



Energy Act 2004

2004 CHAPTER 20

PART 1

THE CIVIL NUCLEAR INDUSTRY

CHAPTER 2

TRANSFERS RELATING TO NUCLEAR UNDERTAKINGS

Extinguishment of undertakings and tax losses

43 Undertakings given by the Secretary of State

- (1) This section applies where—
 - (a) the Secretary of State has given an undertaking to a publicly owned company to make payments to that company or a subsidiary of that company; and
 - (b) it appears to him that (apart from section 21(8)) the financial responsibilities of the NDA under Chapter 1 of this Part would make it unnecessary for those amounts to be paid.
- (2) The Secretary of State may extinguish the undertaking, and every liability of his that has arisen under the undertaking, with effect from such date as he may notify to the other parties to it.
- (3) Nothing in this section authorises the extinguishment of an undertaking at a time when the company to whom payments would fall to be made under the undertaking is not publicly owned.
- (4) The extinguishment of an undertaking under this section shall neither require nor enable any sum to be brought into account in any person's case for the purposes of corporation tax.
- (5) In this section “undertaking” includes any agreement in which an undertaking to make payments is contained.

Changes to legislation: Energy Act 2004, Cross Heading: Extinguishment of undertakings and tax losses is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

II S. 43 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

44 Extinguishment of BNFL losses for tax purposes

- (1) In relation to accounting periods beginning on or after the trigger date, all the relevant losses of every BNFL company arising before that date shall be treated for the purposes of corporation tax as extinguished.
- (2) The following are relevant losses of a BNFL company for the purposes of this section—
 - (a) losses incurred by the company in a trade;
 - (b) losses incurred by the company in a transaction a profit or gain from which would have been chargeable to tax [^{F1}under or by virtue of any provision to which [^{F2}section 1173 of the Corporation Tax Act 2010] (miscellaneous charges) applies];
 - (c) excesses to be carried forward in the company’s case under [^{F3}section 1223 of the Corporation Tax Act 2009 (carrying forward expenses of management and other amounts)];
 - [^{F4}(d) losses incurred by the company in carrying on a UK property business (within the meaning given by Chapter 2 of Part 4 of the Corporation Tax Act 2009);]
 - (e) losses to be carried forward in the company’s case under [^{F5}section 66 of the Corporation Tax Act 2010];
 - [^{F6}(f) any Type 4 carry-forward losses of the company falling within section 95(1) of the Corporation Tax Act 2010;]
 - (g) allowable losses (within the meaning of section 8 of the Taxation of Chargeable Gains Act 1992 (c. 12)) that have accrued to the company;
 - (h) deficits of the kind mentioned in [^{F7}section 456(1) of the Corporation Tax Act 2009] to the extent that they are to be carried forward in the company’s case under [^{F7}section 457(1) of that Act];
 - (i) excesses of the kind mentioned in section 260 of the Capital Allowances Act 2001 (c. 2) in relation to the company;
 - (j) losses of the kind mentioned in paragraph 35(1) of Schedule 29 to the Finance Act 2002 (c. 23) incurred by the company;
 - (k) unrelieved surplus advance corporation tax of the company (within the meaning of section 32 of the Finance Act 1998 (c. 36)).
- (3) This section applies to the relevant losses of a BNFL company only if it is publicly owned on the day before the trigger date.
- (4) In this section—

“BNFL company” means—

 - (a) BNFL;
 - (b) a company that is a 75 per cent subsidiary of BNFL at a time during the qualifying period; or
 - (c) a company (other than BNFL) that is a 75 per cent subsidiary of a BNFL parent company at a time during the qualifying period;

“BNFL parent company” means a company of which BNFL is a 75 per cent subsidiary;

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“qualifying period” means the period beginning with 16th March 2004 and ending with the trigger date;

“trigger date” means whichever is the earlier of the following—

- (a) the date of the first occasion on which section 21 operates so as to confer financial responsibilities on the NDA in relation to an installation, site or facility the person with control of which is a BNFL company that is publicly owned; and
- (b) the date of the first occasion on which a transfer takes effect which is a transfer to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39 of property, rights or liabilities of a BNFL company.

(5) This section is to be construed as one with the Corporation Tax Acts.

Textual Amendments

- F1** Words in s. 44(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 585\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F2** Words in s. 44(2)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 436\(a\)](#) (with [Sch. 2](#))
- F3** Words in s. 44(2)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 585\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F4** S. 44(2)(d) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 436\(b\)](#) (with [Sch. 2](#))
- F5** Words in s. 44(2)(e) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 436\(c\)](#) (with [Sch. 2](#))
- F6** S. 44(2)(f) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 436\(d\)](#) (with [Sch. 2](#))
- F7** Words in s. 44(2)(h) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 585\(d\)](#) (with [Sch. 2 Pts. 1, 2](#))

Commencement Information

- I2** S. 44 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Changes to legislation:

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[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)