Draft text for HMRC Electricity Generator Levy Manual

This is based on draft legislation published in December 2022 and will be updated to reflect that included in the Finance Bill.

The Technical Note published alongside the draft legislation indicated that further provision may be made for joint venture structures and that the process for nominating the lead company of a group would be included in the Finance Bill. Further minor changes to ensure the levy is targeted correctly and to ensure the legislation meets its policy objectives will also be included in the Finance Bill.

EGLMXXXXX – background and layout of guidance

The Electricity Generator Levy (EGL) is a temporary charge on the exceptional receipts that have arisen to some UK electricity generators following an unprecedented increase in the wholesale price of electricity meaning that UK households and businesses have seen energy bills increase significantly.

This increase is attributable to the global energy crisis, which has been compounded by the Russian invasion of Ukraine on 24 February 2022.

Parts of the UK electricity generation sector – principally those based on renewable sources - are receiving the benefit of high wholesale prices but are not experiencing the increased cost of fuel and so have exceptional receipts.

The EGL applies at a rate of 45% to exceptional receipts of companies that generate electricity in the UK from 1 January 2023 to 31 March 2028. The levy applies to exceptional receipts from generation that is subject to wholesale purchase of electricity arising during that period.

Exceptional generation receipts are those in excess of those that would arise based on a benchmark price that is above that which was typically being achieved in the UK electricity market before the energy crisis. Should wholesale prices return to nearer historical levels, the EGL may effectively cease before its statutory expiry date of 31 March 2028.

[include here a list of abbreviations used in this guidance]

EGLMXXXXX – overview of the charge to EGL Mainly Section 1 of draft published on 20 December

The charge

The levy is applied to receipts of a 'generating undertaking' which will include not just stand-alone companies, but all the members of a group that contains one or more companies that operate a relevant generating station.

To determine whether a generating undertaking is liable to pay the levy it is necessary to consider whether a number of conditions have been met for a qualifying period.

The levy threshold

FA23/SXX(3) & (4) apply the levy to a "qualifying" generating undertaking which means one that produces power in excess of the levy threshold. As a result, many smaller generators, which are unlikely to be making exceptional receipts approaching the annual revenue allowance of £10 million, do not need to undertake further work to assess whether they are liable to the levy.

A generating undertaking is only "qualifying" if it has generation attributed to it for a qualifying period that exceeds the levy threshold. The levy threshold is 50,000 MWh per annum (or 50 GWh per annum). This is pro-rated where a qualifying period of the company is shorter than a year. A qualifying period for EGL purposes is based on the corporation tax accounting period of a single company or that of the lead company in the case of a group, see EGLXXXXX.

It should be noted that only attributable generation is counted when considering whether the threshold has been exceeded. EGLMXXXXX explains what is meant by attributable generation. If an undertaking has attributable generation in excess of the threshold for a period, then the levy calculation includes all of the undertaking's attributable generation, not just the amount by which the threshold is exceeded.

Example:

A generating undertaking operates four windfarms, Windy Hill A – D. Following a takeover by an investment group with no other electricity generating assets, it prepares accounts for the six-month period 1/1/24 – 30/06/24 and this is a qualifying period for the purposes of the levy. During that period:

> Windy Hill A generated 15 GWh all of which was sold via a private wire arrangement with a local industrial complex.
>
> Windy Bill B generated 11 GWh, all of which was sold to an independent domestic supplier under a two-year power purchase agreement (PPA).
>
> Windy Hill C generated 24 GWh which was exported to the National Grid subject to a Contract for Difference arrangement with the Low Carbon Contracts Company.
>
> Windy Hill D generated 12 GWh all of which was exported to the grid and sold under a fixed price PPA agreement with an independent merchant.

The undertaking's total output for the period is 62 GWh. Of this Windy Hill A and C are to be ignored because these are not relevant generating stations [ref]. That leaves 23GWh of attributable generation.

The levy threshold of 50 GWH per annum is reduced to 24.93 GWh because the accounting period is only six months (182 days). Since the attributed generation is below the threshold, the undertaking is not within scope of the levy for that six-month period.

EGLMXXXXX – summary of how liability is computed Mainly Section 1 of draft published on 20 December

EGL Computation Overview

The mechanism by which this is achieved is to look at the receipts of the undertaking from the sale of its attributable generation of electricity and compare the average price achieved with a benchmark price that is initially set at £75 per MWh but will adjust in line with the Consumer Prices Index during the life of the charge. The levy is charged on the exceptional receipts above a group-wide revenue allowance of £10m million a year. Exceptional receipts are the amount by which actual receipts exceed the amount that would have arisen if the achieved price for their electricity was at the benchmark price, but after making a deduction for any exceptional costs incurred.

FA23/SXX(5) sets out the fundamental calculation in a number of steps as follows –

- Step 1 – What are the generation receipts attributable to the undertaking?
- Step 2 – What would the receipts be if the generation was charged at the benchmark price?
- Step 3 – Deduct the result of step 2 from that of step 1. If there is no positive result, then there are no exceptional receipts chargeable to the levy. If there is a positive amount, then go to the next step.
- Step 4 – Deduct any allowable exceptional costs from the result at step 3. If there is no positive result, then there are no exceptional receipts chargeable to the levy. If there is a positive amount, then go to the next step.
- Step 5 – Deduct the revenue allowance from the result at step 4.
- Step 6 - If there is no positive result at step 5 then. there are no exceptional receipts chargeable to the levy. If there is a positive amount, then that is the amount on which the levy is charged at a rate of 45%.

There are several key concepts introduced here which are explained in the following pages -

The benchmark amount – EGLMXXXXX

Generating undertaking - EGLMXXXXX

Relevant generating station - EGLMXXXXX

Attribution of generation – EGLMXXXXX

Generation receipts – EGLMXXXXX

Exceptional costs – EGLMXXXXX

EGLMXXXXX – the benchmark amount **Mainly Section 2 of draft published on 20 December**

The EGL is charged on the difference between the receipts that would have arises on the prices actually obtained for electricity output and those that would have arisen had the price been the "benchmark price". This amount is also relevant when calculating any exceptional costs allowable for EGL purposes.

The benchmark amount is based on the prices in the UK wholesale electricity market that were being obtained before the energy crisis that began in 2022.

The benchmark amount was set at £75 per Megawatt hour (MWh) from the commencement of the EGL on 1 January 2023 and FA23/SXX provides that the amount will be adjusted in line with inflation for each financial year starting from 1 April 2024.

The indexation is based on the annual change in the Consumer Prices Index (CPI) in the period to the previous December. So, from 1 April 2024 to 31 March 2025 (financial year 2025) the benchmark will become £75 x (CPI December 2023 / CPI December 2022) with the result rounded up to the nearest whole penny.

Where a generating undertaking's qualifying period straddles a financial year then it will be necessary to allocate generation to the years involved and this is to be done on a fair and reasonable basis.

EGLMXXXXX – meaning of generating undertaking Mainly Section 1 of draft published on 20 December

Generating undertaking

The concept of a generating undertaking is fundamental to the levy, as it is at this level that the levy is calculated. It can either be a single company or a group of companies.

Definition

A generating undertaking is defined at FA23/SXX(1) as follows:

- A company that is not part of group of companies, is a qualifying generating undertaking if it operates a relevant generating station.
- A group of companies is a generating undertaking if one or more companies within the group operates a relevant generating station.

The application of the levy to groups of companies and other structures is covered in detail at [EGLMXXXXX] onwards.

Where the generating undertaking is a group of companies, then all members of the group are included. The purpose of this rule is to ensure that transactions occurring between group members are properly recognised when calculating the undertakings exceptional generation receipts. This is relevant where selling the group's power, hedging its sales contracts and similar operations are carried out in a group company other than the company undertaking generation.

See EGLMXXXXX for the definition of a group for the purposes of the EGL.

See EGLMXXXXX for the arrangements for charging and collection of the levy where the generating undertaking is a group.

EGLMXXXXX – Meaning of relevant generating station – location of station Mainly Section 1(8) of draft published on 20 December

Relevant generating stations are defined by reference to their location, the means by which electricity is generated, and in some cases by the contractual arrangements under which they sell their power to the wholesale market.

An electricity generating station is a relevant generating station if it is located in the United Kingdom, its territorial sea, or any wider area of the seas around the United Kingdom that are designated as a Renewable Energy Zone under the Energy Act 2004. Offshore wind generation connected to the UK is often sited outside what would otherwise be regarded as UK territory but is within a designated Renewable Energy Zone, so is within the scope of the EGL.

Electricity imports and exports

There are several power grid connections between the UK and neighbouring states that allow for power to be both imported and exported, known as interconnectors. An interconnector is not itself regarded as generating station for the purposes of the EGL.

A power station located in another territory is not a relevant generating station, even if its generation output is imported to the United Kingdom via an interconnector. A power station can be a relevant generating station if its power is wholly or partly exported from the United Kingdom via an interconnector; the determinative factor is the territory in which the station is situated.

EGLMXXXX - Relevant generating stations – excluded technologies **Mainly Section 1(8) of draft published on 20 December**

Power stations generating electricity primarily from the burning of oil (including diesel oil), coal or natural gas are excluded from the definition of a relevant generating station. The UK has very few remaining oil or coal fired power stations of any significant size, which generally do not operate on a regular basis but are retained primarily for use in times of risks to the security of supply at a national level. Gas fired stations do, in 2023, supply a very significant part of the UK generating capacity, but have been the most impacted by the geo-political events of the time that have affected both the international market price of gas and electricity and the uncertainty in supplies of gas. Gas powered stations typically set the marginal price for wholesale electricity and applying the levy to gas could then increase the marginal price. It is primarily the potentially distortive effects on security of power supply to the domestic market that has led the Government to determine that it is not appropriate to include them within scope of the EGL

Pumped hydro storage stations

The EGL has a specific exclusion from the definition of a relevant generating station for stations that mainly generate from turbines driven by water that is pumped into storage to create a hydrostatic head of water. This type of station will be a net consumer of electricity but relies on the differential price of power between peak and non-peak times to generate revenues, ensuring that excess capacity in the system at times of low demand can be stored and released at times of high demand. These stations are capable of generating a high output but only for a short time and play an important part in the Balancing Mechanism. This special role means that they have not benefited from the general increase in electricity prices in the same way as other generators. Hydro-electric stations that generate primarily from naturally filled reservoirs or flowing rivers are relevant generating stations.

Battery storage

Battery facilities are a growing feature in the UK energy landscape. Renewable generation from wind and solar power is intermittent, depending on metrological conditions and batteries may be used to store generation until it is needed to meet demand from the grid. These facilities may be integrated with a wind or solar generation station or be used to store electricity imported from the grid. A facility may perform both functions in what is known as a “hybrid” generating station.

The mere storage and release of generated electricity in a battery is not considered generation for the purposes of the EGL.

- Where battery storage is integrated with generation, effectively storing generated electricity until it is exported to the grid then this is part and parcel of the generation activity.
- Where battery storage imports electricity from the grid that is exported later, then that is not generation activity for EGL purposes.
- Where the activities in the bullets above are combined in a hybrid facility then an apportionment must be made. There may be no definitive answer to how that should be done but approaches that HMRC would consider appropriate is set out in the guidance section below.

Hybrid generating stations – with co-located battery storage

Hybrid generating stations that also export power that they have not generated to the grid, for instance a hybrid site using renewable generation and battery storage, will need to determine the exceptional generation receipts arising in respect of their attributable generation on a fair and reasonable basis. One alternative, simpler method that is likely to produce an outcome that meets that requirement would be to attribute the computed exceptional generation receipts between generated and imported electricity on a consistent formulaic basis such as that described below.

The undertaking will in general need to:

• Determine the amount of metered output that relates to generation as compared to output that relates to power imported, stored and exported.

• Separately determine the amount of receipts of the group that are attributable to that generated output

An alternative approach might be to calculate what would be the overall exceptional generation receipts (the gross receipts) for the hybrid asset then apportion the amount chargeable to the EGL based on the following factors –

- The facility's average daily generation value in MWH "X"
- The facility's effective storage capacity in MWh "Y"

The amount of exceptional generation receipts chargeable to the EGL would then be –

- X / (X + Y) x gross receipts

This means that a large generation asset with modest storage, would treat the majority of revenues as generation receipts. A small generation asset with large storage would treat a smaller proportion of revenues as generation receipts.

EGLMXXXXX – Attribution of generation to an undertaking Mainly Section 3 of draft published on 20 December

Not all of the power generated by a generation undertaking is necessarily taken into account when calculating its liability to the EGL, only that part which is attributable to it under FA23/SXX. Power is attributed to the undertaking if it is generated by a relevant generating station that is connected to the grid and intended to be distributed to users via a transmission or distribution system, the meaning of "relevant" generation station is explained at EGLMXXXXX.

Where one or more relevant generating stations are operated in partnership, then see EGLMXXXXX for an explanation of how the rules apply to apportion to a generating undertaking that is a partner.

By "the grid" this guidance means the high voltage transmission systems and the local distribution systems that supply power to customers in the UK. The definitions applicable to the networks in Great Britain and Northern Ireland differ. Generation that is provided by "private wire" connections that do not involve the use of these systems is not taken into account for the purposes of the levy as the price of power supplied by this means is not typically subject to volatility in the wholesale market. See EGLMXXXXX which explains the relevant definitions.

Measurement of power output – adjustment of metered outputs.

The starting point for measuring the amount of generation from an undertaking's stations will generally be the metered output to the grid. Adjustments will then be required for transmission losses, . Additional adjustments may also be necessary where actual output is reduced under the balancing mechanism, but there are generation receipts from the wholesale market for power is not actually generated.

The Balancing and Settlement Code (BSC) provides generators in Great Britain with rules that are to be followed when dealing in the wholesale electricity market. The equivalent for the island of Ireland is the Trading and Settlement Code. The BSC includes adjustments that are relevant to make when determining the volume of electricity that has been supplied under a sales contract, or whether the generator might be liable to charges under the Balancing Mechanism because its actual generation does not match what it has undertaken to generate with the National Grid Electricity System Operator (ESO). These take account of transmission losses, in particular.

When measuring their output for EGL purposes, generating undertakings should follow the relevant BSC principles rather than just take the metered output at the generating station. There are equivalent procedures for generators within Northern Ireland.

One of the relevant System Operator's functions is to ensure that the amount of power supplied to the grid matches demand throughout each day. The fine tuning of this is through the Balancing Mechanism, under which the System Operator can require generators to increase or reduce output to match demand. Generators can offer to *increase* output and will generally be paid to do this at a market rate determined by the price of offers to meet the system's needs). They may also bid to *reduce* output if the system is in surplus, in which case they may be willing to pay the ESO not to generate (for example: where they would save the cost of fuel, etc.). Or they may bid a negative amount with that aim of receiving payment from the ESO (for example: to compensate for the loss of entitlement to Renewable Obligation Certificates (ROCs)). The role of ROCs and similar arrangements, and their treatment for purposes of the levy is explained at EGLMXXXXX.

Accepted offers to increase generation will increase metered output, and the receipts in respect of that under the Balancing Mechanism are taken into account as receipts for EGL purposes.

However, where a bid to reduce output is accepted by the ESO, the amount not generated as a result should nevertheless be included with actual generation when calculating the amount of generation for the purpose of the levy threshold and in calculating the maximum amount of receipts that would not be exceptional under step 2 of the calculation required by FA23/SXX(5).

Overall, the attributable generation from relevant stations that is to be matched with generation receipts should equate to final metered output, adjusted for transmission losses, but with accepted balancing bids added back.

EGLMXXXXX - Relevant generating stations – Treatment of stations operating under CfDs with LCCC and FiT export payment arrangements Mainly Section 1(8) of draft published on 20 December

There are a number of different government-backed schemes that have been made available to generators that are intended to encourage investment in renewable energy generation technologies. In addition to direct subsidy or grant funding options, there are schemes that offer support by removing some of the risks arising from volatility in the price of electricity, guaranteeing a set price for electricity generated and exported to the grid. The two main schemes for renewable energy generators in use as at 2023 are the Feed-in-Tariff (FiT) and the contract for difference schemes (CfD).

The LCCC CfD scheme

The government introduced a CfD scheme for low carbon electricity generators to encourage investment and grow the renewable sector in the UK. This scheme allows companies developing, constructing and operating renewable energy generating stations to enter into a CfD contract with the LCCC. The CfD provides for the power output from the station to be sold on wholesale market terms, with any difference between current market prices and the CfD strike price either payable to, or to be repaid by the generator. CfD strike prices are updated annually in line with inflation.

There is a general exclusion from liability to EGL for stations to the extent that operate under a CfD contract with the Low Carbon Contracts Company Ltd (LCCC). The LCCC is owned by the Secretary of State for the Department for Energy Strategy and Net Zero (previously the Department for Business, Energy and Industrial Strategy). Generators are not exposed to market volatility to the extent that their output is subject to a CfD with the LCCC and will not be making the exceptional returns that are the subject of the EGL.

Stations operated under third party CfD contracts other than those with the LCCC are relevant generating stations. Receipts for the wholesaling of their power are taken into account, after adjusting for any payments under the CfD contract as further explained at EGLMXXXXX.

CfD contracts are managed by the LCCC and awarded in periodic batches. Where a generator has entered into a CfD with LCCC it has a period of time to commence generating under the contract and may sell its power direct to the market outside the terms of the contract until that date. This is often called the 'merchant nose' period. Any generation that is exported to the grid and sold outside the CfD contract, including the merchant nose, is within the scope of the EGL Also, there are also some stations that are "part CfD", in which case the undertaking will need to make a fair and reasonable apportionment in cases where a single meter measures both CfD and non-CfD generation.

Feed-in-Tariff scheme

The FiT scheme was available for smaller renewable stations (generally up to 5MW installed capacity) but closed for new applications from 1 April 2019. Eligible generators qualify for two payments, a generation tariff for all power produced, whether or not exported to the grid, and an export tariff that ensures a set price for power exported to the grid from a licensed electricity supplier. It was possible for accredited stations to opt out of the export tariff and sell power at market rates.

Export tariffs are set centrally and vary according to the date when the station was first accredited for the scheme, its technology type, and by the installed capacity of the generating station. Rates are updated annually in line with inflation. To the extent that a generating station that has not opted out of the export tariff is exempted from the EGL.

Where an accredited FiT station sells its power on market terms, then it is a relevant generating station and the amount received for the exported power is within the scope of the EGL, subject to the threshold amount and the revenue allowance being exceeded by the undertaking that operates the station. See [EGLMXXXXX] for the treatment of generation tariffs received by a relevant generating station.

EGLMXXXXX – identifying generation receipts **Mainly Section 4 of draft published on 20 December**

Generation receipts are the amounts that a generating undertaking realises from its attributable generation from wholesale purchases of power output to the grid.

The key principle in calculating generation receipts that are taken into account when computing an undertaking's liability to EGL is that receipts should generally be matched with attributed generation. Receipts from the sale of relevant generation which is attributed to an undertaking are taken into account for the purposes of the EGL. Conversely, if generation output is not attributed to the undertaking under [section 3], then receipts in respect of the sale of any such electricity generation are not taken into account.

It should be noted, however, that an undertaking should include receipts from the generation that was, at any time, expected to be generated by the power station, even if in the event the electricity was not generated, see example at EGLMXXXXX.

Where a generating undertaking includes both generation and retail supply businesses, it will be necessary to identify the amount attributable to generation business and exclude any element of its overall receipts that is attributable to the supplier business, including an arm's length price for wholesale power passed onto the supply business. Generation receipts can arise in respect of a number of different routes by which the undertaking's attributable generation is delivered to the market, including power purchase agreements, long forward contracts, trading in the day ahead or intra-day markets, or through a balancing market.

EGLMXXXXX - Receipts that are not generation receipts Mainly Section 4 of draft published on 20 December

When a generating undertaking sells power, it is the revenue received for that power which is to be taken into account, and any element of the revenues which relates to other services or items is to be excluded. The following are particular items that should be excluded:

- Renewable Obligations Certificates (ROCs)
- Renewable Energy Guarantees of Origin (REGOs)
- Ofgem-regulated Feed-in-Tariff generation and export tariff payments
- Capacity Market Payments in those limited instances where a renewable generator is eligible to receive them
- other payments received in connection matters other than exported power, such as ancillary services. However, see EGLMXXXXX which explains which payments under the balancing mechanism are to be included as generation receipts.ROCs and REGOs are tradeable certificates issued under Ofgem administered schemes to registered renewable energy producers.

In many instances a generating station that is a certified Feed-In-Tariff site will not be a relevant generating station, so its power output and any associated generation receipts will be ignored for the generating undertakings EGL computation. However, if a generating station that is certified as a Feed-in-Tariff site has opted to forego the export tariff payments and export its power on commercial terms, then these power exports and the associated revenues will be taken into account for the EGL. Generation tariff payments in such a case will still be excluded from generation receipts.

Part of the government's Electricity Market Reform package, the Capacity Market ensures security of electricity supply by providing a payment for reliable sources of capacity, alongside their electricity revenues, to ensure they deliver energy when needed. This encourages investment to replace older power stations and provide backup for more intermittent and inflexible low carbon generation sources. The payments are made in advance of generation and are not treated as receipts for actual generation, so should be excluded when identifying generation receipts for a qualifying period.

"Other payments …" for ancillary services in this context refers to items that may be payable or receivable on a basis that is related to the amount of power generation by an undertaking, but by their nature are not amounts that are directly referrable to the price received for wholesale purchases of power. These may be encountered in relation to charges for, or subsidies received in connection with, the transmission and distribution of power to users. Specific items, whether net positive receipts or charges, that should not be taken into account when calculating attributable generation receipts include (but are not limited to):

- Transmission Network Use of Service and Distribution Use of Service payments - use of service charges for transmission and distribution networks.
- AAHEDC – Assistance for Areas with High Electricity Distribution Costs, which are subsidies payable to distributed generators supplying customers in defined remote areas.

EGLMXXXXX – identifying generation receipts – hedging and other risk management adjustments
Mainly Section 4 of draft published on 20 December

EGL liabilities are calculated for a generating undertaking as a whole, and where the undertaking is a group, relevant transactions of all group members are to be taken into account when identifying the undertaking's generation receipts. In this exercise the undertaking must use a fair and reasonable approach to identify the amount of the group's generation receipts. The starting point for this exercise will generally be take the amount that is receivable by any company in the group from the wholesale purchasers of its power where these are sold to a third party. In some cases, however, it may be appropriate to take the intra-group sale of electricity – for example, where electricity is sold to a licensed energy supplier for onward sale to the retail market.

Adjustments to the receipts should be made where, for example –

- The undertaking has entered into financial arrangements to mitigate the impact of wholesale market price volatility. It is the net receipts that is to be taken into account, so where a generator sells forward and then buys part back, as part of managing generating risk, then it is the net receipt that is attributed.
- Where a 3rd party PPA is bundled and includes value of ROCs and REGOs, then a fair value of these can be deducted from receipts, as these items are not generation receipts.
- The undertaking receives additional amounts under a balancing and settlement code for accepted offers to increase its generation, or
- it is required to pay any imbalance charges because it has failed to generate the amount that it has contracted to supply to the network. Imbalance can at times be positive so whilst charges will be a deduction against receipts, credits may also arise and are to be added to generation receipts.

The largest electricity generator groups often have sophisticated procedures in place to manage market risk, often across a portfolio of diverse generating assets. These risk management functions may well be centralised in a specific business unit that is responsible for trading the group's generation on the market. It will be common for power from generating stations in the group to be sold internally at rates that may or may not reflect current wholesale market terms. Under these circumstances the undertaking can be expected to have sufficiently sophisticated accounting and financial control procedures to be able to arrive at an amount representing the price that the group achieves for its wholesale power output taking into account the group's trading and hedging strategies. However, the methodology applied to arrive at the figure of generation receipts gives a fair and reasonable attribution of their receipts to the attributed generation.

Where a group undertakes trading activity on the wholesale electricity market that is unconnected to activities intended to manage its generation business, the results of such trading activity should not be taken into account in assessing the undertakings generation receipts for the EGL. This will include activity as an off-taker for other generating undertakings.

Examples:

A windfarm operator sells 2000MWh of its power output through a third-party supplier, under a 12-month power purchase agreement whereby they receive the day-ahead wholesale market price for the power. The amount paid by the supplier is the generation receipt.

A windfarm operator sells 2000MWh of its power output through a third-party off-taker, under a power purchase agreement whereby they receive the day-ahead wholesale market price for the power, less a discount of x% in return for which the off-taker will sell the power to suppliers on its own account, and also assume any imbalance risk if the power generated is subject to imbalance charges under the settlement code. The windfarm's generation receipts will be the net amount received from the off-taker.

Any subsequent profits or losses arising to the off-taker from trading that power it purchases in the example above will not be within scope of the EGL as (or to the extent that) this does not relate to generation that is attributed to the off-taker undertaking.

EGLMXXXXX Allowable costs **Mainly Section 5, 6 & 7 of draft published on 20 December**

In general terms, the EGL is a levy on the exceptional receipts a generator receives for its power. Operational overheads and other costs such as business expenses such as financing costs are not normally deductible when calculating the amount of its exceptional receipts. Whilst such general costs can be expected to increase over time, this is compensated for by the indexation of the benchmark price against which exceptional receipts are measured. The exceptions to the general rule preventing deductions for operating costs are –

- the effects from exceptional increases in generation fuel costs, see EGLMXXXX,
- the cost of purchasing electricity on the wholesale market that a generation undertaking has contracted to supply but does not actually generate, and
- certain arrangements under which a generating undertaking gains access to a fuel source in return for sharing revenues from the generation of power, see EGLMXXXXX.

The attributable amount of allowable costs under these headings can be deducted at Step 4 of the calculation of a generation undertaking's exceptional receipts.

In order to deduct allowable costs, the following conditions must be satisfied:

1. The costs are fairly and reasonably attributable to generation receipts taken into account by the undertaking for the EGL in the period.
2. The costs are incurred by the undertaking.
3. The costs have not otherwise been accounted for in calculating the amount of its generation receipts.
4. A claim has been included for those costs in a company tax return for the period.

The first condition may, for example, require an apportionment of costs where fuel is acquired for use in power stations that are not all relevant generating stations, or for purposes other than generation. If fuel is acquired for generation by a relevant power station, but not all that fuel has been used in the period then only the amount that is actually used for generation in the period is to be included when calculating the attributable amount for the period.

For the second condition, a cost in respect of fuel will be incurred if the undertaking has paid for fuel directly, or the amount has been deducted from a receipt otherwise due to the generator. The cost of fuel should be based on what was actually paid for the fuel, not what the market price is at the point of usage. The undertaking should ensure that they account for fuel costs using an appropriate convention that would be expected to match what is used for corporation tax and accounting purposes.

The third condition ensures that there is no double-counting of the cost.

When considering fuel or other costs acquired under non-arm's length arrangements, it is the arm's length amount of those costs which is to be taken into account where that would be lower than the amount otherwise incurred by the undertaking (FA23/SXX(4)).

EGLMXXXXX - Allowable costs – Qualifying electricity purchase costs Mainly Section 5 of draft published on 20 December

The expense of any electricity used in the normal operation of a power plant is not deductible from the exceptional receipts of a generating undertaking. For example, no deduction would be available for electricity costs for electricity consumed at the site while the power plant is offline. However, where the undertaking needs to purchase power to meet its obligations under an agreement to supply power that would be attributable generation if it were actually generated, but is not generated, then that cost can be deducted as an allowable cost.

There is a provision for HM Treasury to specify what amounts are or are not to be treated as qualifying electricity purchase costs, which can be used to provide further clarity for this cost deduction, if required.

Example:

EA Generation Ltd has a PPA with a third-party supplier that it is unable to fulfil because of essential maintenance work at a relevant generating station. The agreement was for 2,000 MWh of power at £90 per MWh, but it can only generate 1,700 MWh. EA Generation Ltd is paid in full for the 2,000 MWh and fulfils the contract by purchasing 300 MWh on the wholesale market at £125 per MWh. The receipt of £1.8 million is included as a generation receipt, attributed to the generation of 2,000MWh. The company has an allowable cost of £375,000 for the qualifying electricity purchase cost.

Note that when calculating the generation receipts, the attributable generation is reduced by the amount of generation it expected to supply, but did not actually generate, because of the provision at [FA23/SXX(4)]. The full receipts of £1.8 million (2000 MWh at £90) are included as generation receipts.

When calculating the maximum amount that would not be exceptional receipts (at Step 2 in s247), only the actual generation of 1700 MWH is included.

EGLMXXXXX – Exceptional generation fuel costs Mainly Section 6 of draft published on 20 December

Where a relevant generating station uses fuel to generate electricity, the undertaking that operates the station can reduce its exceptional generation receipts by the amount by which their generation fuel costs exceed a baseline amount, based on their historic fuel costs.

Generation fuel in this context means directly purchased fuel, such as wood and other biomass, and feedstock that requires further processing to become usable as a generation fuel, such as food and agricultural waste. In the latter case, the fuel cost many include both the cost of the waste (if any) and the costs of processing to provide fuel. Where transport costs are incurred on acquiring the fuel, then those fuel costs may also be included, although the undertaking may choose to ignore that element if they are negligible or unlikely to change materially. The costs may also include those of supplementary fuels, such as where it is necessary to use natural gas in an energy from waste station to ensure combustion at the required temperature. Whatever the basis on which baseline fuel costs are calculated, this must be applied on a consistent basis for all generation periods for the purpose of the EGL.

When considering exceptional generation fuel costs other than the direct costs of a fuel, only revenue costs that can be directly related to the amount of fuel or feedstock acquired should be included. This means that any capital costs, or general running costs such as labour or depreciation of plant and other assets are to be excluded. For example, if a feedstock requires processing using consumable chemicals or other materials in proportion to the amount of fuel to be derived, then the costs of those items can be included. Other operating costs of carrying out the processing are to be excluded.

In some circumstances, a generating undertaking may be paying for some forms of fuel that at other times they charge to take as a form of waste. Only the positive amounts paid are to be taken into account when calculating fuel costs, not the income that has been foregone.

The baseline fuel cost determined on a £ per MWh of power generation basis. For the purposes of calculating the baseline price this will be the lower of £65 per MWh or the average fuel cost in a specified twelve-month period between 1/1/2017 and 1/3/2020. The twelve-month period must be one in which the undertaking was operating using the same fuel source for at least 50% of the days over at least three months.

If there is no such reference period for calculating the baseline fuel costs, then a fair and reasonable estimate of those costs must be made. HMRC would accept that an estimate is fair and reasonable if, for example, it is based on prevailing market rates for purchases of the appropriate fuel source, in appropriate quantities, under supply contracts that are on equivalent terms to those that the generating undertaking currently has with a supplier.

The method of calculating the allowable amount for exceptional generation fuel costs for each generating station is:

- Step 1: Determine the actual generation fuel cost for the station for that period.
- Step 2: Convert the actual costs for the period to a figure in £ per MWh by dividing the actual cost by its attributable generation in the period. Attributable generation being calculated in the same way as for general EGL purposes, see EGLMXXXXX.
- Step 3: Calculate the baseline fuel cost of the station per MWh.

- Step 4: If the result of step 2 does not exceed the baseline fuel cost, there is no exceptional generation fuel cost.
- Step 5: Is the result of step 2 is greater than the baseline fuel cost, deduct the baseline fuel cost from the result of step 2.
- Step 6: Converts the average increase in fuel costs per MWh by the attributable generation to give the amount of exceptional fuel generation costs in the period. This figure feeds into the undertaking's total allowable costs that are deducted at Step 4 of its exceptional generation receipts.

EGLMXXXXX – Exceptional revenue sharing costs Mainly Section 7 of draft published on 20 December

FA23/SXX allows a generating undertaking to make a deduction from its receipts where it incurs "exceptional revenue sharing costs". Broadly, these are the costs incurred as a result of an arrangement with a third party that provides fuel for generation and payment is made based on the either the actual price received for the generated electricity or on the wholesale market price of electricity.

Only payments in respect of fuel for generation qualify for the deduction, FA23/SXX(3). The term "fuel" is considered broad enough to include material that is not used directly for the production of electricity, referred to a feedstock. For example, food or agricultural waste may be subjected to an anaerobic digestion process to produce gas that is then used to generate electricity.

Arrangements within the scope of this rule are often found in the energy from waste sector. For example, a Local Authority or its service provider may send certain waste streams to a generator that will use the waste as fuel. The waste is incinerated with the heat used to drive a turbine that produces electricity. The generator may agree to pay a percentage of its revenues from the sale of the electricity at above a specified price.

An expense will have been incurred for the purpose of calculating the amount of the allowance if either the generating undertaking makes a payment to the Local Authority under the revenue sharing agreement, or a deduction for that share is made from amounts that would otherwise be due to the generating undertaking under that same agreement. This may be the case where the agreement covers waste collection and/or processing services for which the undertaking is due a fee.

For the purpose of this rule a third party is defined as a person which is not a "significant equity holder" in the generating undertaking meaning a person or a group of companies (taking its members together) that holds an interest of 20% or more in the generating undertaking, or in any company that is a member of a group that is a generating undertaking.

The 20% interest threshold may be met by applying any of the following measures –

- entitlement to 20% or more of a company's profits available for distribution to equity holders,
- entitlement to 20% or more of a company's assets available for distribution to equity holders on a winding up, or
- ownership of 20% or more of the company's ordinary share capital.

EGLMXXXXX explains how the corporation tax group relief rules apply when measuring these amounts.

The method of calculating the allowable amount for exceptional revenue sharing costs for a generating undertaking is:

- Step 1: Identify the generating stations that have arrangements where payments are made by reference to the price received or wholesale price of electricity.
- Step 2: Calculate the amounts paid under each of the arrangements in step 1.
- Step 3: For each arrangement, calculate amount that would have been paid had the generation been sold at the benchmark price then deduct that amount from the amount determined at step 2.

- Step 4: Total the amounts calculated at step 3. If the result is a positive amount, then that sum may be claimed as an exceptional revenue sharing cost.

This rule does not apply to arrangements where the amount paid to the third party are reduced to take account of the EGL payable by the generation undertaking.

Where there are hedging arrangements in place that affect the generator's exposure to payments, then those should be taken into account when calculating amounts for the purposes of this rule.

Example

A Local Authority has contracted its domestic refuse collection to a group that provides a range of services in the waste industry. A large proportion of the non-recyclable refuse is used as fuel in a single energy from waste facility and the electricity produced is then sold in the wholesale market.

The arrangement with the Local Authority is that it will be paid 30% of any revenues from electricity sales relating to its waste above £85 per MWh. During the generator's 1-year qualifying period ending on 31 March 2024 the average price it received for its output was £100 and 40,000 MWh was attributable to generation from the Local Authority's waste. It was therefore required to pay (£100 - £85) x 40,000 = £600,000 in respect of the period. It would not have been required to pay anything had it achieved a price of £75 so it is able to claim the full amount as a deduction when calculating its exceptional generation receipts. Had the generator entered into an arrangement that hedged half of its exposure under the agreement then it would be able to claim £300,000.

EGLMXXXXX Groups etc. Introduction to Sections 8 to 15 of draft published on 20 December

Groups: introduction and overview

The rules for determining the amounts of generation receipts that are chargeable to the levy and the amounts that may be deducted are described at EGLMXXXXX. This explains that where electricity generation takes place within a group of companies then the levy is charged on a group basis and this part of the guidance explains how that is done and covers the rules for other structures such as partnerships and joint ventures.

This part of the guidance is set out as follows –

- What is a group for EGL purposes? EGLMXXXXX.
- Which member of a group is responsible for EGL? EGLMXXXXX.
- Nominating a "lead member" for a group.
- Identifying the qualifying period of an EGL group. EGLMXXXXX.
- The treatment of partnerships. EGLMXXXXX.
- Generating undertakings that are joint ventures. EGLMXXXXX.
- Special rules for group companies with significant minority shareholders. EGLMXXXXX.

EGLMXXXXX What is a group for EGL purposes? Mainly Section 8 of draft published on 20 December

The EGL is charged on the receipts of a "generating undertaking" which may be a single company or a group of companies. A group of companies for EGL purposes is defined by FA23/SXX as including –

A company, referred to as the "principal member", and all its 75% subsidiaries together with any 75% subsidiaries of those subsidiaries, and so on. The principal member being the company that is not itself a 75% subsidiary of any other company.

The 75% subsidiary requirement may be met by applying any of the following measures –

- entitlement to 75% or more of a company's profits available for distribution to equity holders,
- entitlement to 75% or more of a company's assets available for distribution to equity holders on a winding up, or
- ownership of 75% or more of the company's ordinary share capital.

As these are alternative conditions it would be possible for a company to be a member of more than one group without a further "tiebreaker" rule. In such a case, the rules apply in priority in the order that they are set out above.

FA23/SXX applies the rules for group relief in Part 5 of CTA 2010 for the purposes of determining: who is an equity holder in a company and how to assess entitlement to profits or assets, and how to trace through indirect holdings. They also apply the rules to companies without share capital and adapt the rules where a group structure includes other entities or arrangements. See EGLMXXXXX

EGLMXXXXX Which member of a group is responsible for EGL? Mainly Sections 9 & 10 of draft published on 20 December

The EGL is charged on the receipts of a "generating undertaking" which may be a single company or a group of companies. Where the undertaking is a group then it is necessary to identify the group member that is responsible for reporting and paying the EGL liability to HMRC and determining the basis period for the calculation of the group's EGL receipts and the amount of levy due. The rules are at FA23/SXX.

EGL is reported using the corporation tax administration rules, see EGLMXXXXX. The additional reporting requirements for EGL are explained at EGLMXXXXX.

Because a single group company is responsible for the EGL liability of the whole group, the members of the group share joint and several liability for the payment of the amount due to HMRC, FA23/SXX.

Identifying the group member responsible for reporting and paying EGL liability

The group member responsible for reporting EGL liability is described as the "lead member". There is a statutory mechanism for identifying this company but a group may nominate another company that is within the charge to corporation tax. In the absence of a nomination, the rules identify the lead member in the following order –

1. the principal member of the group, as defined by FA23/SXX, provided it is within the charge to corporation tax.
2. the company that would be the principal member but for it being the 75% subsidiary of a company that is not within the charge to corporation tax.
3. where there is more than one company that would meet the condition above, then it will be the company meeting that condition that has the highest amount of electricity generation attributable to it treating each such company and its subsidiaries as a separate generating undertaking.
4. where there is no company meeting any of the above conditions, then the lead company will be the non-UK principal member of the group.

For the purposes of item 3 above, the amount of electricity generation is that in the calendar year 2022 for a group that generates electricity above the levy threshold of 50 GWh in that period. Where the threshold is only exceeded in a later period, then the assessment is based on the generation in the 12 months ending before the start of the period in which the threshold is exceeded.

In practice, we expect many groups to prefer to nominate a lead member. The nomination procedure is described at EGLMXXXXX.

EGLMXXXX Nominating a lead member for a group.

[Holding page - legislation will be included in Finance Bill rather than set out in Regulations (as envisaged in the draft legislation published in December 2022). The intention is to allow flexibility in terms of when a change of nomination takes effect compared with the default rule explained at EGLMXXXXX]

EGLMXXXXX Identifying the qualifying period of an EGL group **Mainly Section 9 of draft published on 20 December**

The charge to EGL is based on the "exceptional generation receipts" in a "qualifying period", that period is also used to assess whether an undertaking exceeds the levy threshold.

For a single company the qualifying period is based on its corporation tax accounting period, although the qualifying period may be shorter, say on the commencement of the EGL or where the company only becomes liable after commencement, see FA23/SXX(9) & (10).

In a group context the EGL qualifying period is determined by the corporation tax accounting period of the lead member, FA23/SXX(1). The lead member of a group may change and the replacement ("B") may not have the same accounting period as the original lead member ("A"). Where that happens the default rule is that one qualifying period will end and another begin, FA23/SXX(5).

For example: lead member A has an accounting period ending on 31 December 2026, it ceases to be the lead member on 1 September 2025 to be replaced by B which has an accounting period that ends on 30 June 2027. The result is that the group's qualifying periods for EGL are 1 January to 31 August 2026 and 1 September 2026 to 30 June 2027, by reference to A and B's respective accounting periods.

Examples of where such a change in lead member could arise where there is no nomination in place are: where the principal member of one group becomes a subsidiary of another or where a lead member that is not the principal member is sold and ceases to be a member of its original group.

The way the rules work means that qualifying period for EGL will always fall within the lead company's corporation tax accounting period although it may not coincide with the whole accounting period. This means that the EGL liability of the lead company is to be reported in that company's corporation tax self-assessment return for the relevant accounting period.

This default rule may be displaced where the change of lead member results from the nomination of a new group company, EGLMXXXXX explains how the qualifying periods are determined where that happens.

EGLMXXXXX The treatment of partnerships Mainly Section 12 of draft published on 20 December

There are specific provisions in the EGL rules for dealing with partnerships, including General Partnerships and Limited Liability Partnerships (LLPs). In broad terms, these provisions apply in a similar way to that for corporation tax generally: they are treated as "transparent" so that each partner in a partnership that undertakes electricity generation is treated as itself undertaking its proportionate share of that electricity generation.

Qualifying partnerships

A qualifying partnership is a partnership that operates a relevant generating station and where either:

- The generating undertaking is a single company and that company is a partner in the partnership (with the implication that there is at least one external partner), or
- The generating undertaking is a group of companies, that there is at least one partner that is a member of the group and there is at least one partner who is not a member of the group.

FA23/SXX provides that the 'qualifying proportion' of the qualifying partnership are to be included in the generating undertakings generation for the period.

The amount of generation attributed to a partner is determined by the partner's proportionate entitlement to a share of the profits of the partnership. Where more than one company in the same group is a partner, the entitlements of the various group companies are aggregated.

Having attributed the generation of the qualifying partnership to the generating undertaking under FA23/SXX, it therefore follows that the generating undertaking will include the generating receipts and exceptional costs which are, on a fair and reasonable basis, attributable to that generation. This would include (i) a share of the receipts and exceptional costs of the partnership itself; and (ii) receipts and exceptional costs of the generating undertaking outside of the partnership that are in respect of the undertaking's share of the generation of the partnership.

Other partnerships

The partnership rule in FA23/SXX does not apply where all the partners are members of the same group of companies: there is no need to divide up the generation because EGL is charged on the exceptional generation receipts of the group as a whole.

All the receipts and exceptional costs of the generating undertaking that are linked to the generation of the partnership would then be included under the EGL provisions.

General partnership provisions

FA23/SXX provides that the general rules for the treatment of partnerships for corporation tax apply for the purposes of the EGL. In particular:

- CTA09/S1258 provides that a firm (such as a Scottish partnership) is not to be regarded as an entity separate and distinct from the partners.
- CTA09/S1273 provides that where an LLP carries on a business with a view to profit then it is treated in the same way as an ordinary partnership. The fact that an LLP is a body corporate is therefore ignored for EGL purposes.

Joint contractual arrangements

It is possible that a generating station may be operated by more than one person through a contractual relationship that does not amount to a partnership. In that case each party should include their receipts and costs from the generation activity in accordance with their contractual agreement.

EGLMXXXXX Joint ventures: introduction and layout of guidance Introduction to Sections 11 and 13 to 16 of draft published on 20 December

There are special rules that deal with joint ventures for the purposes of the EGL. The legislation uses the concept of a 'qualifying joint venture' (referred to as a JV in this guidance). This, broadly, is a company that is not a member of another group (but could be the principal member of its own group) and is substantially owned by a small number of shareholders. The definition of a JV for EGL purposes and the identification of its members are explained at EGLMXXXXX.

JVs present a number of issues that need to be addressed in the EGL rules –

- A generating undertaking that is a JV, including a group headed by a JV, will be liable to EGL in its own right and be chargeable on its exceptional generation receipts above the £10 million revenue allowance.
- The corporate members of a JV will be chargeable to EGL in the same way and provision is needed to ensure that there is no multiplication of the revenue allowance: calculating exceptional generation receipts at the level of the JV in isolation may overstate or understate the aggregate level of exceptional UK generation receipts that arise across the JV and its members. Therefore, the amount of generation of the JV that is not charged because of a JV's revenue allowance is attributed to its members. See EGLMXXXXX.
- In addition, a JV might sell its generation to a member which then sells into the market. Depending on the pricing of that intermediate sale, without additional rules it is possible that too few, or too many, generation receipts might be taken into account when calculating EGL compared with the overall transaction. See EGLMXXXXX.
- Similarly, where a JV sells its generation to a third party, a JV member may enter into a hedging arrangement in relation to its share of that generation. There could be unfair outcomes if such arrangements are not taken into account when calculating liability to EGL. See EGLMXXXXX.

EGLMXXXXX Joint ventures: what is a joint venture and which members are affected? Mainly Section 13 of draft published on 20 December

What is a qualifying joint venture (JV)?

The definition of a JV company for EGL purposes at FA23/SXX(1)-(2) is similar to that used for the Substantial Shareholding Exemption that applies for corporation tax on chargeable gains.

A company is a JV company if –

- It is not a 75% subsidiary of another company, because in that case it would be a member of a wider group.
- At least 75% of the company's share capital is held by five or fewer persons. For this purpose, members of the same group are treated as being the same person.
- Where the company does not have share capital then the last condition is based instead on entitlement to distributable profits.

Which members of a JV are affected?

FA23/SXX(3)-(4) labels a member of a JV that is affected by the EGL rules as a "participant". A participant is a company or group that holds 10% or more of the ordinary share capital of the JV. This test is based on entitlement to distributable profits for a JV that does not have ordinary share capital. This rule does not apply by reference to any particular period, rather a company or group will be regarded as a participant at any point in time at which the condition is met. Where an investor is part of a group, all the interests across the members of the group are aggregated in applying this test.

Where the participant is not itself a generating undertaking then it is treated as one for EGL purposes. For example, an investment company is a participant in a JV that generates electricity. Generation receipts are attributed to it under the rule described at EGLMXXXX. The investment company is liable to EGL on those receipts because it is treated as a generating undertaking even though it does not itself generate electricity. Extending the example, say there are two investment companies in the same group that are members of a JV and taken together they hold more than 10% of its ordinary share capital. It is then the investment company group that is treated as a generating undertaking for EGL purposes.

EGLMXXXXX Joint ventures: treatment of amounts within the allowance Mainly Section 14 of draft published on 20 December

Joint ventures that undertake electricity generation are liable to EGL in their own right on the same basis as other companies or groups. This means that if they undertake UK generation with an annual output above 50 Gigawatt hours, they will be subject to the levy on exceptional generation receipts above the £10 million revenue allowance.

In the case of qualifying joint ventures (JVs), FA23/SXX provides that the amount of a JV's generation receipts that are not subject to the levy because they fall within the allowance are then attributed to the JV members that meet the definition of a participant which is explained at EGLMXXXXX. Of course, the generation receipts of the JV may be covered entirely by its revenue allowance.

Broadly, each participant has attributed to it a proportionate share of the amount of the generation receipts that have not been charged at the level of the JV, which the legislation refers to as the "non-chargeable amount" and defines by reference to the calculation of the JV's exceptional generation receipts set out in FA23/SXX(5).

To determine the amount to be attributed to a participant it is first necessary to calculate the participant's "proportionate interest" in the JV which is simply the proportionate share of the JV's ordinary share capital held by the participant, treating members of the same group are treated as being the same person. Where the JV company does not have share capital then the proportionate interest is instead based instead on the participant's entitlement to distributable profits.

FA23/SXX(6) the explains how to calculate the appropriate proportion for each participant in the JV at any point in time by setting out a number of steps.

- The first step is to allocate both generation receipts and allowable costs of the joint venture (not the non-chargeable amount) to participants based on their proportional interests in the JV at the time of generation to which they are attributed.
- The second step 2 says that if step 1 results in a participant having more costs than receipts allocated to it, then the participant will not have any amount of the non-chargeable exceptional generation receipts attributed to it. There are no exceptional receipts from the JV's generation after taking allowable costs into account.
- The third step operates where step 1 results in a participant having more receipts than costs meaning that at the time of generation the JV was realising exceptional receipts. In that case a proportion of the JV's non-chargeable amount is allocated to the participant allocated to it.

The allocation under the third step is determined by reference to their relative interests in the JV, after taking into account the allocation to any participant with excess costs. This adjustment ensures that the overall amount attributed to the participants with net receipts is equal to the joint venture undertaking's non-chargeable amount.

It is possible that the corporation tax accounting periods, and therefore the EGL qualifying periods of the JV and its participants may not coincide. In that case the attribution of non-chargeable amounts is to be made on a fair and reasonable basis. This is because simple time apportionment may not produce a fair and reasonable result where the JV's exceptional receipts do not arise smoothly over time.

Further guidance

The definition of a JV for EGL purposes and the identification of its members are explained at EGLMXXXXX.

EGLMXXXXX Joint ventures: attribution of receipts to participants **Mainly Section 14 of draft published on 20 December**

Joint ventures that undertake electricity generation are liable to EGL in their own right on the same basis as other companies or groups. However, it can often be the case that investors in joint ventures enter into arrangements in relation to their share of the generation of the joint venture.

Where there is a qualifying joint venture (JV), the EGL makes specific provision in relation to the participants in the JV.

In particular, the legislation deals with two scenarios:

- The JV may sell its generation to the participant which the participant sells onto the market. The participant may realise a different price for the electricity, due to the terms on which it is sold on or due to hedging instruments that it takes out in respect of the receipts. (See EGLMXXXX.)
- The JV may sell its generation to the market otherwise than through the participant, but the participant takes out a hedging instrument. Again, the effect of the hedge means that the participant may realise a different price for the electricity than that obtained by the JV. (See EGLMXXXX.)

In both cases, the legislation looks to attribute the receipts and costs from the arrangements onto the participant in the JV.

Offset between JVs and participants

This could lead to the situation where a JV realises exceptional receipts, but the effect of the arrangements is that the participant realises a lower price for the generation. It is possible that this 'shortfall' by the participant can be offset against other exceptional receipts of the participant from other generation activities. However, it may also be possible that this shortfall would effectively be stranded in the participant.

Equally, it is possible for the JV to realise receipts below the benchmark price, but the effect of the arrangements is that the participant realises a higher price for the generation. It is possible that the shortfall in the JV would effectively be stranded in the JV.

[Placeholder for outline / link to further rules.]

Further guidance

The definition of a JV for EGL purposes and the identification of its members are explained at EGLMXXXXX.

EGLMXXXXX Joint ventures: treatment of generation supplied to members Mainly Section 15(1) to (3) of draft published on 20 December

Joint ventures that undertake electricity generation are liable to EGL in their own right on the same basis as other companies or groups. However, it can often be the case that investors in joint ventures enter into arrangements in relation to their share of the generation of the joint venture.

FA23/SXX(1)-(2) addresses the situation where a generating undertaking that is a qualifying joint venture (JV) supplies electricity to a participant which then sells it. The aim is for the EGL to apply to take account of the participant's position.

A participant is defined by FA23/SXX as a member having a 10% or greater interest in the JV, see EGLMXXXXX.

Broadly, where a participant in a JV realises amounts from selling output of the JV or from hedging output of the JV, those amounts will be treated as additions or reductions to the participant's exceptional generation receipts. For example –

- A participant buys electricity from the JV and then sells it to third parties in the wholesale market at a higher price. The net receipts that the participant makes from that on-selling would be included when calculating its exceptional generation receipts.
- Equally, a participant may sell the electricity in the wholesale market at a lower price. The net shortfall that the participant suffers from that on-selling would be included when calculating its exceptional generation receipts.
- A participant buys electricity from the group company and sells electricity to third parties on a similar basis. It also enters into a financial hedge in respect of its share of the generation of the group company. The return that the participant makes from that hedge would also be included in calculating its exceptional generation receipts.
- Alternatively, the participant may make a loss on the hedge described above. Then the loss would also be included in calculating its exceptional generation receipts.

This treatment applies to generation received by a participant from a JV to the extent that this reflects the participant's interest in the JV as it is accepted that any excess generation received will representing the participant's activity as an electricity trader rather than am on-seller of the JV's output. For example: say a participant has a 15% interest in the profits of the JV but it receives 100% of the output from the generating station that is operated by the JV – effectively it is operating as the off-taker for the whole of the JV's generation. The participant may enter into forward sale agreements and financial hedges to manage its risk to electricity prices. The rules will bring into account the net receipts of the participant that relates to its share of the generation of JV, but not the net receipts that it realises as part of its off-taker role. Any necessary apportionment required to calculate the net receipts attributable to the participant under this rule is to be made on a fair and reasonable basis.

It may be the case that a participant may not have sufficient generation receipts attributed to it to fully relieve any loss. [Placeholder for outline / link to further rules.]

The "relevant proportion" of the JV's generation that is subject to this rule means the proportion of the JV's ordinary share capital held by the participant company. Where and more than one company in the same group is a partner, the entitlements of the various group companies are aggregated. If

the JV does not have ordinary share capital, then the assessment is instead based on entitlement to the JV's profits, FA23/SXX(3).

The main effects of the rule are that –

- The relevant proportion of the JV's electricity generation that is supplied to the participant are to be attributed to both the JV and the participant.
- The sale by the participant is ignored when calculating the JV's exceptional generation receipts. This means that it is the receipt from the sale to the participant that is relevant for the JV.
- The participant may also deduct the relevant proportion of the costs of that generation allowable under FA23/SXX.
- The participant will deduct the cost of purchasing the generation from the JV venture, rather than applying the benchmark amount, when calculating its exceptional generation receipts.

Example

A JV sells electricity to a participant at £100/MWh giving an exceptional receipt of £25/MWh by reference to the benchmark amount. The participant then sells the electricity for £120/MWh. The participant's exceptional receipt is £20/MWH rather than the excess over the benchmark amount of £45/MWh. The total exceptional generation receipts are therefore £45/MWh.

Conversely, if the intermediate sale was priced at £60/MWh then the JV would have no exceptional receipt by reference to the benchmark amount but the participant's would be the difference between its sale price of £125/MWh and the benchmark amount of £75/MWh, again a total of £45/MWh.

There is an extended example at EGLMXXXXX.

EGLMXXXXX Joint ventures: treatment of generation supplied to members: extended example

This example is based on that set out in the Technical Note published by HM Treasury alongside draft legislation in December 2022.

Company A and Company B each own 50% in a JV. The JV sells 1 million MWh output to Company A at a fixed price of £125/MWh and 1 million MWh to Company B at day-ahead prices. It also sells 1 million MWh output to Company C, a third-party at day-ahead prices.

The average output price achieved by the JV over the period is £145/MWh.

Company A sells on the power it buys from the JV at an average price of £150/MWh. Company B enters into day-ahead-fixed swap that acts as a hedge against its JV interest and makes a loss on that instrument of £20 million (£20 per MWh).

The JV has exceptional UK generation receipts of (£145/MWh – benchmark £75/MWh) x 3 million = £210 million.

The JV's liability to the levy is therefore calculated as:

- £210 million – £10 million allowance = £200 million chargeable exceptional generation receipts
- £200 million x 45% = £90 million EGL liability

As participants in the JV, Companies A and B of the JV members will also be liable for the EGL on specified amounts relating to their interest in the JV as follows:

<u>Company A –</u>

- A proportionate share of the JV's exceptional generation receipts below the JV's allowance: 50% of £10 million = £5 million, plus
- Its own exceptional receipts from output received from the JV of (£150/MWh – £125/MWh paid) x 1 million = £50 million)
- Total exceptional receipts for EGL purposes £55 million (before the revenue allowance)
- Assuming that it has no other generation receipts, it will have £55 million - £10 million = £45 million of chargeable exceptional receipts for the period.
- It will therefore have an EGL liability of £20.25 million (at 45%).

<u>Company B –</u>

- A proportionate share of the JV's exceptional generation receipts below the JV's allowance = £5 million (as for Company A), less
- a loss of £20 million on the derivative instrument. An alternative way of looking at this is that Company B is selling generation it bought for £145/MWh at a net price after the hedge of £125/MWh: (£125/MWh – £145/MWh paid) x 1 million = £20 million)
- This results in a net shortfall of £15 million in relation to its participation in the JV.

EGLMXXXXX Joint ventures: treatment of generation supplied other than to members Mainly Section 15(4) & (5) of draft published on 20 December

Joint ventures that undertake electricity generation are liable to EGL in their own right on the same basis as any other company or group. However, it can often be the case that investors in joint ventures enter into arrangements in relation to their share of the generation of the joint venture.

FA23/SXX(1)-(3) (covered at EGLMXXXX) sets out the treatment where a qualifying joint venture (JV) sells electricity directly or indirectly to a participant.

FA23/SXX(4)-(5) contains separate provision which addresses the alternative situation where JV supplies electricity to a person other than a participant in the JV. Again, the aim is for the EGL to apply to take account of the participant's position.

Broadly, where a participant in a JV realises amounts from hedging output of the JV, those amounts will be treated as additions or reductions to the participant's exceptional generation receipts. For example –

- A participant hedges the price at which the JV sells electricity to third parties and the participant makes a profit on that hedge. The return that the participant makes from that hedge would also be included in calculating its exceptional generation receipts.
- Alternatively, the participant may make a loss on the hedge described above. Then the loss would also be included in calculating its exceptional generation receipts.

The "relevant proportion" of the JV's generation that is subject to this rule means the proportion of the JV's ordinary share capital held by the participant company. Where and more than one company in the same group is a partner, the entitlements of the various group companies are aggregated. If the JV does not have ordinary share capital, then the assessment is instead based on entitlement to the JV's profits, FA23/SXX(3).

Example

In 2023, a JV sells electricity to a third party off-taker at day-ahead prices. In the period it generated 100GWh of electricity. It realised an average price of £100/MWh giving exceptional generation receipts of £2,500,000 by reference to the benchmark amount of £75 (100,000 MWh x £25/MWh).

A participant with a 25% interest in the JV will have an exposure to the day-ahead electricity prices inherent in its investment – for example, being reflected in the dividend flow that it receives from the JV. The participant therefore hedges it exposure to day-ahead electricity prices by swapping this to a fixed price of £120/MWh over 25 GWh of electricity. In the period, the participant receives additional net receipts of £20/MWh (being the difference between the fixed price and the average day-ahead price).

The participant therefore includes net receipts of £500,000 (25,000MWh x £20/MWh) in its calculation of exceptional generation receipts that are subject to the EGL.

Conversely, if the participant had fixed the price at £95/MWh (say), then it would recognise a shortfall of £5/MWh in respect of the hedge. It would therefore have a shortfall of £125,000 (25,000 MWh x £5/MWh) that it can set against any other generation receipts that it has for the period.

Note that the participant may decide to hedge a lower amount of generation than that which it expects the JV to generate in the period. All of this derivative would, in this case, still be hedging the participant's exposure to the generation of the JV.

Equally, it is possible that the participant may decide to 'overhedge' by entering into a derivative over a higher amount of generation than which it expenses the JV to generate in the period. The proportion of the hedge which exceeds the expected generation of the JV would not, therefore, be hedging the JV's generation for the period. Only the proportion of the hedge that relates to the participants share of the JV's generation will be brought into the charge of the levy.

Offsetting between the JV and the participant

It may be the case that a participant may not have sufficient generation receipts attributed to it to fully relieve any shortfall. [Placeholder for outline / link to further rules.]

Further guidance

The meaning of a qualifying joint venture and a participant are set out in EGLMXXXXX.

EGLMXXXXX Joint ventures: [holding page for further rules]

EGLMXXXXX Joint ventures: [holding page for further rules]

EGLMXXXXX Special rules for group companies with significant minority shareholders Mainly Section 16 of draft published on 20 December

FA23/SXX and FA23/SXX provide for where a group company that undertakes electricity generation includes one or more significant minority shareholders. A significant minority shareholder is, broadly speaking, one holding a 10% or greater interest in a company that is a member of a group.

There are two particular sets of rules that apply to significant minority shareholders:

- A group to elect for a group company to bear its own share of the group's EGL liability. See EGLMXXXX which also explains the definition of significant minority shareholder.
- To take in account arrangements of a significant minority shareholder in relation to generation supplied through them. The latter rule largely replicates the approach to generation supplied to members of a joint venture in FA23/SXX. See EGLMXXX.

EGLMXXXXX Group companies with significant minority shareholders: Election for group company to pay its own share of EGL liability **Mainly Section 11 of draft published on 20 December**

FA23/SXX applies where the generating undertaking is a group and a member of that group has a significant minority shareholder. It allows the group to elect for that company to be individually liable for its share of the group's overall EGL liability which will include the liability of any subsidiary of the company involved.

This rule is to make it easier for corporate groups to ensure that the costs of the EGL are borne by the companies whose activities have given rise to those costs, in situations where that could have significant commercial implications. For example, a company that operates a generating station could be owned 80% by X Ltd and 20% by Y Ltd and the electricity output is supplied to the owners in the same proportions. The company is in the same group as X Ltd because the 75% ownership condition is met and the whole of the generation would normally be included in calculating the EGL liability of the X group. However commercially it is Y Ltd that will be benefitting from any exceptional generation receipts from its 20% of the output. This matter could be resolved through contractual arrangements between X Ltd and Y Ltd but FA23/SXX provides an alternative.

The election may be made where a group member has one or more significant minority shareholders and an amount of the group's EGL liability is attributable to that group company on a fair and reasonable basis.

A significant minority shareholder is one that holds a 10% or greater interest in a group company based on applying any of the following measures –

- entitlement to the company's profits available for distribution to equity holders,
- entitlement to the company's assets available for distribution to equity holders on a winding up, or
- ownership of the company's ordinary share capital.

FA23/SXX applies the rules for group relief in Part 5 of CTA 2010 for the purposes of determining: who is an equity holder in a company and how to assess entitlement to profits or assets, and how to trace through indirect holdings. They also apply the rules to companies without share capital and adapt the rules where a group structure includes other entities or arrangements.

An election for this treatment is to be made by the lead company of the group and should specify the relevant amount of EGL. It must be made by nine months following the end of the relevant qualifying period, which will correspond to the date that payment of EGL by the lead company is due (reflecting that company's corporation tax accounting period).

The making of an election does not prevent HMRC from collecting the amount of EGL liability involved from another member of the group in the event of non-payment.

EGLMXXXXX Group companies with significant minority shareholders: treatment of generation supplied to a significant minority shareholder Mainly Section 16 of draft published on 20 December

FA23/SXX addresses the situation where a generating undertaking that is a member of a group supplies electricity to a significant minority shareholder which then sells it on. The aim is for the EGL to take account of the minority shareholder's position. The meaning of significant minority shareholder can be found at EGLMXXXXX.

In the following guidance the term "shareholder" is used as shorthand for "significant minority shareholder" but that term may apply to either a single company or a group generating undertaking.

The treatment is very similar to that where a participant in a joint venture receives generation from the joint venture.

Broadly, where a shareholder realises amounts from selling output of the group company or from hedging output of the company, those amounts will be treated as additions or reductions to the exceptional generation receipts of the shareholder. For example –

- A shareholder buys electricity from the group company and then sells it to third parties in the wholesale market at a higher price. The net receipts that the participant makes from that on-selling would be included when calculating its exceptional generation receipts.
- A shareholder buys electricity from the group company and then sells it to third parties in the wholesale market at a lower price. The net shortfall that the participant makes from that on-selling would be included when calculating its exceptional generation receipts.
- A shareholder buys electricity from the group company and sells electricity to third parties on a similar basis. It also enters into a financial hedge in respect of its share of the generation of the group company. The return that the participant makes from that hedge would also be included in calculating its exceptional generation receipts.
- Alternatively, a shareholder may make a loss on the hedge described above. Then the loss would also be included in calculating its exceptional generation receipts.

This treatment applies to generation received from the group company to the extent that this reflects the shareholder's interest in the group company as it is accepted that any excess generation received will representing the shareholder activity as an electricity trader rather than an on-seller of the group company's output. For example: say a shareholder has a 15% minority shareholding in the group company but receives 100% of the output from the generating station that is operated by group company – effectively it is operating as the off-taker for the whole of the JV's generation. The participant may enter into forward sale agreements and financial hedges to manage its risk to electricity prices. The rules will bring into account the net receipts of the participant that relates to its share of the generation of JV, but not the net receipts that it realises as part of its off-taker role. Any necessary apportionment required to calculate the net receipts attributable to the participant under this rule is to be made on a fair and reasonable basis.

It may be the case that a shareholder may not have sufficient generation receipts attributed to it to fully relieve any loss. [Placeholder for outline / link to further rules.]

The "qualifying proportion" of the group company's generation that is subject to this rule means the proportion of the group company's ordinary share capital held by the shareholder. Where and more than one company in the same group holds shares in the group company, the entitlements of the

various group companies are aggregated. If the group company does not have ordinary share capital, then the assessment is instead based on entitlement to the company's profits, FA23/SXX(3).

The main effects of the rule are that –

- The qualifying proportion of the group company's electricity generation that is supplied to the participant are to be attributed to both the group company and the shareholder.
- The sale by the group company is ignored when calculating the exceptional generation receipts of the group of which that company is a member. This means that it is the receipt from the sale to the shareholder that is relevant.
- The shareholder may also deduct the relevant proportion of the costs of that generation allowable under FA23/SXX.
- Where the shareholder is not itself a generating undertaking then it is treated as one for EGL purposes. For example, an energy trading group has a minority shareholding in a group company that generates and takes part of the output. The trading company (or group) is liable to EGL on its receipts from trading this output in the wholesale market because it is treated as a generating undertaking even though it does not itself generate electricity.

The examples for the corresponding rule for joint ventures at EGLMXXXXX illustrate the overall effect of the rule.

EGLMXXXXX Administration of the Electricity Generator Levy **Mainly Sections 17 to 20 and 24 of draft published on 20 December**

Although the Electricity Generator Levy is a distinct charge it is administered through the corporation tax (CT) system: it is collected and managed "as if" it were CT, FA23/SXX(1).

This means that it is assessed and collected in the same way as CT, the receipts charged are those that arise in a qualifying period based on a CT accounting period and the wider CT administration framework concerning self-assessment, making of enquiries, charging of interest, penalties etc. apply to the EGL. FA23/SXX(3) provides a non-exhaustive list of the CT provisions that also apply for EGL purposes and FA23/SXX(4) ensures that EGL liability is included in the self-assessment return of a company liable to the EGL.

One significant difference from the usual CT rules is that in a group situation it is usually only the lead company that is responsible for reporting and paying the ECL on behalf of the wider group that is the "generating undertaking". EGLMXXXXX explains how the lead company is identified, including the process for nominating a group company for this purpose. More than one group company may be responsible for paying the EGL where an election is made to transfer part of the group's liability to a member with a significant minority shareholder, as explained at EGLMXXXXX.

Liability for the EGL is calculated by reference to a "qualifying period" and the way the rules work means that this period will always fall within the lead company's corporation tax accounting period although it may not coincide with the whole accounting period. This means that the EGL liability of the lead company is to be reported in that company's CT self-assessment return for the relevant accounting period. See also EGLMXXXXX. The amount of EGL payable is to be added as the final item in the lead company's CT return, FA23/SXX.

Additional reporting requirements

FA23/SXX requires a company liable to the EGL to include a statement of certain additional matters with its CT return and also to make a return if it would not otherwise be liable to do so, for example: where it would not otherwise be within the charge to CT.

The additional matters to be included in the statement are the following amounts for the qualifying period that corresponds to or falls within the company's accounting period - –

- the electricity generation attributed to the generating undertaking, see EGLMXXXXX
- the undertaking's generation receipts, see EGLMXXXXX
- the allowable costs to be deducted from those receipts, see EGLMXXXXX
- the undertaking's revenue allowance for that period
- where relevant, the amount of EGL payable by another group company as a result of any election under FA23/SXX, see EGLMXXXXX

Payment of interest

FA23/SXX(1) & (2) modify the rules in Taxes Management Act 1970 to ensure that EGL is payable at the same time as CT is due and that late payment interest may be charged accordingly. This also applies where CT is paid through a group payment arrangement.

Quarterly instalment payments

Large or very large companies are required to pay CT by instalments in advance of the standard payment date of nine months following the end of an accounting period. FA23/SXX(3) ensures that liability to EGL is taken into account when considering whether a company is required to make instalment payments. It does this by providing that the requirement is met when either the company's CT profits or its exceptional generation receipts exceed the relevant "profits" threshold in the Instalment Payment Regulations.

FA23/SXX(4) & (5) deal with the commencement of the levy. Any EGL liability in relation to the period from 1 January to [the date of Royal Assent] is to be included in the first instalment due after [the date of Royal Assent].

Treatment of EGL liability for CT purposes

FA23/SXX makes clear that amounts of EGL payable are not to be deducted when calculating profits for the purposes of CT. It also provides that amounts paid between companies to meet or reimburse a payment of the levy are neither taxable nor allowable for CT purposes. For example, in a group context the lead company or the company responsible for making payments under a group payment arrangement may recharge the various companies the amount of EGL attributable to their electricity sales. Such recharges are to be ignored when calculating profits chargeable to CT, such as trading income or expenses of management.

EGLMXXXXX - Application of group relief rules Mainly Section 21 of draft published on 20 December

The definition of a group for EGL purposes and the rules concerning joint ventures and group companies with substantial minority shareholders require consideration of the amounts of profits or assets that are available for distribution to equity holders of a company. FA23/SXX applies the corporation tax group relief rules in Chapter 6 of Part 5 CTA 2010. In particular, CTA10/S167 provides for indirect beneficial entitlement to be established through intermediate companies.

The group relief rules are modified as follows for EGL purposes –

Bank lending

Under CTA10/S159(1)(b), a person who is a loan creditor of a company in respect of a loan which is not a normal commercial loan (CTA10/S162) is an equity holder of the company. FA23/SXX(2)(b) modifies this rule so that a bank is not treated as a loan creditor of a company (and accordingly is not an equity holder) in respect of loans made to the company in the ordinary course of its business.

Arrangements to reduce entitlements

The group relief rules restrict the percentage entitlement to profits or assets if there are arrangements under which the entitlement could be reduced at a later date. It is arguable that an agreement to sell a company constitutes "arrangements" with the result that a company might leave the group before the actual sale. So, for the purposes of the EGL this rule is disregarded.

Options

CTA10/S173 and CTA10/S174 set out rules in respect of options over shares or securities. These are also to be disregarded for EGL purposes.

Remaining rules to be covered (where not already) -

22 Anti-avoidance

23 Information sharing

25 Regulations under this Part

26 Minor definitions relating to electricity market

27 Definitions in this Part