

---

---

[DRAFT]

## CONTENTS

### PART 1

#### ELECTRICITY GENERATOR LEVY

##### *Charge*

- 1 Charge on exceptional generation receipts
- 2 Benchmark amount
- 3 Attribution of generation
- 4 Generation receipts
- 5 Allowable costs
- 6 Exceptional generation fuel costs
- 7 Exceptional revenue sharing costs

##### *Groups, partnerships and joint ventures*

- 8 Groups
- 9 Lead member of a group and its qualifying periods
- 10 Liability of members of groups
- 11 Election for members with significant minority shareholding to pay levy
- 12 Qualifying partnerships
- 13 Qualifying joint ventures
- 14 Non-chargeable amounts of joint venture to be attributed to participants
- 15 Attribution of receipts to participants in joint venture

##### *Treatment of significant minor shareholders*

- 16 Attribution to companies that are significant minority shareholders

##### *Management and administration*

- 17 General application of corporation tax administration
- 18 Requirement to make company tax return
- 19 Levy to be added to end of corporation tax calculation
- 20 Application of Part 5A of TMA 1970

##### *Supplemental*

- 21 Application of Part 5 of CTA 2010 for the purposes of determining interests

- 22 Anti-avoidance
- 23 Information sharing
- 24 Electricity generator levy not deductible for corporation tax purposes
- 25 Regulations under this Part
- 26 Minor definitions relating to electricity market
- 27 Definitions in this Part

## PART 1

### ELECTRICITY GENERATOR LEVY

#### *Charge*

#### **1 Charge on exceptional generation receipts**

- (1) If a qualifying generating undertaking has exceptional generation receipts for a qualifying period, that undertaking is liable to pay a charge equal to 45% of those exceptional receipts.
- (2) The charge is referred to in this Part as the “electricity generator levy”.
- (3) A generating undertaking is “qualifying” in a qualifying period if generation attributed to it under this Part (see section 3, but also sections 15 and 16) for that period exceeds the levy threshold.
- (4) The levy threshold for a qualifying period is—
  - (a) where the period is a year, 50,000 megawatt hours, or
  - (b) where the period is shorter than a year, that number of megawatt hours multiplied by the amount given by dividing the number of days in the period by 365.
- (5) To determine if a generating undertaking has exceptional generation receipts for a qualifying period and (if so) the amount of those receipts, take the following steps—

*Step 1 (attribute generation receipts)*

Determine the amount of generation receipts to be attributed to the undertaking for the period in accordance with section 4.

*Step 2 (determine the maximum amount of receipts that would not be exceptional)*

Multiply the amount of electricity generation (expressed in megawatt hours) attributed to the undertaking for the period (see section 3) by the benchmark amount (see section 2).

*Step 3 (determine whether undertaking has receipts that exceed that amount)*

Subtract the result of Step 2 from the amount determined under Step 1. If the result of this Step is nil or less, the undertaking does not have any exceptional generation receipts (otherwise, carry on to Step 4).

*Step 4 (subtract allowable costs)*

Determine the amount of allowable costs (if any) to be attributed to the undertaking for the period (see section 5) and subtract that amount from the result of Step 3.

If the result of this Step is nil or less, the undertaking does not have any exceptional generation receipts (otherwise, carry on to Step 5).

*Step 5 (apply revenue allowance)*

Subtract the revenue allowance for the period from the result of Step 4.

*Step 6 (result of Step 5 is amount of exceptional generation receipts unless negative)*

If the result of Step 5 is nil or less, the undertaking does not have any exceptional generation receipts.

Otherwise, the amount of exceptional generation receipts the undertaking has for the period is the result of Step 5.

- (6) For the purposes of Step 5, the revenue allowance for a generating undertaking for a qualifying period is –
- (a) where the period is a year, £10 million, or
  - (b) where the period is shorter than a year, £10 million multiplied by the amount given by dividing the number of days in the period by 365.
- (7) Other provisions in this Part may affect the determination of exceptional generation receipts, including –
- (a) section 14, which contains provision attributing amounts from a joint venture to its participants,
  - (b) section 15, which contains provision that attributes generation to participants in a joint venture in certain circumstances,
  - (c) section 16, which contains provision that attributes generation to significant minor shareholders in a generating undertaking in certain circumstances, and
  - (d) section 22, which contains anti-avoidance provisions.
- (8) In this Part –
- “company” has the meaning it has in the Corporation Tax Acts (see section 1121 of CTA 2010);
  - “generating undertaking” means –
    - (a) a company, other than a company that is a member of a group, that operates a relevant generating station, or
    - (b) a group of companies that includes at least one member who operates a relevant generating station;
  - a generating station is “relevant” –
    - (a) if it generates electricity at a relevant place and is not a generating station that mainly generates electricity –
      - (i) as a result of the burning of oil, coal or natural gas, or
      - (ii) as a result of the use of plant driven by water, where the power is mainly a result of the hydrostatic head of the water having been increased by pumping, and
    - (b) to the extent that is not subject to –
      - (i) a contract for difference within the meaning of Chapter 2 of Part 2 of the Energy Act 2013 (contracts for difference),
      - (ii) an investment contract within the meaning of Schedule 2 to that Act (investment contracts), or
      - (iii) feed-in tariff export payments;
  - “relevant place” means a place in –
    - (a) the United Kingdom,

- (b) the territorial sea of the United Kingdom, or
  - (c) a Renewable Energy Zone within the meaning of Part 2 of the Energy Act 2004 (see section 84(4) of that Act);
- a generating station is “subject” –
- (a) to a contract for difference or an investment contract to the extent that its output may give rise to payments under such an instrument, and
  - (b) to feed-in tariff export payments to the extent its output gives rise to such payments.
- (9) References in this Part to a “qualifying period” in relation to a generating undertaking means –
- (a) the period, if any, between the beginning of 1 January 2023 and the commencement of the first accounting period of the undertaking that commences on or after 1 January 2023,
  - (b) the first accounting period of the undertaking commencing on or after 1 January 2023,
  - (c) every subsequent accounting period of the undertaking that ends on or before 31 March 2028, and
  - (d) the period, if any, between the end of the last accounting period ending on or before 31 March 2028 and the end of 31 March 2028.
- (10) References in this Part to an “accounting period” are –
- (a) in relation to a company within the charge to corporation tax, to an accounting period for the purposes of that tax, or
  - (b) in relation to a company not within the charge to corporation tax, to a period that would be an accounting period for the purposes of that tax were the company within the charge to that tax and had first come within it on 1 January 2023.

See also section 9, which provides that the accounting period of a generating undertaking that is a group is the accounting period of its lead member.

## 2 Benchmark amount

- (1) The benchmark amount for the financial years ending in 2023 and 2024 is £75.
- (2) The benchmark amount for each subsequent financial year is the benchmark amount for the previous financial year –
  - (a) increased or decreased by the same percentage as the consumer prices index for the December before the start of that subsequent financial year has increased or decreased from that index for the previous December, and
  - (b) rounded up to the nearest whole penny.
- (3) Before the commencement of each of the financial years ending in 2025 to 2028, His Majesty’s Revenue and Customs must publish the benchmark amount for that financial year in such manner as they consider appropriate.

- 
- (4) Subsections (5) to (7) apply where 2 financial years fall within a qualifying period.
  - (5) Generation attributed to a generating undertaking for that period is to be allocated, on a fair and reasonable basis, between those financial years.
  - (6) The calculation in Step 2 of section 1(5) is to be applied to separately to the generation allocated to each of those financial years by reference to the benchmark amount for that year.
  - (7) Accordingly, the result of that Step is to be the sum of those calculations.
  - (8) In this section—
    - “consumer prices index” means the all items consumer prices index published by the Statistics Board;
    - “financial year” means a period of twelve months ending with 31st March.

### 3 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 12), 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—
  - (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 distribution system or a 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 1(3) (application of levy threshold), and
  - (b) Step 2 in section 1(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.

#### 4 Generation receipts

- (1) Where generation is attributed to a generating undertaking under section 3(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 3(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 3(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.

- (7) Subsection (8) applies to generation attributed to a generating undertaking under section 3(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 arms 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 arms 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 arms length provision had been made or imposed instead of the provision actually made or imposed.
- (9) In this Part “the arms length provision” has the meaning it has in Part 4 of TIOPA 2010.

## **5 Allowable costs**

- (1) “Allowable costs” means—
- (a) exceptional generation fuel costs of relevant generating stations (see section 6),
  - (b) exceptional revenue sharing costs in respect of relevant generating stations (see section 7),
  - (c) qualifying electricity purchase costs (see subsections (6) and (7)), and
  - (d) such other descriptions of costs as may be specified in regulations made by the Treasury.
- (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
  - (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 arms 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 arms 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.
- (7) The Treasury may by regulations provide that such descriptions of costs as may be specified in the regulations are, or are not, qualifying electricity purchase costs.

## 6 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).

*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 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).

- (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 –
  - (a) be a period of at least 12 months in which there is a period of 3 months in which 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 in which 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.

## 7 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 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) For the purposes of that subsection, ignore any arrangements where the payments are reduced in a manner that reflects the cost of paying the electricity generator levy.
- (5) Where payments are made by reference to the wholesale price of electricity and there are arrangements intended to act as a hedge of the exposure to changes in the price of electricity that are relevant to those payments, those arrangements may be taken into account in a claim on a fair and reasonable basis.
- (6) 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.

*Groups, partnerships and joint ventures*

## 8 Groups

- (1) For the purposes of this Part, the following form a “group”—
  - (a) a company that is not a 75% subsidiary of any other company, and
  - (b) every company that is a 75% subsidiary—
    - (i) of that company,
    - (ii) of a 75% subsidiary of that company, or
    - (iii) of a 75% subsidiary of a 75% subsidiary of that company, and so on.
- (2) The company in a group that is not a 75% subsidiary of any other company is the “principal member” of the group.
- (3) A company (“B”) is a “75% subsidiary” of another company (“A”) if—
  - (a) A is beneficially entitled to 75% or more of any profits available for distribution to equity holders of B,
  - (b) A would be beneficially entitled to 75% or more of any assets of B available for distribution to its equity holders on a winding-up, or
  - (c) at least 75% of B’s ordinary share capital is owned directly or indirectly by A.
- (4) Where as a result of the application of each of paragraphs (a) to (c) of subsection (3) a company would (ignoring this paragraph) be a member of more than one group, that company is to be treated as only being a 75%

subsidiary of the first company it is a subsidiary of applying the rules in those paragraphs in order (starting with paragraph (a)).

## 9 Lead member of a group and its qualifying periods

- (1) For the purposes of section 1(9) (meaning of qualifying period), the reference to an accounting period of a generating undertaking that is a group means an accounting period of its lead member.
- (2) Take the following steps in order to identify the lead member of the group (stopping at the first step under which a member of the group is identified as the lead member)–

### *Step 1*

If there is a member of the group that–

- (a) is within the charge to corporation tax, and
- (b) is nominated for the purposes of this section in accordance with regulations made by the Treasury,

that member is the lead member of the group.

### *Step 2*

If the principal member of the group is within the charge to corporation tax, it is the lead member of the group.

### *Step 3*

If–

- (a) there is a member of the group that–
    - (i) is within the charge to corporation tax, and
    - (ii) has no 75% parent within the charge to corporation tax, and
  - (b) there is no other member of the group falling within paragraph (a),
- that member is the lead member of the group.

### *Step 4*

If there is more than one member falling within paragraph (a) of Step 3, the lead member is the member falling within that paragraph to which the greatest amount of generation would be attributed under section 3(1) in the period of 12 months ending with the later of 31 December 2022 and the beginning of the first qualifying period in which the group is a qualifying generating undertaking if–

- (a) each such member were a generating undertaking, and
- (b) that period of 12 months were a qualifying period.

### *Step 5*

If none of the preceding steps identifies a lead member, the principal member of the group (who will not be within the charge to corporation tax) is the lead member of the group.

- (3) For the purposes of subsection (2), a company (“P”) is a 75% parent of another company if that other company is a 75% subsidiary–
  - (a) of P,

- (b) of a 75% subsidiary of P, or
  - (c) of a 75% subsidiary of a 75% subsidiary of P, and so on.
- (4) The Treasury may by regulations –
- (a) make provision about the manner by which a member of a group may be nominated for the purposes of this section;
  - (b) provide for conditions that a member must meet in order to be nominated (which may include requirements about the residency of that member);
  - (c) make provision about the effect of a member being nominated (including provision about the qualifying periods of the group);
  - (d) make provision about the effect of a nominated member ceasing to be nominated (including provision treating that member as continuing to be lead member for a period).
- (5) Subject to provision in regulations under subsection (4), where a company becomes lead member of a group during a qualifying period, and that period is not the same as an accounting period of the new lead member –
- (a) the qualifying period ends, and
  - (b) a qualifying period commences that ends with the end of the current accounting period of the new lead member.

## 10 Liability of members of groups

Where a generating undertaking that is a group is liable to an amount of electricity generator levy –

- (a) the lead member is, subject to section 8A, liable to pay that amount, but
- (b) every other member, along with the lead member, is jointly and severally liable for that amount.

## 11 Election for members with significant minority shareholding to pay levy

- (1) This section applies where –
- (a) a generating undertaking that is a group is liable to an amount of electricity generator levy for a qualifying period,
  - (b) a member of that group (“the relevant member”) has, at any time in that period, at least 1 significant minority shareholder that is not a member of the group,
  - (c) some, or all, of that amount is attributable, on a fair and reasonable basis, to the activities of the relevant member.
- (2) Where this section applies, the lead member of the group may elect that so much of the amount as is attributable to the relevant member must be paid by that member.
- (3) But an election under this section does not prevent the recovery by His Majesty’s Revenue and Customs of the amount the relevant member must

pay from other members of the group by virtue of paragraph (b) of section 10 (joint and several liability).

- (4) An election under this section in respect of an amount of electricity generator levy for a qualifying period must be made no later than 9 months after the end of that period.
- (5) For the purposes of this Part—
  - (a) a person (“P”) is a significant minority shareholder in a company (“C”) if—
    - (i) P is beneficially entitled to 10% or more of any profits available for distribution to equity holders of C,
    - (ii) P would be beneficially entitled to 10% or more of any assets of C available for distribution to its equity holders on a winding-up, or
    - (iii) at least 10% of C’s ordinary share capital is owned directly or indirectly by P, and
  - (b) a group of companies is a significant minority shareholder in C if—
    - (i) members of the group are, between them, beneficially entitled to 10% or more of any profits available for distribution to equity holders of C,
    - (ii) members of the group between them would be beneficially entitled to 10% or more of any assets of C available for distribution to its equity holders on a winding-up, or
    - (iii) at least 10% of C’s ordinary share capital is owned directly or indirectly by members of the group.

## **12 Qualifying partnerships**

- (1) A “qualifying partnership”, in relation to a generating undertaking, means a partnership that operates a relevant generating station whose partners include—
  - (a) in the case of a generating undertaking that is a company, that company, or
  - (b) in the case of a generating undertaking that is a group, at least one partner who is not a member of the group and at least one partner who is a member of the group.
- (2) For the purposes of subsection (1) of section 3, the qualifying proportion for a qualifying period in relation to a generating undertaking that is a company and a qualifying partnership in relation to that undertaking is the proportion of the partnership’s profits represented by the undertaking’s share of those profits.
- (3) For the purposes of that subsection, the qualifying proportion for a qualifying period in relation to a generating undertaking that is a group and a qualifying partnership in relation to that undertaking is the proportion of the partnership’s profits represented by the sum of the shares of those profits of each partner that is a member of the undertaking.

- (4) Part 17 of CTA 2009 (partnerships) applies for the purposes of this section as it applies for the purposes of corporation tax.

### **13 Qualifying joint ventures**

- (1) For the purposes of this Part a company (“C”) is “qualifying joint venture” if –
- (a) C is not a member of a group other than a group of which it is the principal member, and
  - (b) there are five or fewer persons who between them –
    - (i) hold 75% or more of C’s ordinary share capital, or
    - (ii) in a case where C does not have ordinary share capital, are beneficially entitled to 75% or more of C’s profits available for distribution to equity holders of C.
- (2) In determining whether there are five or fewer such persons as are mentioned in subsection (1)(b), the members of a group are treated as if they were a single company.
- (3) A company (“P”) that is not a member of a group is a participant in a qualifying joint venture (“V”) if –
- (a) P holds 10% or more of V’s ordinary share capital, or
  - (b) in a case where V does not have ordinary share capital, P is beneficially entitled to 10% or more of V’s profits available for distribution to equity holders of V.
- (4) A group of companies is a participant in a qualifying joint venture (“V”) if –
- (a) a member of that group, or two or more members between them, hold 10% or more of V’s ordinary share capital, or
  - (b) in a case where V does not have ordinary share capital, a member of the group is, or two or more members between them are, beneficially entitled to 10% or more of V’s profits available for distribution to equity holders of V.
- (5) Where a participant in a qualifying joint venture is not a generating undertaking, the participant is to be treated as a generating undertaking for the purposes of this Part.

### **14 Non-chargeable amounts of joint venture to be attributed to participants**

- (1) Subsection (3) applies where the result of Step 4 in section 1(5) for a joint venture undertaking is greater than nil for a qualifying period.
- (2) For the purposes of this Part “joint venture undertaking” means a generating undertaking –
- (a) that is a qualifying joint venture, or
  - (b) that is a group whose principal member is a qualifying joint venture.
- (3) The appropriate proportion of the non-chargeable amount in relation to the joint venture undertaking is to be added to the result of Step 4 in section 1(5)

for each generating undertaking that is a participant in the qualifying joint venture (“the JV”) that comprises, or is the principal member of, the joint venture undertaking (and where Step 4 would not otherwise have been reached as a result of the second sentence of Step 3, ignore that sentence).

- (4) Where the qualifying period of the joint venture undertaking corresponds to a qualifying period of a participant of the JV, the whole of the appropriate proportion of the non-chargeable amount is to be added to the result of Step 4 for the participant for that period.

Otherwise, the appropriate proportion is to be apportioned, on a fair and reasonable basis, between the qualifying periods of the participant in which the qualifying period of the joint venture undertaking falls.

- (5) The non-chargeable amount for a qualifying period of the joint venture undertaking is so much of the result of Step 4 in section 1(5) for that period as is reduced as a result of Step 5 of that section.

- (6) To determine the appropriate proportion of the participants in the JV for a qualifying period of the joint venture undertaking take the following steps –

*Step 1*

The generation receipts and allowable costs attributed to the joint venture undertaking for the period are to be allocated to the participants in the JV in proportion to the proportional interest each has in the JV at the time of the generation to which the receipts or costs relate.

*Step 2*

In respect of each participant, subtract those allocated allowable costs from those allocated generation receipts.

If the result of this Step is less than nil for any of the participants, the appropriate proportion for that participant is nil.

*Step 3*

The appropriate proportion for any other participant is the amount given by dividing –

- (a) the result of Step 2 in respect of that participant, by
- (b) the result of Step 4 in section 1(5) for the joint venture undertaking –
  - (i) ignoring any amounts added to the result of that Step in accordance with subsection (3), and
  - (ii) where the result of Step 2 for one or more of the participants is less than nil, increased by the sum of those results (each expressed as a positive number).

- (7) The proportional interest of a participant (“P”) in the JV at any time is –

- (a) the percentage of the JV’s ordinary share capital held –
  - (i) where P is a generating undertaking which is a company, by P, or
  - (ii) where P is a generating undertaking which is a group, by members of P, or

- (b) in a case where the JV does not have ordinary share capital, the percentage of the JV's profits available for distribution to equity holders of the JV –
  - (i) where P is a generating undertaking which is a company, to which P is beneficially entitled, or
  - (ii) where P is a generating undertaking which is a group, to which members of P are beneficially entitled.

## 15 Attribution of receipts to participants in joint venture

- (1) Subsection (2) applies where –
  - (a) generation attributed to a joint venture undertaking (otherwise than in accordance with this section) is supplied, directly or indirectly, to a generating undertaking (“Q”) that is a participant in the joint venture (“the JV”) that comprises, or is the principal member of, the joint venture undertaking, and
  - (b) that generation is subsequently the subject of a wholesale purchase of electricity from Q.
- (2) Where this subsection applies –
  - (a) the relevant proportion of the generation attributed to the joint venture undertaking is also to be attributed to Q,
  - (b) in determining the amount of generation receipts to be attributed to the joint venture undertaking under section 4 in respect of that generation, do not take account of the transaction described in subsection (1)(b),
  - (c) the generation attributed to Q as a result of paragraph (a) is to be attributed to Q for the qualifying period of Q in which the generation occurred,
  - (d) subject to paragraph (f), the generation attributed to Q as a result of paragraph (a) is to be treated for the purposes of this Part as if it had been attributed under section 3(1),
  - (e) in determining the amount of generation receipts to be attributed to Q under section 4 in respect of generation attributed as a result of paragraph (a), take account of the relevant proportion of the costs of acquiring that generation, and
  - (f) in determining the exceptional generation receipts of Q for a qualifying period of Q under section 1(5), any generation attributed to Q for that period as a result of paragraph (a) is to be ignored for the purposes of Step 2 (application of benchmark amount).
- (3) The “relevant proportion” for the purposes of subsection (2) is –
  - (a) the percentage of the JV's ordinary share capital held –
    - (i) where Q is a generating undertaking which is a company, by Q, or
    - (ii) where Q is a generating undertaking which is a group, by members of Q, or

- (b) in a case where the JV does not have ordinary share capital, the percentage of the JV's profits available for distribution to equity holders of the JV –
  - (i) where Q is a generating undertaking which is a company, to which Q is beneficially entitled, or
  - (ii) where Q is a generating undertaking which is a group, to which members of Q are beneficially entitled.
- (4) Subsection (5) applies where –
  - (a) generation attributed to a joint venture undertaking is supplied, directly or indirectly to a person other than a participant in the qualifying joint venture (“the JV”) that comprises, or is the principal member of, the joint venture undertaking,
  - (b) one or more participants in the JV (each “Q”) are party to arrangements that result in receipts arising by reference to that generation that would be generation receipts of the joint venture undertaking if that undertaking were party to those arrangements.
- (5) Where this subsection applies –
  - (a) the generation attributed to the joint venture undertaking is also to be attributed to Q,
  - (b) the generation attributed to Q as a result of paragraph (a) is to be attributed to Q for the qualifying period of Q in which the generation occurred,
  - (c) subject to paragraph (d), the generation attributed to Q as a result of paragraph (a) is to be treated for the purposes of this Part as if it had been attributed under section 3(1),
  - (d) in determining the exceptional generation receipts of Q for a qualifying period of Q under section 1(5), any generation attributed to Q for that period as a result of paragraph (a) is to be ignored for the purposes of Step 2 (application of benchmark amount).

*Treatment of significant minor shareholders*

## **16 Attribution to companies that are significant minority shareholders**

- (1) Where the conditions in subsection (2) are met, subsection (3) applies to –
  - (a) generation by a relevant generating station operated, otherwise than in partnership, by a member (“A”) of a generating undertaking that is a group (“U”), or
  - (b) the qualifying proportion of generation by a relevant generating station operated in partnership by a member (“A”) of a generating undertaking that is a group (“U”).
- (2) Those conditions are that –
  - (a) the generation is supplied, directly or indirectly, to a company that is not a member of the group or to another group (either “M”) that is a significant minority shareholder in A, and

- 
- (b) the generation is subsequently the subject of a wholesale purchase of electricity from M.
- (3) Where this subsection applies to generation or the qualifying proportion of generation –
- (a) the relevant proportion of that generation or qualifying proportion is also to be attributed to M,
  - (b) in determining the amount of generation receipts to be attributed to U under section 4 in respect of the generation, do not take account of the transaction described in subsection (2)(b),
  - (c) the generation attributed to M as a result of paragraph (a) is to be attributed to M for the qualifying period of M in which the generation occurred,
  - (d) subject to paragraph (f), the generation attributed to M as a result of paragraph (a) is to be treated for the purposes of this Part as if it had been attributed under section 3(1),
  - (e) in determining the amount of generation receipts to be attributed to M under section 4 in respect of generation attributed as a result of paragraph (a), take account of –
    - (i) where the generation attributed to M is the qualifying proportion of generation, the relevant proportion of the qualifying proportion of the costs of acquiring the generation, or
    - (ii) otherwise, the relevant proportion of the costs of acquiring the generation, and
  - (f) in determining the exceptional generation receipts of M for a qualifying period of M under section 1(5), any generation attributed to M for that period as a result of paragraph (a) is to be ignored for the purposes of Step 2 (application of benchmark amount).
- (4) For the purposes of this section, “the qualifying proportion” of generation by, or of the costs of acquiring generation by, a relevant generating station operated in partnership by A is the proportion of that generation, or those costs, that is equal to the proportion of the partnership’s profits represented by A’s share of those profits (and Part 17 of CTA 2009 applies for the purposes of this subsection as it applies for the purposes of corporation tax).
- (5) The “relevant proportion” for the purposes of subsection (3) is –
- (a) the percentage of A’s ordinary share capital held –
    - (i) where M is a generating undertaking which is a company, by M, or
    - (ii) where M is a generating undertaking which is a group, by members of M, or
  - (b) in a case where A does not have ordinary share capital, the percentage of A’s profits available for distribution to equity holders of A –
    - (i) where M is a generating undertaking which is a company, to which M is beneficially entitled, or

- (ii) where M is a generating undertaking which is a group, to which members of M are beneficially entitled.
- (6) Where M is not a generating undertaking, M is to be treated as a generating undertaking for the purposes of this Part.

*Management and administration*

## 17 General application of corporation tax administration

- (1) Where a company is liable to an amount of electricity generator levy, that amount may be charged on the company as if it were an amount of corporation tax chargeable on it.
- (2) For the purposes of the collection and management of the electricity generator levy, any provision made by or under an enactment that applies in relation to corporation tax is to apply in relation to the electricity generator levy.
- (3) The following are examples of provision that, as a result of subsection (2), apply in relation to the electricity generator levy –
  - (a) provision relating to returns of information and the supply of accounts, statements and reports;
  - (b) provision relating to the assessing, collecting and receiving of corporation tax;
  - (c) provision conferring or regulating a right of appeal;
  - (d) provision concerning administration, penalties or interest on unpaid amounts of corporation tax;
  - (e) provision about the priority of amounts owed to the Commissioners for His Majesty’s Revenue and Customs in cases of insolvency under the law of any part of the United Kingdom.
- (4) Accordingly –
  - (a) TMA 1970 is to have effect as if any reference to corporation tax included amounts of electricity generator levy that a company is chargeable to, and
  - (b) Paragraph 1 of Schedule 18 to FA 1998 (company tax returns, assessments and related matters) has effect as if –
    - (i) the “and” at the end of the paragraph beginning “section 33 of the Finance Act 2022” were omitted, and
    - (ii) at the end there were inserted “and,  
 section 17(1) of the Finance Act 2023.”
- (5) Subsections (1) to (4) are subject to –
  - (a) any other provision made by or under this Part, and
  - (b) any necessary modifications.
- (6) The Treasury may by regulations make the following provision –

- (a) provision that disapplies any provision so far as it would otherwise, as a result of subsection (2), apply in relation to the electricity generator levy;
- (b) provision modifying the application of any such provision in relation to the electricity generator levy;
- (c) provision about (including provision modifying) the application of any provision of the Tax Acts (that would not otherwise apply to the electricity generator levy as a result of subsection (2)) in relation to the levy.

## **18 Requirement to make company tax return**

- (1) A generating undertaking that is a company and is a qualifying generating undertaking for a qualifying period must include a statement of the matters mentioned in subsection (3) in its company tax return for the accounting period that ends on the same day as that period (and if it would not otherwise be required to make a company tax return for that period, it must make one).
- (2) Where a generating undertaking that is a group is a qualifying generating undertaking for a qualifying period, the lead member in that period must include a statement of the matters mentioned in subsection (3) in its company tax return for the first accounting period that ends on or after the day on which the qualifying period ends (and if it would not otherwise be required to make a company tax return for that period it must make one).
- (3) The matters that must be stated are as follows—
  - (a) the amount of generation attributed to the generating undertaking for the qualifying period under this Part,
  - (b) the amount of generation receipts attributed to that undertaking for that period under section 4,
  - (c) the amount of any allowable costs attributed to that undertaking for that period under section 5,
  - (d) the amount of the undertaking's revenue allowance for that period,
  - (e) in the case of a generating undertaking that is a group, any amount of electricity generator levy that a member of that group must pay as a result of an election under section 11.
- (4) Where the lead member of a generating undertaking that is not a group fails to comply with the obligation in subsection (2) in relation to a qualifying period, an officer of Revenue and Customs may by notice require another member of the group to make or amend a company tax return that includes the matters mentioned in subsection (2).
- (5) Nothing in this section is to be taken to limit the things which must be included in a company tax return as a result of section 17(4)(b) (which has the effect of treating the electricity generator levy as tax for the purposes of company tax returns).

**19 Levy to be added to end of corporation tax calculation**

- (1) Schedule 18 to FA 1998 (company tax returns etc.) applies in relation to a company required to make, or amend, a company tax return as a result of section 18 as if, in paragraph 8(1) of that Schedule (calculation of tax payable), at the end there were inserted –

*“Sixth step*

Add any amount of electricity generator levy the company is liable to in respect of that accounting period under Part 1 of the Finance Act 2023.”

- (2) For the purposes of that modification, a company is liable to an amount of electricity generator levy in respect of an accounting period if the company tax return for that period must, as a result of section 18, include a statement of the matters mentioned in subsection (3) of that section in relation to the qualifying period to which that amount relates.

**20 Application of Part 5A of TMA 1970**

- (1) Section 59E of TMA 1970 (further provision as to when corporation tax is due and payable) has effect as if, in subsection (11) after paragraph (f) there were inserted –

“(g) to any sum chargeable on a company under section 1 of FA 2023 (electricity generator levy) as if it were an amount of corporation tax chargeable on the company.”

- (2) Section 59F of that Act (arrangements for paying corporation tax on behalf of group members) has effect as if, in subsection (6) –

- (a) the “and” at the end of paragraph (d) were omitted,  
 (b) after paragraph (e) there were inserted “, and

(f) to any sum chargeable on a company under section 1 of FA 2023 (electricity generator levy) as if it were an amount of corporation tax chargeable on the company.”

*Supplemental*

**21 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 8(3);  
 (b) section 11(5);  
 (c) section 13(1)(b)(ii), (3)(b) and (4)(b);  
 (d) section 14(7)(b);  
 (e) section 15(3)(b);  
 (f) section 16(5)(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 11(5), any reference to company A were to the person referred to in that paragraph.

## 22 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) 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.
- (4) In this section “arrangements” include any agreement, understanding, scheme transaction or series of transactions (whether or not legally enforceable).

## 23 Information sharing

- (1) This section applies to information that—
  - (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).

## **24 Electricity generator levy not deductible for corporation tax purposes**

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.

## **25 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.

## **26 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;

“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;

“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.

## 27 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 1(10)
accounting period (of a generating undertaking that is a group)	section 9(1)
allowable costs	section 5(1)
arms length provision	section 4(9)
Balancing and Settlement Code	section 26
baseline fuel cost	section 6(2)
company	section 1(8)
company tax return	section 5(3)
distribution system	section 26
electricity generator levy	section 1(2)

Term	Provision defining or explaining
exceptional generation fuel costs	section 6(1)
feed-in tariff export payments	section 26
generating undertaking	section 1(8)
generation fuel costs	section 6(2)
generation receipts	section 4(2)
grid connected electricity generation	section 3(3)
group	section 8(1)
joint venture undertaking	section 14(2)
lead member (of a group)	section 9(2)
principal member (of a group)	section 8(2)
qualifying electricity purchase costs	section 5(6)
qualifying joint venture	section 13(1)
qualifying partnership	section 12(1)
qualifying period	section 1(9)
reference period (in relation to the determination of baseline fuel cost)	section 6(4)
relevant generating station	section 1(8)
relevant place	section 1(8)
SEM Memorandum	section 26
settlement code	section 26
significant equity holder	section 7(6)
significant minority shareholder (that is a person)	section 11(5)(a)
significant minority shareholder (that is a group of companies)	section 11(5)(b)
standard conditions of electricity supply licences	section 26
subject to a contract for difference, an investment contract or feed-in tariff export payments (in relation to a generating station)	section 1(8)
third party (in relation to a generating undertaking)	section 7(6)

Term	Provision defining or explaining
Trading and Settlement Code	section 26
transmission system	section 26

---