



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 5

ELECTRICITY GENERATOR LEVY

Calculation of exceptional generation receipts

282 Attribution of generation

- (1) The following amounts of generation, expressed in megawatt hours, are to be attributed to a generating undertaking for a qualifying period—
 - (a) any grid connected electricity generation of a relevant generating station of the undertaking for the period, and
 - (b) the amount given by multiplying—
 - (i) the amount (if any) of grid connected electricity generation for the period of a relevant generating station that is operated by a qualifying partnership in relation to the undertaking (see [section 291](#)), by
 - (ii) the qualifying proportion for that period (see that section).
- (2) For the purposes of [this Part](#), a generating station is a generating station of a generating undertaking if—
 - (a) in the case of an undertaking that is a company, it is operated by that company otherwise than in partnership with another person, and
 - (b) in the case of an undertaking that is a group, it is operated by any member of that group—
 - (i) including where the station is operated in partnership and all of the partners are members of the group, but
 - (ii) not including where the station is operated in partnership and one or more of the partners are not members of the group.
- (3) “Grid connected electricity generation” of a relevant generating station for a qualifying period means—

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Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Cross Heading: Calculation of exceptional generation receipts. (See end of Document for details)

- (a) electricity generated by the station in that period for the purpose of giving a supply to any premises or enabling a supply to be so given where that supply would involve the use of a licensed distribution system or a licensed transmission system, and
 - (b) electricity that was, at any time, expected to be (but was not) generated by the station in that period for that purpose.
- (4) But for the purposes only of—
- (a) [section 279\(3\)](#) (application of levy threshold), and
 - (b) Step 2 in [section 279\(5\)](#) (determination of maximum amount of receipts that would not be exceptional),
- ignore any electricity that was expected to be, but was not, generated by a relevant generating station unless the electricity was not generated in connection with an accepted bid to decrease generation under a settlement code.

283 Generation receipts

- (1) Where generation is attributed to a generating undertaking under [section 282\(1\)](#) for a qualifying period, generation receipts in respect of that generation are to be attributed to that undertaking for that period.
- (2) In [this Part](#) “generation receipts” means amounts that it is fair and reasonable to attribute to generation attributed under [section 282\(1\)](#) (whether or not they are received by, or otherwise arise to the operator of the station) on the basis that the amounts reflect, directly or indirectly, the amount realised (or to be realised) for the wholesale purchase of electricity arising from that generation (whether or not the electricity is actually generated).
- (3) In determining the amounts realised (or to be realised) for the wholesale purchase of electricity the following are, amongst other things, to be taken into account—
 - (a) amounts received in accordance with a settlement code in connection with accepted offers to increase generation (but not amounts in connection with accepted bids to decrease generation);
 - (b) imbalance charges under such a code;
 - (c) payments and receipts under arrangements whose principal purpose is to act as a hedge of the exposure to changes in the price of electricity where those arrangements relate to generation attributed under [section 282\(1\)](#).
- (4) The arrangements referred to in [subsection \(3\)\(c\)](#) may include arrangements comprising, or that include the use of, options, futures and contracts for difference (within the meaning of Part 7 of CTA 2009).
- (5) The Treasury may by regulations make provision about when amounts can (and cannot) be fairly and reasonably attributed to generation under [subsection \(2\)](#).
- (6) Regulations may also provide that—
 - (a) amounts of a specified description are always to be treated as generation receipts;
 - (b) amounts of a specified description are never to be treated as generation receipts.

“Specified” means specified in the regulations.

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- (7) **Subsection (8)** applies to generation attributed to a generating undertaking under **section 282(1)** if—
- (a) provision, within the meaning of Part 4 of TIOPA 2010, has been made or imposed as between two persons by means of a transaction or series of transactions,
 - (b) that provision relates to that generation,
 - (c) if instead of that provision the arm's length provision had been made or imposed, one of those persons would have an amount that it is fair and reasonable to attribute the generating undertaking in accordance with **subsection (2)**, and
 - (d) were that person within the charge to corporation tax, their profits and losses would be calculated (as a result of Part 4 of TIOPA 2010) as if the arm's length provision had been made or imposed instead of the provision actually made or imposed.
- (8) Where **this subsection** applies to generation attributed to a generating undertaking, generation receipts in respect of it are to be determined as if the arm's length provision had been made or imposed instead of the provision actually made or imposed.
- (9) In **this Part** “the arm's length provision” has the meaning it has in Part 4 of TIOPA 2010.

284 Allowable costs

- (1) “Allowable costs” means—
- (a) exceptional generation fuel costs of relevant generating stations (see **section 285**),
 - (b) exceptional revenue sharing costs in respect of relevant generating stations (see **section 286**), and
 - (c) qualifying electricity purchase costs (see **subsection (6)**).
- (2) Allowable costs may only be attributed to a generating undertaking for a qualifying period to the extent—
- (a) those costs are fairly and reasonably attributable to generation receipts attributed to the undertaking for the period,
 - (b) they reflect expenses of the undertaking (or, in the case of an undertaking that is a group, of one or more of its members), and
 - (c) those costs are not already reflected in the determination of the amounts of those receipts.
- (3) Allowable costs are only to be attributed to a generating undertaking if a claim is made for those allowable costs in a company tax return.
- In **this Part** “company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1) of that Schedule).
- (4) **Subsection (5)** applies to allowable costs of a person (“the cost holder”) to be attributed to a generating undertaking if—
- (a) the costs arise as a result of provision made or imposed as between the cost holder and another person by means of a transaction or series of transactions, and

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- (b) were the cost holder within the charge to corporation tax, the cost holder's profits and losses would be calculated (as a result of Part 4 of TIOPA 2010) as if the arm's length provision had been made or imposed instead of the provision actually made or imposed.
- (5) Where [this subsection](#) applies to allowable costs, the amount of those costs is to be determined as if that arm's length provision had been made or imposed instead of the provision it arose as a result of.
- (6) In [this section](#) “qualifying electricity purchase costs” means costs reasonably incurred in the purchase of electricity in order to comply with the terms of an agreement under which it was expected that a relevant generating station will generate but does not do so.

285 Exceptional generation fuel costs

- (1) For the purposes of a claim for allowable costs by a generating undertaking, the amount (if any) of “exceptional generation fuel costs” of a relevant generating station for a qualifying period is to be determined as follows—

Step 1

Determine the generation fuel costs for the station for that period.

Step 2

Divide the amount of those costs by the amount of electricity generated by the station in that period (expressed in megawatt hours) that are attributable to a generating undertaking.

Step 3

Determine the baseline fuel cost of the station.

Step 4

If the result of Step 2 is the same as or less than the baseline fuel cost, there are no exceptional generation fuel costs of the station for that period.

Step 5

If the result of Step 2 is greater than the baseline fuel cost, subtract the baseline fuel cost from the result of Step 2.

Step 6

Multiply the amount of electricity generated by the station that is attributable to a generating undertaking in that period by the result of Step 5 to give the amount of exceptional generation fuel costs of the station for that period.

- (2) The “generation fuel costs” of a relevant generating station for a period means costs which, on a fair and reasonable basis, can be directly attributed to the acquisition of fuel used for generating electricity in that period (which may include the costs of transporting such fuel) that is attributable to a generating undertaking.
- (3) The baseline fuel cost of a relevant generating station is the lesser of—
 - (a) the average generation fuel costs of the station per megawatt hour for the reference period specified in the claim for allowable costs, determined on a fair and reasonable basis (and which cannot be less than nil), and
 - (b) £65 per megawatt hour.
- (4) Subject to [subsection \(5\)](#), the reference period that may be specified in the claim must—

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- (a) be a period of at least 12 months in which there is a period of 3 months where the generating station was generating on 50% or more of the days in that 3 month period,
 - (b) commence no earlier than 1 January 2017, and
 - (c) end no later than 1 March 2020.
- (5) Where a reference period cannot be specified in the claim in accordance with [subsection \(4\)](#) because there is no period of at least 12 months between 1 January 2017 and 1 March 2020 in which there is a period of 3 months where the generating station was generating on 50% or more of the days in that 3 month period—
- (a) a period of 12 months commencing no earlier than 1 January 2017 and ending no later than 1 March 2020 may be specified as the reference period,
 - (b) the average generation fuel costs of the station for the purposes of [subsection \(3\)\(a\)](#) is to be determined as a fair and reasonable estimate of what those costs would have been—
 - (i) had the generating station been generating in that period, and
 - (ii) had it been generating on a similar basis in that period as it had been generating in the period of 12 months ending with the end of the qualifying period to which the claim relates.
- (6) Where a generating station uses more than one type of fuel, a generating undertaking making a claim for allowable costs in respect of the exceptional fuel costs of that station may calculate the exceptional generation fuel costs in relation to each type of fuel separately, and may specify different reference periods for those calculations.
- (7) Where a generating undertaking makes a claim for allowable costs in respect of exceptional generation fuel costs of two or more generating stations that use the same type of fuel, the same reference period must be specified in relation to the calculation of exceptional generation costs in relation to fuel of the same type.

286 Exceptional revenue sharing costs

- (1) [Subsection \(2\)](#) applies for the purposes of determining the amount of allowable costs that may be claimed by a generating undertaking in respect of exceptional revenue sharing costs.
- (2) Take the following steps to determine the amount (if any) that can be claimed for a qualifying period—

Step 1

Determine if there are any relevant generating stations whose generation has been attributed to the undertaking in relation to which there are qualifying arrangements under which payments are made to a third party in relation to the undertaking by reference to—

- (a) the price received for generation by that station, or
- (b) the wholesale price of electricity.

Step 2

Determine the amounts paid, in respect of each of those arrangements.

Step 3

In relation to each such payment, determine the amount that would have been paid if the price received for generation by the station in question and the

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wholesale price of electricity had been the benchmark amount and subtract that amount from the amount actually paid.

Step 4

Add together the results of Step 3.

If the result of Step 3 is nil or less the generating undertaking, no amount can be claimed.

If the result of Step 3 is more than nil, that amount can be claimed (to the extent it is fairly and reasonably attributable to generation receipts attributed to the undertaking).

- (3) For the purposes of [subsection \(2\)](#), arrangements are “qualifying” if they are arrangements under which fuel for generating electricity is acquired and the requirement to make payments under the arrangements relates to that acquisition.
- (4) Where the arrangements provide for some or all of the cost of paying the levy to be passed to the third party (whether by way of reduction of payments or otherwise) no amount of allowable costs in relation to the arrangements may be claimed unless [subsection \(6\)](#) applies.
- (5) [Subsection \(6\)](#) applies where the arrangements provide for a fixed proportion of the cost of paying the levy to be passed to the third party.
- (6) Where this subsection applies, the proportion of the amount calculated under [subsection \(2\)](#) that is equal to the proportion of the costs of paying the levy that are not passed to the third party may be claimed.
- (7) In [this section](#)—
 - “third party”, in relation to a generating undertaking, means a person that is not a significant equity holder in—
 - (a) where the undertaking is not a group, the undertaking, or
 - (b) where the undertaking is a group, any member of the group;
 a person (“P”), other than a member of a group of companies, is a “significant equity holder” in a company (“C”) if—
 - (a) P is beneficially entitled to 20% or more of any profits available for distribution to equity holders of C,
 - (b) P would be beneficially entitled to 20% or more of any assets of C available for distribution to its equity holders on a winding-up, or
 - (c) at least 20% of C’s ordinary share capital is owned directly or indirectly by P;
 a member of a group of companies is a “significant equity holder” in a company (“C”) if—
 - (a) members of the group between them are beneficially entitled to 20% or more of any profits available for distribution to equity holders of C,
 - (b) members of the group between them would be beneficially entitled to 20% or more of any assets of C available for distribution to its equity holders on a winding-up, or
 - (c) at least 20% of C’s ordinary share capital is owned directly or indirectly by members of the group.

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