



Finance Act 2003

2003 CHAPTER 14

PART 8

OTHER TAXES

Climate change levy

188 Exemption for fuel used in recycling processes

- (1) In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), after paragraph 18 insert—

“Exemption: supply for use in recycling processes

- 18A (1) A supply of a taxable commodity is exempt from the levy if the person to whom the supply is made intends to cause the commodity to be used as fuel in a prescribed recycling process falling within sub-paragraph (2).
- (2) A recycling process falls within this sub-paragraph if there is another process (“the competing process”) that—
- is not a recycling process,
 - uses taxable commodities otherwise than as fuel,
 - produces a product of the same kind as one produced by the recycling process,
 - uses a greater amount of energy than the recycling process to produce a given quantity of that product, and
 - involves a lesser charge to levy for a given quantity of that product than would, but for this paragraph, be the case for the recycling process.
- (3) For the purposes of sub-paragraph (2)(b) taxable commodities are used “otherwise than as fuel” only if the supplies of those commodities to the person using them are exempted from the levy by virtue of paragraph 18.

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- (4) Sub-paragraphs (5) and (6) apply where the recycling process or the competing process, as well as producing a product that is of the same kind as one produced by the other process (“the corresponding product”), also produces one or more products that are not (“different products”).
- (5) If the production of the different products is merely incidental to the production of the corresponding product, the different products shall be treated for the purposes of sub-paragraph (2)(d) and (e) as being of the same kind as the corresponding product.
- (6) If the production of the different products is not merely incidental to the production of the corresponding product—
 - (a) the amounts of energy referred to in sub-paragraph (2)(d), and the amounts of the charge to levy referred to in sub-paragraph (2)(e), shall be determined on a just and reasonable apportionment;
 - (b) the exemption conferred by sub-paragraph (1) shall be restricted to the proportion of the supply that is the same as the proportion of the energy used by the recycling process to produce the corresponding product (as determined for the purposes of paragraph (a)).
- (7) In this paragraph “prescribed” means prescribed by regulations made by the Treasury.”.
- (2) The following amendments to that Schedule are consequential on that made by subsection (1)—
 - (a) in paragraph 14(3A)(a) (use of electricity in an “exemption-retaining” way) for “and 18” substitute “, 18 and 18A ”;
 - (b) in paragraph 101(2)(a)(ii) (penalty for incorrect exemption notification) after “18” insert “, 18A ”;
 - (c) in paragraph 146(3) (regulations subject to affirmative resolution procedure) after “18(2),” insert “ 18A, ”;
 - (d) in paragraph 147 (interpretation), in the definition of “prescribed”, after “16(3)” insert “, 18A ”.

189 CHP exemption to be based on current efficiency

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.
- (2) In paragraph 15 (exemption for supplies to combined heat and power stations)—
 - (a) for paragraph (b) of sub-paragraph (4) substitute—
 - “(b) the “efficiency percentage” for a combined heat and power station shall be determined in accordance with regulations under paragraph 149.”;
 - (b) omit sub-paragraph (5).
- (3) In paragraph 148 (meaning of “combined heat and power station” etc)—
 - (a) in sub-paragraphs (2)(c) and (3)(c), for “complying with sub-paragraph (6) and (so far as applicable)” substitute “ complying (so far as applicable) with ”;
 - (b) omit sub-paragraph (6) (efficiency percentage to be stated on certificate of full or partial exemption).

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- (4) In paragraph 149(1) (determination of efficiency percentages for combined heat and power stations) omit “the percentage that is to be stated in a certificate under paragraph 148 as”.
- (5) This section has effect in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint.

190 Supplies not known to be taxable when made, etc

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), paragraph 24 (deemed supply: change of circumstances or intentions) is amended as follows.
- (2) In the heading, for “*change of circumstances or intentions*” substitute “*change of circumstances etc*”.
- (3) For sub-paragraphs (1) and (2) substitute—
 - “(1) This paragraph applies in the following cases.
 - (1A) The first case is where—
 - (a) a supply of a taxable commodity has been made,
 - (b) the supply was not a taxable supply, and
 - (c) there is such a change in circumstances or any person’s intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would have been a taxable supply.
 - (1B) The second case is where—
 - (a) a supply of a taxable commodity has been made,
 - (b) the supply was made on the basis that it was not a taxable supply, and
 - (c) it is later determined that the supply was (to any extent) a taxable supply.
 - (2) This paragraph does not apply where the reason that—
 - (a) the supply was not a taxable supply, or
 - (b) the supply was made on the basis that it was not a taxable supply,is that it was, or was thought to be, exempt from the levy under paragraph 19 or 20A (exemption for supply of electricity produced from renewable sources or in combined heat and power stations) (but see paragraph 20 or 20B).”.
- (4) In sub-paragraph (3), at the beginning insert “Where this paragraph applies, ”.
- (5) After that sub-paragraph insert—
 - “(3A) Where—
 - (a) had matters been as mentioned in sub-paragraph (1A)(c), only part of the supply would have been a taxable supply, or
 - (b) the determination referred to in sub-paragraph (1B)(c) is that only part of the supply was a taxable supply,the reference in sub-paragraph (3) to the commodity shall be read as a reference to a corresponding part of it.”.
- (6) In sub-paragraph (5) for “sub-paragraph (1)(c)” substitute “sub-paragraph (1A)(c) ”.

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- (7) In paragraph 34(3) of that Act (time when deemed supply under paragraph 24 treated as made) at the end insert “ or, as the case may be, upon the later determination ”.
- (8) This section has effect in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint.

191 Deemed supplies

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.
- (2) In paragraph 5(3) (levy chargeable on deemed supply of electricity) for “paragraph 23(3)” substitute “ paragraph 20(6)(a), 20B(6)(a), 23(3) or 24 ”.
- (3) In paragraph 6 (supplies of gas)—
- (a) after sub-paragraph (2) insert—

“(2A) Levy is chargeable on a supply of gas that is deemed to be made under paragraph 24.”;
 - (b) in sub-paragraph (3) for “sub-paragraphs (1) and (2)” substitute “ sub-paragraph (1), (2) or (2A) ”.
- (4) Subsection (2) has effect in relation to supplies deemed to be made on or after 31st March 2003, and subsection (3) in relation to supplies deemed to be made on or after the day on which this Act is passed.

192 Amendments about registration, payment etc

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.
- (2) In paragraph 41 (returns and payment of levy)—
- (a) for paragraph (a) of sub-paragraph (1) (liability to account for levy by reference to accounting periods) substitute—

“(a) for persons liable to account for levy to do so—

 - (i) by reference to such periods (“accounting periods”) as may be determined by or under the regulations, or
 - (ii) in such other way as may be so determined;”;
 - (b) in sub-paragraph (1)(c) (liability to pay) omit “for any period”;
 - (c) after sub-paragraph (2) insert—

“(2A) Paragraph 91(5) provides for the application of Part 7 of this Schedule (recovery and interest) in relation to cases where, by virtue of regulations under sub-paragraph (1)(a)(ii) above, a person is liable to account for levy otherwise than by reference to accounting periods.

(2B) Regulations under this paragraph may provide for the application of any provision of this Schedule in relation to such cases.”.
- (3) In paragraph 53 (requirement to be registered), after sub-paragraph (3) insert—
- “(4) Regulations made by the Commissioners may provide that, in such cases or circumstances and subject to such conditions or requirements as may be

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prescribed in the regulations, the Commissioners may exempt a person from the requirement to be registered.”.

(4) In paragraph 62(2)(b) (provision in regulations about bringing tax credit into account) for “levy due from him for such accounting period or periods” substitute “ such levy due from him ”.

(5) In paragraph 78 (assessments of amounts of levy due), after sub-paragraph (1) insert—

“(1A) Where it appears to the Commissioners—

- (a) that any levy for which a person is liable to account otherwise than by reference to an accounting period has become due, and
- (b) that there has been a default by that person that falls within sub-paragraph (2),

they may assess the amount of that levy to the best of their judgement and notify it to him.”.

(6) In paragraph 91 (interpretation etc of Part 7) at the end insert—

“(5) In relation to cases where, by virtue of regulations under paragraph 41(1) (a)(ii), a person is liable to account for levy otherwise than by reference to accounting periods, this Part of this Schedule shall have effect as if—

- (a) references to levy due for “an” or “any” accounting period were references simply to levy due;
- (b) references to levy due for a specified accounting period were references to the levy in question;
- (c) references to an assessment for a specified accounting period were references to an assessment in respect of the levy in question;
- (d) any time limit framed by reference to the end of the accounting period for which levy is due were framed by reference to the date on which payment of the levy is due;
- (e) references to the making of a return for an accounting period were references to the payment of the levy in question;
- (f) references to the amount shown in such a return were references to the amount of levy paid;
- (g) paragraph 88(8) and (9) were omitted.”.

(7) In paragraph 93(4) (criminal penalty for false return)—

- (a) in paragraph (a) after “return” insert “ or other notification ”;
- (b) in paragraph (b), and in the words after that paragraph, after “return” insert “ or notification ”.

(8) In paragraph 100(1) (civil penalty for misdeclaration)—

- (a) omit “for an accounting period”;
- (b) in paragraph (a) after “return” insert “ or other notification ”.

(9) In paragraph 125(1) (obligation to keep records) for “persons who are, or are required to be, registered” substitute “persons who—

- (a) are registered,
- (b) are required to be registered, or
- (c) are exempted from the requirement to be registered by regulations under paragraph 53(4)”.

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- (10) In paragraph 135(1)(c) (Commissioners' certificate as evidence of non-payment of levy shown as due in a return) after “return” insert “ or other notification ”.

193 Electricity from renewable sources etc

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.

- (2) In paragraph 20 (exemption under paragraph 19: averaging periods) for sub-paragraphs (6) to (8) substitute—

“(6) If the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a), then—

- (a) in a case where, at the time when the balancing period ends, an averaging period also ends because of sub-paragraph (2)(f) or (g), the supplier is for the purposes of this Schedule deemed to make at that time a taxable supply of a quantity of electricity equal to the excess;
- (b) in any other case, a balancing debit equal to the excess is carried forward to the next balancing period.”.

- (3) In paragraph 20B (exemption under paragraph 20A: averaging periods) for sub-paragraphs (6) to (8) substitute—

“(6) If the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a), then—

- (a) in a case where, at the time when the balancing period ends, an averaging period also ends because of sub-paragraph (2)(f) or (g), the supplier is for the purposes of this Schedule deemed to make at that time a taxable supply of a quantity of electricity equal to the excess;
- (b) in any other case, a balancing debit equal to the excess is carried forward to the next balancing period.”.

- (4) The amendment made by subsection (2) has effect where the end of the balancing period referred to in paragraph (a) of the sub-paragraph (6) substituted by that subsection falls on or after 31st March 2003.

- (5) The amendment made by subsection (3) has effect where the end of the balancing period referred to in paragraph (a) of the sub-paragraph (6) substituted by that subsection falls on or after 1st April 2003.

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