

Electricity Generator Levy: new investment exemption.

Draft core guidance (mention & cross references to be added to existing guidance)

EGL22500 - The New Investment Exemption – overview and structure of legislation

The government announced at its Autumn Statement on 22 November 2023 that there would be an exemption from the EGL for new power generation projects for which there had been no substantive decision to proceed before that day.

The exemption was introduced to strengthen the incentives for investment in renewable energy generation.

HM Treasury published a Technical Note outlining the scope of the exemption which can be found here [\[link\]](#).

Overview

In broad terms, the exemption means that the EGL will not apply to generation resulting from an investment project where the substantive decision to proceed was taken on or after 22 November 2023. This is achieved by treating the particular generating station, or a part of it, as not being “relevant” for the EGL, F(2)A23/S280(1)(c).

The exemption will apply to completely new power generation projects, in which case the identification of the investment project involved and the application of the exemption should be straightforward. It will also apply to additional generation from a project to expand an existing generating station and also where substantially the whole of the generating plant of an existing station is replaced, known as “repowering”.

The exemption may apply to all forms of electricity generation that are currently within the scope of the EGL although it is expected to be mainly relevant to projects involving renewable sources of energy.

Structure of the legislation

FAXX/SXX introduced the new investment exemption by amending the EGL legislation in Part 5 F(2)A23.

As mentioned above, the exemption works by excluding the affected part of a generating station from being treated as “relevant” for EGL purposes by amending the definition in F(2)A23/S280. It does this by excluding the part of a generating station that meets the definition of “qualifying new generating plant”. New F(2)A23/S311A sets out the meaning of qualifying new generating plant. Broadly, this means plant that is commissioned as part of a “qualifying project” where the investment decision was made on or after 22 November 2023, F(2)A23/S311A(1).

The test for when the investment decision was made is expressed by asking whether, on the day before the exemption was announced, it would have been reasonable to conclude that there was a significant likelihood of the investment project not proceeding. This is termed the “new investment condition” set out in F(2)A23/S311A(2).

The meaning of a “qualifying project” is set out in F(2)A23/S311A(4) by reference to the provision of new generating plant for:

- A new generating station,
- The replacement of substantially the whole of the generating plant of an existing generating station (repowering), and,
- Adding capacity to an existing station.

F(2)A23/S311A(5) & (6) then provide that for a project to add capacity to an existing station, it is only the additional capacity that will qualify for the exemption.

F(2)A23/S311A(3) provides a power to extend the meaning of the new investment condition through Regulations, should that become necessary.

Specific guidance on the new investment condition and qualifying projects is at EGL22600 and EGL22700.

EGL22600 - The New Investment Exemption - the new investment condition

F(2)A23/S311A(2) expresses this condition by asking whether, as at 21 November 2023 (immediately before the exemption was announced) it would have been reasonable to conclude that there was a significant likelihood of the “qualifying project” not proceeding. “Significant” here will be interpreted by HMRC as being of importance rather than there being some trivial, fanciful or insignificant risk to the project.

Major infrastructure projects will typically reach a stage referred to as the Final Investment Decision (“FID”) which is a commercial concept that the EGL legislation does not attempt to define but broadly the exemption would not apply where a formal FID has taken place before 22 November nor where the factors pointing to FID (even where there was no formal process) have taken place before that date.

The factors that would point to a substantive decision to proceed with a project having been made may include:

- A main board level commitment to undertake the project
- An approval of the total financial commitment required for the project
- The release of project funding by major investors
- The commitment to contracts regarding generating equipment and installation activity
- Where relevant, the triggering of options to acquire the interests in land required for the site of the station
- The approval of a credible timetable or programme for the project demonstrating that the facility can reasonably be expected to be commissioned
- Public statements announcing the decision to go ahead with the project, which may include announcements made for regulatory purposes

The absence of one or more critical agreements at 21 November 2023 may indicate that no substantive decision to invest has been made by that date. For example, where a project does not have funding in place, or there are no agreements in place for the supply of the key generating equipment.

EGL22700 - The New Investment Exemption - qualifying projects

F(2)A23/S311A(4) defines a qualifying “Qualifying project” means a project to commission new generating plant for one of three purposes –

- The creation of a new generating station,
- The replacement of the generating plant of an existing station provided the whole, or substantially the whole, of the plant is replaced, and
- The increase of the generating capacity of an existing station.

Each is discussed further below.

The creation of a new generating station,

The identification of this type of project should be straightforward as it will invariably involve the construction and commissioning of a clearly identifiable new site with its own, separately metered, connection to the electricity distribution network.

The replacement of the generating plant of an existing station

This equates to the process referred to in the energy sector as “repowering” which is where the whole, or substantially the whole, of the generating plant of an existing station is replaced, as reflected in the language used in the rule.

Where such a project takes place then the whole of the capacity of the station will be within the scope of the exemption.

Such a project will typically not involve replacement of all elements of the station infrastructure hence the focus on “generating plant”. For example, the project may involve replacing just the actual solar panels in a solar power station, utilising the existing panel supports along with the cabling and transmission equipment. Similarly, it may involve the replacement of the turbines and blades of a wind power station, retaining the towers and other infrastructure.

Whether “substantially the whole” of the plant has been replaced will depend on the circumstances of a particular generating station. For example, a wind power station may contain 30 turbines of which [25] were part of the original development and are now approaching the end of their useful lives but [five] were added more recently and do not require replacement. It would be reasonable to conclude that the replacement of the life expired turbines represents the replacement of substantially the whole of the generating plant.

The increase of the generating capacity of an existing station

This type of project may involve an expansion beyond the former boundaries of a site or the installation of additional generating equipment within an existing site. The focus here is on the creation of additional capacity (the rated capacity of the station in megawatts) and not simply an increase in output by more efficient use of existing capacity (an increased output in megawatt hours).

Indicators of a project that meets the definition would include the obtaining of a new interest in land or seabed, or the bringing into use of a previously undeveloped area of land or seabed (which may represent a discrete generating station) or the provision of separate metering of the resulting additional output. The provision of a distinct metering, though a useful indication of station expansion, would not be regarded as determinative.

Examples of projects that may qualify would be an existing wind power station that has 20 turbines and a further five are added within the boundary of the existing site, or where an additional biogas turbine is installed in an existing waste treatment facility.

The refurbishment, general repair, maintenance and replacement of parts in an existing site would not be a qualifying project for the exemption even where such activities lead to the operation of an existing generating station beyond its originally planned life. This includes cases where such works are essential for maintaining capacity or could lead to increased capacity. Such activities would typically represent part of an existing plan to maintain the station over its working lifetime rather than a new investment project.

Where a project qualifies under this condition then it is only the resulting additional generating capacity that may qualify for the exemption, F(2)A23/S311A(5) &(6). In effect, the additional capacity is treated as if that of a generating station that is outside the charge to EGL and a fair and reasonable apportionment should be made where the output is not separately metered. The requirement for the attribution of generation receipts to be made on a fair and reasonable basis is to be found in F(2)A23/S283(2).

Returning to the example of a wind power station with 20 turbines and a further five added, the exemption would apply to the metered output of those five new turbines if that is known. Otherwise, using the proportion that the capacity of those new turbines bears to that of the whole station would be a reasonable approach. However, that may not produce a fair result if some of the turbines suffer from significant outages during the relevant qualifying period in which case some further adjustment may be appropriate. HMRC considers that a reasonably broad-brush approach will be appropriate in most circumstances.