



# Finance (No. 2) Act 2023

## 2023 CHAPTER 30

### PART 5

#### ELECTRICITY GENERATOR LEVY

*Treatment of company as transparent as alternative to attribution and surrender*

#### **300 Election to treat certain companies as transparent**

- (1) A company that is, or is a member of, a generating undertaking may elect that the company is to be treated as transparent while the election is in force.

[Section 301](#) sets out the effect of a company being “treated as transparent”.

- (2) An election under [subsection \(1\)](#)—
- (a) must be made by notice to HMRC;
  - (b) must specify the first day on which the election is to have effect, which must be no earlier than 12 months before the day on which the notice is given;
  - (c) may only be made if conditions A and B are met.
- (3) Condition A is that—
- (a) the company is a qualifying joint venture that is, or is a member of, a generating undertaking, or
  - (b) the company—
    - (i) is a subsidiary member of a group that is a generating undertaking, and
    - (ii) has at least one significant minority shareholder.
- (4) Condition B is that each shareholder of the company—
- (a) has at least a 10% interest in it,
  - (b) is a company, and
  - (c) has consented to the making of the election.

*Status: Point in time view as at 22/02/2024.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Cross Heading: Treatment of company as transparent as alternative to attribution and surrender. (See end of Document for details)*

- (5) Where two or more members of a group are shareholders of the company, they are to be regarded as a single shareholder (and their interests aggregated) for the purposes of determining whether subsection (4)(a) is met (but each must still consent to the making of the election for condition B to be satisfied).
- (6) For the purposes of [this section](#) and [section 301](#)—
- (a) a person is a shareholder of a company if—
    - (i) in the case of a company that has ordinary share capital, the person holds ordinary share capital of the company, or
    - (ii) in the case of a company that does not have ordinary share capital, the person is beneficially entitled to a share of the company’s profits available for distribution to equity holders of it, and
  - (b) a shareholder’s interest in a company is—
    - (i) in the case of a company that has ordinary share capital, the proportion of the ordinary share capital of the company the shareholder holds, or
    - (ii) in the case of a company that does not have ordinary share capital, the proportion of the company’s profits available for distribution to equity holders of it to which the shareholder is beneficially entitled.
- (7) An election under [this section](#) has effect from the date specified in accordance with [subsection \(2\)\(b\)](#) until—
- (a) revoked by the company,
  - (b) revoked by HMRC, or
  - (c) a person who was not a shareholder of the company at the time the election first took effect becomes a shareholder of the company.

Nothing in [this subsection](#) is to be read as preventing a subsequent election being made that commences at any time after the first election ceased to have effect.

- (8) An election may be revoked by the company by notice given to HMRC that specifies the date the election is to cease to have effect, which must be no earlier than 12 months before the day on which the notice of revocation is given.
- (9) An election may be revoked by HMRC by notice given to the company if HMRC considers that the company or its shareholders have not complied with any obligation under [this Part](#).
- (10) A notice under [subsection \(9\)](#)—
- (a) must specify the date from which the revocation has effect (including a date which if specified would result in the election never having effect), and
  - (b) must state the reasons for revocation, and
  - (c) may be appealed by the company by notice to HMRC.
- (11) An appeal under [subsection \(10\)\(c\)](#) must be made during the period of 30 days beginning with the date on which the notice under [subsection \(9\)](#) was given.

Further provision about appeals is contained in Part 5 of TMA 1970 (which applies in relation to the electricity generator levy as a result of [section 302](#)).

### **301 Effect of company being transparent**

- (1) [This section](#) applies where a company (“C”) is treated as transparent as a result of an election under [section 300](#).

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- (2) C is to be treated for the purposes of [this Part](#) as if it were a partnership.
- (3) Its shareholders are to be regarded for those purposes as its partners.
- (4) Each shareholder's share of the profits of the partnership is equal to its interest in C.
- (5) Where C is a generating undertaking, all generation, generation receipts and allowable costs that would (ignoring [this section](#)) be attributed to C in accordance with [this Part](#) are to be treated instead as if they resulted from the operation of a generating station operated in partnership by C's partners.
- (6) Where C is a member of a group that is a generating undertaking, the generation, generation receipts and allowable costs that—
  - (a) would (ignoring [this section](#)) be attributed to the group in accordance with [this Part](#), and
  - (b) are attributable on a fair and reasonable basis to the activities of C,are to be treated instead as if they resulted from the operation of a generating station operated in partnership by C's partners.
- (7) Where C is, or is treated as, the only shareholder in another company ("D"), the generation, generation receipts and allowable costs that—
  - (a) would (ignoring [this section](#)) be attributed, in accordance with [this Part](#), to the group of which D is a member, and
  - (b) are attributable on a fair and reasonable basis to the activities of D,are to be treated instead as if they resulted from the operation of a generating station operated in partnership by C's partners.
- (8) C is to be treated as the only shareholder in another company if—
  - (a) the other company's only shareholder is—
    - (i) a company in which C is the only shareholder,
    - (ii) a company in which the only shareholder is a company in which C is the only shareholder, and so on, or
  - (b) the other company has more than one shareholder, but each of its shareholders is one of the following—
    - (i) C;
    - (ii) a company whose only shareholder falls within [paragraph \(a\)\(i\)](#) or [\(ii\)](#);
    - (iii) a company that has more than one shareholder each of which is a company falling with [sub-paragraph \(i\)](#) or [\(ii\)](#) or this sub-paragraph.
- (9) Where a shareholder of a company, or a generating undertaking of which such a shareholder is a member, is liable to an amount of electricity generator levy as a result of [this section](#)—
  - (a) where the company is a generating undertaking, it is jointly and severally liable to that amount (to the extent it arises as a result of [this section](#)), or
  - (b) where the company is a member of a generating undertaking that is a group, that undertaking is jointly and severally liable to that amount (to the extent it arises as a result of [this section](#)).
- (10) Where—
  - (a) a generating undertaking is liable to an amount of electricity generator levy as a result of [subsection \(9\)\(a\)](#) or [\(b\)](#), and

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- (b) the qualifying period (“the chargeable period”) by reference to which that amount was determined does not wholly correspond to a qualifying period of the undertaking,

the amount is to be apportioned, on a fair and reasonable basis, between the qualifying periods of the undertaking in which the chargeable period falls.

**Status:**

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