SCHEDULES

SCHEDULE 42

CLIMATE CHANGE LEVY: SUPPLIES SUBJECT TO CARBON PRICE SUPPORT RATES ETC

PART 2

NEW PROVISION HAVING EFFECT FROM 1 APRIL 2013

New provision

2 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

3 In paragraph 4 (definition of "taxable supply") in sub-paragraph (2)(b) after "24" insert " , 24A, 24B, 24C, 42D ".

4 In paragraph 5 (supplies of electricity) after sub-paragraph (2) insert—

"(2A) Levy is chargeable on a supply of electricity if—

(a) the supply is made by an exempt unlicensed electricity supplier who is an auto-generator or who is of a description prescribed by regulations made by the Treasury,

(b) the electricity was produced in a generating station owned by the supplier using commodities which were the subject of a deemed supply under paragraph 24A or which would have been the subject of such a supply had the reference in paragraph 24A(1)(a) to Great Britain been a reference to the United Kingdom instead,

(c) the supply is not a deemed supply under paragraph 23(3), and

(d) the person to whom the supply is made is not an electricity utility."

5 In paragraph 6 (supplies of gas) in sub-paragraph (2A) after "24" insert " , 24A, 24B, 24C, 42D ".

6 (1) Paragraph 14 (exemption for supplies to electricity producers) is amended as follows.

(2) In sub-paragraphs (2)(b) and (3)(b) after "electricity" insert " in a small generating station ".

(3) After sub-paragraph (3) insert—

"(3ZA) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—

(a) uses the commodity supplied in producing electricity in a stand-by generator, and

(b) uses the electricity produced otherwise than in exemption-retaining ways."

(4) After sub-paragraph (3A) insert—

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"(3B) Paragraph 24A makes provision under which carbon price support rate commodities intended to be used in a generating station may be the subject of a deemed taxable supply (and, accordingly, this paragraph needs to be read subject to that paragraph)."

(5) Omit sub-paragraphs (4) and (5).

7 In paragraph 15 (exemption for supplies to combined heat and power stations) after sub-paragraph (4) insert—

"(4A) Paragraph 24B makes provision under which carbon price support rate commodities intended to be used in a combined heat and power station may be the subject of a deemed taxable supply (and, accordingly, this paragraph needs to be read subject to that paragraph)."

8 (1) Paragraph 17 (exemption: self-supplies by electricity producers) is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) The supply is exempt from levy if it is a supply of electricity produced in—

(a) a fully exempt combined heat and power station,
(b) a partly exempt combined heat and power station,
(c) a stand-by generator, or
(d) a small generating station.

(1B) Sub-paragraph (1A)(d) applies only if the producer is—

(a) an auto-generator, or
(b) an exempt unlicensed electricity supplier of a description prescribed by regulations made by the Treasury."

(3) In sub-paragraph (2) for the words from "If" to "unless—" substitute " This paragraph does not exempt the supply if— ".

(4) Omit sub-paragraphs (3) and (4).

9 In paragraph 21 (regulations to avoid double charges to levy) after sub-paragraph (2) insert—

"(2A) In sub-paragraph (2)(b) "taxable supply" does not include a deemed supply under paragraph 24A, 24B, 24C or 42D."

10 In Part 2 after paragraph 24 insert—

"Deemed taxable supply: commodities to be used in producing electricity

24A (1) Sub-paragraph (2) applies if—

(a) a quantity of a carbon price support rate commodity is brought onto, or arrives at, a site in Great Britain at which a generating station is situated,
(b) that quantity of the commodity is intended to be used for producing electricity in the station,
(c) the station is neither a fully exempt combined heat and power station nor a partly exempt combined heat and power station, and

(d) the station is neither a small generating station nor a stand-by generator.

(2) For the purposes of this Schedule the owner of the station is deemed to make a taxable supply to himself of that quantity of the commodity.

(3) In sub-paragraph (1)(a) the reference to a commodity being brought onto, or arriving at, a site covers (in particular) gas in a gaseous state arriving at the site through a pipe.

(4) For the purposes of sub-paragraph (1) it does not matter—

(a) if the quantity of the commodity is not the subject of an actual supply made to the owner of the station, or

(b) if the commodity's availability for use in the station is subject to any condition.

Deemed taxable supply: commodities to be used in combined heat and power station

24B (1) Sub-paragraph (2) applies if—

(a) a quantity of a carbon price support rate commodity is brought onto, or arrives at, the CHPQA site of a fully exempt combined heat and power station or a partly exempt combined heat and power station in Great Britain,

(b) that quantity of the commodity is intended to be used in the station for producing outputs of the station, and

(c) the station is not a small generating station.

(2) For the purposes of this Schedule the operator of the station is deemed to make a taxable supply to himself of that quantity of the commodity so far as that quantity is referable to the production of electricity.

(3) For the purposes of sub-paragraph (2) the extent to which a quantity of a commodity is referable to the production of electricity is to be determined in accordance with regulations under paragraph 24D(1).

(4) In sub-paragraph (1)(a) the reference to a commodity being brought onto, or arriving at, the CHPQA site of a station covers (in particular) gas in a gaseous state arriving at the CHPQA site through a pipe.

(5) In sub-paragraph (1)(b) “outputs” has the meaning given by paragraph 148(9).

(6) For the purposes of sub-paragraph (1) it does not matter—

(a) if the quantity of the commodity is not the subject of an actual supply made to the operator of the station, or

(b) if the commodity's availability for use in the station is subject to any condition.

(7) In this paragraph “CHPQA site”, in relation to a fully exempt combined heat and power station or a partly exempt combined heat and power station, means the site of the scheme in relation to which the station's CHPQA certificate was issued.

24C (1) This paragraph applies if—

(a) a determination ("the initial determination") is made under regulations falling within paragraph 24B(3) that—

(i) none of a quantity of a carbon price support rate commodity is, or

(ii) a proportion of such a quantity is not,

referable to the production of electricity,

(b) as a result of the initial determination, the quantity or proportion of a quantity is determined not to be the subject of a deemed supply under paragraph 24B, and

(c) it is later determined that, contrary to the initial determination, the quantity or proportion of a quantity—

(i) was referable to the production of electricity, and

(ii) accordingly, should have been determined to be the subject of a deemed supply under paragraph 24B.

(2) For the purposes of this Schedule—

(a) the operator of the station in question is deemed to make a taxable supply to himself of the quantity or proportion of a quantity, and

(b) the amount payable by way of levy on the deemed supply is the amount which would have been payable in relation to the quantity or proportion of a quantity had it been determined to be the subject of a deemed supply as mentioned in sub-paragraph (1)(c)(ii).

Power to make regulations giving effect to paragraphs 24A to 24C etc

24D (1) The Commissioners may by regulations make provision for giving effect to paragraphs 24A to 24C and 42A to 42D.

(2) Regulations under sub-paragraph (1) may, in particular, include provision—

(a) for determining whether a deemed supply under paragraph 24A or 24B is made;

(b) for determining the quantity of any commodity which is the subject of such a deemed supply;

(c) for determining whether paragraph 42C(2) applies in relation to a deemed supply under paragraph 24A or 24B and, if it does, the reduction in the relevant carbon price support rate.

(3) Regulations under sub-paragraph (1) may include—

(a) provision in respect of calculations, measurements, data and procedures to be made or used;

(b) provision that, so far as framed by reference to any document, is framed by reference to that document as from time to time in force."

11 After paragraph 38 insert—

"Deemed supplies under paragraph 24A, 24B, 24C or 42D

38A (1) A deemed supply under paragraph 24A or 24B is treated as taking place when the quantity of the commodity is brought onto, or arrives at, the site at which the station is situated or the CHPQA site of the station (as the case may be).

(2) A deemed supply under paragraph 24C or 42D is treated as taking place upon the later determination."

12 (1) Paragraph 39 (regulations as to time of supply) is amended as follows.

(2) In sub-paragraph (1)(c) after "24" insert " , 24A, 24B, 24C, 42D ".

(3) In sub-paragraph (3) after "supply)" insert " and 38A ".

13 In paragraph 42 (amount payable by way of levy) before sub-paragraph (2) insert—

"(1B) Sub-paragraph (1) does not apply to a deemed supply under paragraph 24A or 24B."

14 After paragraph 42 insert—

"42A (1) This paragraph applies to a deemed supply under paragraph 24A or 24B.

(2) The amount payable by way of levy on the deemed supply is the amount ascertained by applying the relevant carbon price support rate; and the levy payable on a fraction of a kilowatt hour, kilogram or gigajoule is that fraction of the levy payable on a kilowatt hour, kilogram or gigajoule.

(3) The carbon price support rates are as follows.

Carbon price support rate commodity	*Carbon price support rate*
Any gas in a gaseous state that is of a kind supplied by a gas utility	£0.00091 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, in a liquid state	£0.01460 per kilogram
Any commodity falling within paragraph 3(1)(d) to (f)	£0.44264 per gigajoule

(4) Sub-paragraph (2) needs to be read with paragraphs 42B and 42C.

42B (1) This paragraph applies for the purposes of paragraph 42A(2) if the commodity deemed to be supplied is a quantity of a commodity falling within paragraph 3(1)(d) to (f).

(2) The number of gigajoules in the quantity supplied is to be determined by reference to the total gross calorific value of that quantity.

(3) Sub-paragraph (4) applies if there is included in that quantity any coal slurry taken from a slurry pit situated at the site of a coal mine (including a disused coal mine).

(4) The gross calorific value of the coal slurry is to be left out of account in determining the total gross calorific value of that quantity.

42C (1) Sub-paragraph (2) applies for the purposes of paragraph 42A(2) if, in the calendar year in which the deemed supply is treated as taking place, carbon capture and storage technology is operated in relation to carbon dioxide generated by the station in question in producing electricity.

(2) In relation to the deemed supply, only C% of the relevant carbon price support rate is to be applied (instead of the full rate).

(3) "C%" is 100% minus the station's carbon capture percentage for the calendar year.

(4) The station's "carbon capture percentage" for the calendar year is the percentage of the station's generated carbon dioxide for that year which, through the operation of the carbon capture and storage technology, is—

(a) captured, and

(b) then disposed of by way of permanent storage.

(5) The station's "generated carbon dioxide" for the calendar year is the amount of carbon dioxide generated in the year by the station from the use of carbon price support rate commodities in producing electricity.

(6) In this paragraph "carbon capture and storage technology" and "carbon dioxide" have the meaning given by section 7(3) and (4) of the Energy Act 2010.

(7) Sub-paragraph (8) applies for the purposes of sub-paragraph (4) in relation to any carbon dioxide if—

(a) the carbon dioxide is captured but then leaks out and therefore is not disposed of by way of permanent storage, but

(b) the leak does not occur—

(i) on the land on which the station is situated,

(ii) on any other land under the control of the station's owner or a person connected with the station's owner, or

(iii) from any pipeline or other facility or installation which is operated by the station's owner or a person connected with the station's owner.

Section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies for the purposes of paragraph (b).

(8) The carbon dioxide is to be treated as if it had been disposed of by way of permanent storage.

(9) If the percentage mentioned in sub-paragraph (4) is not a whole number, it is to be rounded to the nearest whole number (taking 0.5% as nearest to the next whole number).

42D (1) This paragraph applies if—

(a) an amount is determined to be payable by way of levy on a deemed supply of a quantity of a commodity under paragraph 24A or 24B, but

(b) it is later determined that that amount is too low.

(2) For the purposes of this Schedule—

(a) the person who made the deemed supply is deemed to make a further taxable supply to himself of the quantity of the commodity, and

(b) the amount payable by way of levy on that further deemed supply is—

(i) the total amount payable on the first deemed supply on the basis of the later determination mentioned in sub-paragraph (1)(b), less

(ii) the amount previously determined to be payable on the first deemed supply."

15 In paragraph 55 (notification of registrability) in sub-paragraph (1) after paragraph (a) insert—

"(aa) expects to be deemed to make a taxable supply to himself under paragraph 24A or 24B, or".

16 In paragraph 62 (tax credits) in sub-paragraph (1) after paragraph (b) insert—

"(ba) a quantity of a carbon price support rate commodity is the subject of a deemed supply under paragraph 24A or 24B but afterwards the quantity—

(i) is not used as mentioned in paragraph 24A(1)(b) or 24B(1)(b) (as the case may be), and

(ii) is removed from the site at which the station is situated or from the CHPQA site of the station (as the case may be);

(bb) after—

(i) a determination is made under regulations falling within paragraph 24B(3) that a quantity, or a proportion of a quantity, of a carbon price support rate commodity is referable to the production of electricity, and

(ii) it is accordingly determined that the quantity or proportion of a quantity is the subject of a deemed supply under paragraph 24B,

it is determined that the quantity or proportion of a quantity was not referable to the production of electricity;

(bc) after an amount is determined to be payable by way of levy on a deemed supply under paragraph 24A or 24B, it is determined that that amount is too high;".

17 In paragraph 146 (regulations) in sub-paragraph (3)—

(a) for "14(3)," substitute " 5(2A), 14(2), ", and

(b) after "16," insert " 17(1B), ".

18 In paragraph 147 (definitions)—

(a) at the appropriate places, insert—

""carbon price support rate commodity" means any taxable commodity other than electricity;",

""CHPQA certificate" has the same meaning as in the Climate Change Levy (Combined Heat and Power Stations) Exemption Certificate Regulations 2001 (S.I. 2001/486);",

""exempt unlicensed electricity supplier" has the meaning given by paragraph 152A;",

""Great Britain" includes the territorial waters of the United Kingdom so far as adjacent to Great Britain;",

""small generating station" has the meaning given by paragraph 152B;", and

""stand-by generator" means a generating station which—

(a) is used to provide an emergency electricity supply to a building in the event of a failure of the building's usual electricity supply, and

(b) is not used for any other purpose;", and

(b) in the definition of "prescribed"—

(i) for "14(3)," substitute " 5(2A), 14(2), ", and

(ii) after "16(3)" insert " , 17(1B) ".

19 After paragraph 152 insert—

"Meaning of "exempt unlicensed electricity supplier"

152A(1) In this Schedule "exempt unlicensed electricity supplier" means a person—

(a) to whom an exemption from section 4(1)(c) of the Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under section 5 of that Act, or

(b) to whom an exemption from Article 8(1)(c) of the Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order,

except where the person is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

(2) Sub-paragraph (1) applies subject to—

(a) any direction under paragraph 151(1), and

(b) any regulations under paragraph 151(2).

Meaning of "small generating station"

152B(1) In this Schedule "small generating station" means a generating station the capacity of which for producing electricity is no more than 2 megawatts.

(2) Sub-paragraph (3) applies if a relevant station ("station X") is one of a number of relevant stations which—

(a) are situated in the United Kingdom, and

(b) are owned by P or persons connected with P.

(3) In applying sub-paragraph (1) in relation to station X, the reference to the capacity of a generating station is to be read as a reference to the capacity of station X and all the other relevant stations mentioned in sub-paragraph (2) taken together.

(4) In sub-paragraphs (2) and (3) "relevant station" means a generating station which is neither an exempt CHP station nor a stand-by generator.

(5) For the purposes of sub-paragraph (2)(b)—

(a) "P" is the person who owns station X, and

(b) section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies.

(6) Sub-paragraph (7) applies if the scheme in relation to which the CHPQA certificate of an exempt CHP station ("station Y") is issued covers other exempt CHP stations as well.

(7) In applying sub-paragraph (1) in relation to station Y, the reference to the capacity of a generating station is to be read as a reference to the capacity of station Y and all the other exempt CHP stations mentioned in sub-paragraph (6) taken together.

(8) In this paragraph "exempt CHP station" means a fully exempt combined heat and power station or a partly exempt combined heat and power station."

20 (1) Regulation 5 of the Climate Change Levy (Electricity and Gas) Regulations 2001 (S.I. 2001/1136) is amended as follows.

(2) In paragraph (1) for "paragraph 14(2) of the Act (exemption: certain supplies to electricity producers)" substitute " paragraphs 5(2A), 14(2) and 17(1B) of the Act (which contain references to exempt unlicensed electricity suppliers) ".

(3) In paragraph (2)(a) for "14(4)" substitute " 152A(1) ".

(4) The amendments made by this paragraph are to be treated as having been made by the Treasury under the powers to make regulations conferred by paragraphs 5(2A), 14(2) and 17(1B) of Schedule 6 to FA 2000.

Commencement

21 The amendments made by this Part of this Schedule are treated as having come into force on 26 March 2013.

22 (1) The amendments made by paragraph 6(2) and (3) above have effect for the purpose of determining if a supply of gas or electricity is exempt from levy where the gas or electricity is actually supplied on or after 1 April 2013."Gas" means gas in a gaseous state that is of a kind supplied by a gas utility.

(2) Those amendments are to have effect for the purpose of determining if any other supply is exempt from levy where the supply is treated as taking place on or after 1 April 2013.

(3) The amendments made by paragraph 8 above have effect for the purpose of determining if a supply of electricity is exempt from levy where the electricity is caused to be consumed on or after 1 April 2013.

(4) The amendment made by paragraph 10 above has effect in relation to carbon price support rate commodities which are brought onto, or arrive at, sites on or after 1 April 2013.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2013, PART 2.