



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 5

ELECTRICITY GENERATOR LEVY

Supplemental

307 Application of Part 5 of CTA 2010 for the purposes of determining interests

- (1) Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of determining the interests of persons in companies under the following provisions (each a “relevant provision”)—
- (a) [section 287\(4\)](#);
 - (b) [section 290\(5\)](#);
 - (c) [section 292\(1\)\(b\)\(ii\)](#), [\(3\)\(b\)](#) and [\(4\)\(b\)](#);
 - (d) [section 293\(7\)\(b\)](#);
 - (e) [section 294\(5\)\(b\)](#);
 - (f) [section 296\(7\)\(b\)](#).
- (2) For those purposes that Part has effect as if—
- (a) references to [section 151\(4\)\(a\)](#) and [\(b\)](#) of that Act were references to the relevant provision,
 - (b) in [section 158](#) of that Act after [subsection \(2\)](#) there were inserted—
 - “(2A) But for those purposes a person carrying on a business of banking is not treated as a loan creditor of a company in respect of any loan capital or debt issued or incurred by the company for money lent by the person to the company in the ordinary course of that business.”,
 - (c) [sections 171\(1\)\(b\)](#) and [\(3\)](#), [173](#), [174](#) and [176](#) to [178](#) of that Act were omitted, and
 - (d) in its application for the purposes of [paragraph \(a\)](#) of [section 290\(5\)](#), any reference to company A were to the person referred to in that [paragraph](#).

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- (3) That Part is to be read, for the purposes mentioned in subsection (1), with all modifications necessary to ensure that—
- (a) it applies to a company which does not have share capital, and to holders of corresponding ordinary holdings in such a company, in a way which corresponds to the way it applies to companies with ordinary share capital and holders of ordinary shares in such companies,
 - (b) it applies to a company which is an unincorporated association in a way which corresponds to the way it applies to companies which are bodies corporate,
 - (c) it applies in relation to ownership through an entity (other than a company), or any trust or other arrangement, in a way which corresponds to the way it applies to ownership through a company, and
 - (d) for the purposes of achieving paragraphs (a) to (c), profits or assets are attributed to holders of corresponding ordinary holdings in unincorporated associations, entities, trusts or other arrangements in a manner which corresponds to the way profits or assets are attributed to holders of ordinary shares in a company which is a body corporate.
- (4) In subsection (3) “corresponding ordinary holding” in an unincorporated association, entity, trust or other arrangement means a holding or interest which provides the holder with economic rights corresponding to those provided by a holding of ordinary shares in a body corporate.

308 Anti-avoidance

- (1) This section applies to arrangements if the main purpose, or one of the main purposes of the arrangements, is to—
- (a) reduce or avoid a charge to the electricity generator levy, or
 - (b) otherwise avoid the effect of any of the provisions of this Part.
- (2) Any such reduction or avoidance that would (in the absence of this section) arise from such arrangements is to be counteracted by the making of such adjustments as are just and reasonable.
- (3) Where the arrangements result in a change in the composition of a generating undertaking that is a group (including where such a group ceases to exist), those adjustments may include adjustments to secure that the same liability to electricity generator levy arises, and can be recovered from members of the group, as if the composition of the group had not changed.
- (4) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of—
- (a) an assessment,
 - (b) the modification of an assessment,
 - (c) amendment or disallowance of a claim,
- or otherwise.
- (5) In this section “arrangements” include any agreement, understanding, scheme transaction or series of transactions (whether or not legally enforceable).

309 Information sharing

- (1) This section applies to information that—

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- (a) is held by the Secretary of State, the Gas and Electricity Markets Authority or the Northern Ireland Authority for Energy Regulation (each “a relevant person”), and
 - (b) is relevant to the electricity generator levy.
- (2) Information to which [this section](#) applies may be disclosed by a relevant person (or anyone acting on behalf of that person) to the Commissioners for His Majesty’s Revenue and Customs for the purposes of their functions relating to electricity generator levy or any other tax.
- (3) Subject to [subsection \(5\)](#), no duty of confidentiality or other restriction on disclosure (however imposed) prevents the disclosure of information in accordance with [subsection \(2\)](#).
- (4) [This section](#) does not limit the circumstances in which information may be disclosed under—
- (a) section 105(2) to (4) of the Utilities Act 2000,
 - (b) Article 63(2) to (4) of the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#)), or
 - (c) any other enactment or rule of law.
- (5) Nothing in [this section](#) authorises the making of a disclosure which—
- (a) contravenes the data protection legislation (save that the power conferred by [this section](#) is to be taken into account in determining whether a disclosure contravenes that legislation), or
 - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (save that the power conferred by [this section](#) is to be taken into account when determining whether a disclosure is prohibited by those provisions).

310 Interaction of electricity generator levy with corporation tax

- (1) In calculating profits or losses for the purposes of corporation tax—
- (a) no deduction is allowed in respect of the electricity generator levy, and
 - (b) no account is to be taken of any amount which is paid by a person to another person for the purposes of meeting or reimbursing the cost of the electricity generator levy.
- (2) [Subsection \(3\)](#) applies if—
- (a) two related generating undertakings (within the meaning of [section 298](#)) have an agreement between them in relation to the surrender of amounts of shortfall amounts (within the meaning of that section),
 - (b) such an amount is surrendered between them in accordance with [section 299](#), and
 - (c) as a result of the agreement the undertaking to whom the amount is surrendered makes a payment to the other undertaking that does not exceed the amount surrendered.
- (3) The payment—
- (a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and
 - (b) for corporation tax purposes is not to be regarded as a distribution.

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311 Regulations under [this Part](#)

- (1) Regulations under [this Part](#) are to be made by statutory instrument.
- (2) Regulations under [this Part](#) may—
 - (a) make provision having retrospective effect, provided any such provision does not have the effect of increasing the amount of the electricity generator levy any generating undertaking is liable to;
 - (b) make different provision for different purposes;
 - (c) make supplementary, incidental and consequential provision;
 - (d) make transitional or transitory provision and savings.
- (3) A statutory instrument containing regulations under [this Part](#) is subject to annulment in pursuance of a resolution of the House of Commons.

312 Minor definitions relating to electricity market

In this Part—

“the Balancing and Settlement Code” means the code for the governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of transmission licences granted under section 6(1)(b) of the Electricity Act 1989 as that code has effect from time to time;

“distribution system” and “transmission system” mean anything which would be such a system for the purposes of—

- (a) Part 1 of the Electricity Act 1989, or
- (b) Part 2 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));

“feed-in tariff export payments” means export payments within the meaning of Schedule A to Condition 33 of the standard conditions of electricity supply licences;

“generation” does not include the release of electricity from a battery;

“licensed distribution system” means a distribution system operated by the holder of a licence under—

- (a) section 6(1)(c) of the Electricity Act 1989, or
- (b) Article 10(1)(bb) of the Electricity (Northern Ireland) Order 1992;

“licensed transmission system” means a transmission system operated by the holder of a licence under—

- (a) section 6(1)(b) of the Electricity Act 1989, or
- (b) Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992;

“the SEM Memorandum” means the Memorandum of Understanding referred to in Article 2(3) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)).

“settlement code” means—

- (a) the Balancing and Settlement Code, or
- (b) the Trading and Settlement Code;

“the standard conditions of electricity supply licences” means the standard conditions incorporated in licences under section 6(1)(d) of the Electricity Act 1989 by virtue of section 8A of that Act;

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“the Trading and Settlement Code” means the Single Electricity Market Trading and Settlement Code referred to in the SEM Memorandum as that code has effect from time to time.

313 Definitions in this Part

The following table contains a list of terms used in this Part and the provisions that define or explain them.

Term	Provision defining or explaining
accounting period (generally)	section 280(3)
accounting period (of a generating undertaking that is a group)	section 288(1)
allowable costs	section 284(1)
arm's length provision	section 283(9)
Balancing and Settlement Code	section 312
baseline fuel cost	section 285(3)
company	section 280(1)
company tax return	section 284(3)
distribution system	section 312
electricity generator levy	section 279(2)
exceptional generation fuel costs	section 285(1)
feed-in tariff export payments	section 312
generating undertaking	section 280(1)
generation fuel costs	section 285(2)
generation receipts	section 283(2)
grid connected electricity generation	section 282(3)
group	section 287(1)
HMRC	section 281(3)
joint venture undertaking	section 293(2)
lead member (of a group)	section 288(2)
principal member (of a group)	section 287(2)
qualifying electricity purchase costs	section 284(6)
qualifying joint venture	section 292(1)
qualifying partnership	section 291(1)
qualifying period	section 280(2)
reference period (in relation to the determination of baseline fuel cost)	section 285(4)

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Term	Provision defining or explaining
relevant generating station	section 280(1)
relevant place	section 280(1)
relevant subsidiary (in sections 290, 296 and 297)	section 290(6)
SEM Memorandum	section 312
settlement code	section 312
significant equity holder	section 286(7)
significant minority shareholder (that is a person)	section 290(5)(a)
significant minority shareholder (that is a group of companies)	section 290(5)(b)
standard conditions of electricity supply licences	section 312
subject to a contract for difference, an investment contract, a revenue collection contract or feed-in tariff export payments (in relation to a generating station)	section 280(1)
subsidiary member (of a group)	section 287(3)
third party (in relation to a generating undertaking)	section 286(7)
Trading and Settlement Code	section 312
transmission system	section 312

Status:

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