



Finance Act 2002

2002 CHAPTER 23

PART 5

OTHER TAXES

Climate change levy

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

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

“Exemption: electricity produced in combined heat and power stations

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

- (a) the supply is not one that is deemed to be made under paragraph 23(3),
 - (b) the supply is made under a contract that contains a CHP declaration given by the supplier,
 - (c) prescribed conditions are fulfilled, and
 - (d) the supplier, and each other person (if any) who is a generator of any CHP electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.
- (2) Sub-paragraph (1) does not apply in relation to a supply to a person of electricity produced in a wholly or partly exempt combined heat and power station where the supply is made to that person from the station.
- (3) In this paragraph “CHP declaration” means a declaration that, in each averaging period, the amount of electricity supplied by exempt CHP

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supplies made by the supplier in the period will not exceed the difference between—

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

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

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

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

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

- (a) the giving of effect to CHP declarations;
- (b) the supply of information;
- (c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;
- (d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;
- (e) the doing of things to or by a person authorised by the Authority or the Director General (as well as the doing of things to or by the Authority or the Director General);
- (f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.

(6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.

(7) The conditions that may be prescribed under sub-paragraph (4)(c) include in particular conditions in connection with any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).

(8) Each of—

- (a) the Gas and Electricity Markets Authority, and
- (b) the Director General of Electricity Supply for Northern Ireland,

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shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application of this paragraph (whether generally or in relation to any particular case).

- (9) Paragraph 19(10) (disclosure of information) applies in relation to sub-paragraph (8) above as it applies in relation to paragraph 19(8).

Exemption under paragraph 20A: averaging periods

- 20B (1) This paragraph applies where a person (“the supplier”) makes supplies of electricity on the basis that they are exempt under paragraph 20A (“exempt CHP supplies”).
- (2) The rules about balancing and averaging periods are—
- (a) a balancing period is a period of three months;
 - (b) when a balancing period ends, a new one begins;
 - (c) the first balancing period and the first averaging period begin at the same time;
 - (d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt CHP supplies;
 - (e) when an averaging period ends, a new one begins;
 - (f) an averaging period ends once it has run for two years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));
 - (g) if the supplier stops making exempt CHP supplies, the end of the balancing period in which he makes the last exempt CHP supply is also the end of the averaging period in which the balancing period falls.
- (3) At the end of each balancing period calculate—
- (a) the total of—
 - (i) the quantity of CHP electricity that the supplier acquired or generated in that period, and
 - (ii) any balancing credit carried forward to that balancing period; and
 - (b) the total of—
 - (i) the quantity of electricity supplied by exempt CHP supplies made by him in that period, and
 - (ii) any balancing debit carried forward to that balancing period.
- (4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
 - (b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.
- (5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—

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- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
 - (b) no balancing credit or debit is carried forward to the next balancing period.
- (6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).
- (7) Where the end of the balancing period is by virtue of sub-paragraph (2) (g) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—
- (a) is made at the end of the balancing period, and
 - (b) is a supply of a quantity of electricity equal to the difference between the two totals.
- For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.
- (8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.”.
- (2) Subsection (1) has effect in relation to supplies of electricity made on or after such day as the Treasury may by order made by statutory instrument appoint.

124 Climate change levy: certification requirement

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

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

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

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- (3) Regulations under this paragraph may in particular provide that the supply of any electricity does not qualify for the exemption under paragraph 16(2) unless the electricity is certified as specified in sub-paragraph (1)(b).
- (4) Regulations under this paragraph may also make provision for determining whether electricity is produced and supplied as specified in sub-paragraph (1)(b)."

125 Climate change levy: exemption for renewable sources

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

126 Climate change levy: electricity produced from coal mine methane

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), in paragraph 19 (exemption: renewable source electricity), after sub-paragraph (4) there is inserted—

“(4A) For the purposes of this paragraph, coal mine methane shall be regarded as a renewable source.”.
- (2) This section has effect in relation to supplies of electricity made on or after such day as the Treasury may by order made by statutory instrument appoint.

127 Climate change levy: incorrect certificates

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), in sub-paragraph (2)(a) of paragraph 101 (civil penalties: incorrect notifications etc)—
 - (a) in sub-paragraph (ii) for "18 and 21, or" substitute "15, 18 and 21, ";
 - (b) before the word "and" at the end of sub-paragraph (iii) insert—

“, or

(iv) a reduced-rate supply (or reduced-rate supplies),”.
- (2) This section applies in relation to certificates given in respect of any supplies made on or after 24th April 2002.

128 Climate change levy: invoices incorrectly showing levy due

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

“Invoices incorrectly showing levy due

141A (1) This paragraph applies where—

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- (a) a person issues an invoice showing an amount as levy chargeable on a supply, and
 - (b) no levy is chargeable on the supply, or the amount chargeable is less than the amount shown.
 - (2) The person shall be liable to a penalty unless he satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the inclusion in the invoice of the false information.
 - (3) The amount of the penalty is £50 or, if more, the following amount—
 - (a) where no levy is chargeable, the amount shown as chargeable;
 - (b) where an amount of levy is chargeable, the difference between that amount and the amount shown as chargeable.
 - (4) It is irrelevant for the purposes of sub-paragraph (1) whether or not the supply shown on the invoice actually takes place or has taken place.
 - (5) A reference in this paragraph to an invoice is a reference to any kind of invoice (and not just a climate change levy accounting document).”
- (2) This section applies only in relation to invoices issued on or after the day on which this Act is passed.

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