REA Member Update Meeting
Electricity Generator Levy
Draft Legislation Update

12th January 2023

REA Competition Law Policy

- REA’s compliance with all aspects of UK Competition Law applies to all activities of REA including its subsidiaries Member Forums, committees, working groups, technical groups, and sub-groups and any other such meeting:

  - Members are not permitted to discuss competitively sensitive information, or to use REA as a conduit for such discussions

  - Competitively sensitive information covers any non-public strategic information about a business’s commercial policy. It includes, but is not limited to, future pricing and output plans

  - Please note this session is being recorded for note taking purposes.

Agenda

- Overview of the Electricity Generator Levy (EGL)
- REA Actions to Date
- Draft Legislation and Supplementary Technical Note – notable changes
- Members Discussion On Continuing Concerns
- Next Steps

New 45% Electricity Generation Levy

In the Autumn Statement, the government announced a new temporary 45% tax on 'extraordinary returns' from low carbon UK generation.

This replaced the previously planned 'Cost-plus Revenue' Cap trailed by Liz Truss's Government

It will be legislated to be in place from the 1st January 2023 to 31st March 2028.

- 'Extraordinary returns' defined as the **aggregate revenue that generators make per annum** from in-scope generation, across their group, at an average **output price above £75/MWh.**
- Originally, the tax was limited to generators whose in-scope generation output exceeded **100GWh per annum** (*now revised to 50GWh/year*) and applied to extraordinary returns **exceeding £10 million.**
- The tax will apply to extraordinary returns arising from 1 January 2023 and will be legislated for in Spring Finance Bill 2023. Draft Legislation has now been published.

Published Documents in December

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HM Treasury

Electricity Generator Levy

Supplementary technical note

December 2022

[DRAFT]

CONTENTS

PART 1

ELECTRICITY GENERATOR LEVY

Charge

Treasury Update

Statement made on 20 December 2022

Statement UIN HCWS475

Statement made by

James Cartlidge

The Exchequer Secretary is the Treasury

Conservative

South Suffolk

Commons

Statement

Along with resurgent demand for energy following the pandemic, Russia's invasion of Ukraine and weaponisation of gas supplies has driven UK wholesale gas prices to record highs. Due to the composition and structure of the UK electricity market, higher wholesale gas prices are in turn driving higher wholesale electricity prices and leading to exceptional returns arising to some electricity generators in the UK.

Consistent with action taken in other countries, from 1 January 2023 the government is introducing a temporary 45% tax on extraordinary returns made by some UK electricity generators. HM Treasury will today publish on GOV.UK draft legislation, along with an updated technical note explaining the policy in detail. The levy will be applied to a measure of extraordinary revenues, defined as revenues from selling periodic output at an average price above £75/MWh. That is approximately 1.5 times the average price of electricity over the last decade. It will apply to revenues from electricity generation in the UK from renewable (including biomass), nuclear, and energy from waste sources and will be focused on the largest generators through a generation threshold of 50GWH of annual output and a £10 million allowance.

This temporary measure is not designed to penalise electricity generators. It is instead a response to the fact that, as a result of exceptional and unforeseen geopolitical events, some electricity generators are realising extraordinary returns from higher electricity prices – higher prices that have imposed substantial costs on households and business energy users and necessitated the government to take unprecedented action with £55 billion to directly help households and businesses with their energy bills. The government had previously considered a

Government Process

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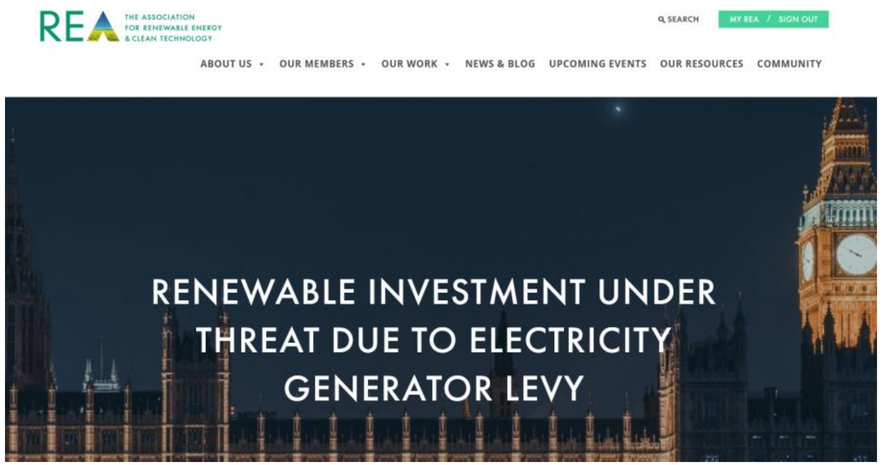
- Publication of Draft Legislation followed industry engagements, inc. strong representations from the REA.
- Further industry engagement on the draft legislation is ongoing this month, although Treasury have suggested they are not looking to revisit policy decisions, just legislative drafting issues.
- Along with pushing for wider changes, the REA are also highlighting inconsistencies between the Supplementary Technical Note and Draft Legislation.
- Draft legislation is not yet laid, so still possible to see amendments through the Civil Servants.
- Further Guidance on specific issues also expected to be issued by HMRC.
- Draft legislation expected to be incorporated into the Finance Bill in March. Once laid before Parliament, it will require MP intervention to make amendments.
- Bill expected to receive Royal Assent in March /April, but the Levy itself will still apply from 1st January 2023 – creating a retrospective liability.

REA Actions To Date

- Before Christmas we had good engagement with the Treasury Team, leading to some notable changes.
- We ran a short survey in November to understand the levy’s impact on members.
- On Publication of Draft Legislation , REA put out a Press Release focusing on impact of EGL on Investments
- REA also produced a column for the Telegraph on these issues.
- Since the New Year, REA have collated members continuing concerns in relation to the legislation. A briefing on all these issues have been passed to Treasury and REA are seeking further meetings.
- REA remain engaged with the relevant teams at BEIS and Treasury as levy continues to be designed.



Detailed Information on Draft Legislation for the EGL

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Still No Investment Allowances despite those provided to the Oil and Gas sector within the Energy Profit Levy.

In-Scope Generation: levy applies to groups generating electricity from nuclear and renewable (including biomass) sources and energy from waste.

Reduction of Total Generation Threshold: In scope-generation was originally restricted to those groups, or stand-alone companies, generating more than 100 GWh per annum. This has been reduced in the draft legislation to 50 GWh per annum. Note other thresholds remain in place.

Revenue (£10mn) and generation thresholds confirmed as pro-rated.

Indexation of the benchmark price of £75/MWh: Government agreed that the initial benchmark price of £75/MWh will be adjusted each year from April 2024 in line with the Consumer Prices Index in the preceding calendar year.

However, note this will be the only feature of the levy that will be indexed, with the £10mn allowance remaining static.

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,

(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.

(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.

Allowable Costs

Exceptional Costs – Fuel costs: Generators will be able to reduce exceptional generation receipts by a measure of the amount by which generation fuel costs exceed historic levels.

Generators will be required to calculate a baseline fuel cost from whichever is lower:

- A measure of the generator's fuel costs per MWh calculated over a period of at least twelve months between 1 January 2017 and 1 March 2020 OR
- A specified rate of £65 per MWh.

Groups may include the costs of transporting fuel, so long as this is done consistently in measuring the baseline fuel costs and actual fuel costs.

Note Allowances are not pro-rated.

Clarifications needed in the Draft Legislation

- ***Generation fuel costs based on*** *"*the acquisition of fuel used for generating electricity". Legislation doesn't explicitly mention feedstocks, while technical note does.
- ***Generation Fuel costs currently doesn't allow for negative prices, despite loss of gate fees.*** Clause 6(3) says generation fuel costs cannot be less then nil.
- ***Guidance needed on how transport costs are included.*** *Not explicit in the legislation step by step.*

Allowable Costs

Exceptional Costs – Revenue Sharing Arrangements:

Generators will be able to deduct the exceptional element of the shared revenues that are linked to market electricity prices.

This will be calculated as the amount of revenue passed on versus the amount of revenue that would have needed to be passed on had generators' average achieved price equalled to the benchmark price.

Limited to arrangements with third parties and arrangements under which payments are calculated on a pre-tax rather than post-tax basis

Clarifications needed in the Draft Legislation

- Drafting within the legislation could be clearer, with the step-by-step calculation requiring some working.
- Worked examples in HMRC guidance required.
- Would still like to see further inclusion of other exceptional costs. E,g. Chemical Input Costs, O&M , Financing costs etc.

Other Revenues and Energy Storage

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Other Revenues including FiT, RO, REGOs and Ancillary Services: Receipts from ROCs, REGOs, balancing bids where output is reduced, capacity markets payments, ancillary services and the Feed in Tariff generation and export generator payments are excluded from the EGL calculation.

Note that Feed-in Tariff sites that have opted to export on commercial terms will still have such export revenue subject to the levy.

Energy Storage: Government intention is that revenues from storage are excluded from the levy. Within the note, they make explicit reference to "battery technologies, pumped hydroelectric storage, and innovative storage technologies such as hydrogen"

In co-location sites, generators will need to identify revenues from generation, by determining the amount of metered output that relates to generation as compared to output that relates to power imported, stored and exported.

Clarifications needed in the Draft Legislation

- While implied by Clauses 3 and 4 - REA would still like to see explicit exclusion of ROCs and REGOs revenue in the draft legislation.
- While the technical note makes clear Government intention to exclude electricity storage, this is not explicit in the legislation. Serious concern that current definition of storage as a sub-set of generation could see its inclusion. REA seeking explicit exclusion in the legislation.
- Further guidance needed on metering of colocation sites.

Further Details of Interest

Private Wire: The technical guidance confirms that the levy will not apply to electricity generated and used under a private wire arrangement or “behind the meter” generation that is not exported.

Definitions of Group and Treatment of Joint Ventures: The technical note confirms that a group will consist of the ultimate parent, known as the principal company, its 75% subsidiaries, and the 75% subsidiaries of those subsidiaries.

The technical note also describes how Joint Ventures (JVs) are to be treated, including special rules for where there are companies that are not 75% owned by a single company

Administration of the levy: The EGL will incorporate the existing Corporation Tax rules for tax administration. This means that, for example, the Corporation Tax rules for reporting liability under self-assessment, making payments, opening enquiries and charging interest and penalties will apply.

Anti-Avoidance Provision: Draft legislation includes Clause 22 that provides HMRC powers to adjust liabilities if they believe actions have been taken to try and reduce or avoid the levy.

Member Discussion – Ongoing Concerns

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Members have already highlighted concerns that still need addressing or areas where there appears to be inconsistencies between the guidance and what is within the draft legislation.

We are engaging HM Treasury directly on these identified issues and would welcome further insight into how this legislation will impact our members.

Changes to Policy needed:

- Given disparity in taxing renewables more harshly than oil and gas- Introduction of investment allowances or separate capital allowances
- Exclusion of Late-stage commissioning, non-profit making Assets.
- Additional exceptional Costs Added.

Clarifications in legislation needed:

- Explicit Exclusion of all Energy Storage Technologies.
- Clarity on assessment of colocation generation
- Explicit exclusion of REGO and ROC Revenue
- Consistency in 'Attributed generation' calculation between sections.
- Clarity on generation fuel transport costs
- Tidying drafting of revenue sharing costs
- Clarity on how developers can challenge levy if there is inconsistency between guidance and legislation.

➢ **Do the issues that we have identified match with your reading of the draft legislation?**
➢ **Are there any issues that we have missed?**

Next Steps

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- REA continuing to engage with treasury. We have already sent over a briefing on our concerns but are happy to provide further evidence.

- We are seeking further meetings with the Treasury Team, and they have referenced possible industry roundtables soon.

- We are exploring further external affairs actions, focused on the issue of investment allowances ahead of the Spring Statement.

- Any evidence of impacts of levy on investment decisions and future projects would be gratefully received.

- We will consider what MP engagement might be required to see any further amendments.

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