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Sections 278-312: electricity generator levy

Electricity generators generally pay standard corporation tax rates and abide by corporation tax rules. However, Finance Act 2023 (No 2), sections 278-312, introduced an additional 45% levy on revenues generated from producing electricity from nuclear, renewable, biomass, and energy from waste sources in the UK (the levy), effective from 1 January 2023 to 31 March 2028. This note explores the background, mechanisms, and broader implications of this levy.

Background

The sharp rise in oil, gas, and electricity prices¹ caused by the ongoing Russo-Ukrainian War led to high inflation² and a cost of living crisis.³ To address this issue, on 26 May 2022, the then Chancellor of the Exchequer, Rishi Sunak, extended a support package and announced a windfall tax on oil and gas producers.⁴ He also pledged to introduce a similar levy on electricity producers that were making exceptional profits.⁵ However, these plans were disrupted by political turbulence and changes in the fiscal regime during Liz Truss's premiership.⁶ After Rishi Sunak became Prime Minister, the Chancellor of the Exchequer, Jeremy Hunt, presented an Autumn Statement⁷ aimed at reducing borrowing by reversing most of Liz Truss's reforms, expanding the energy profits levy for oil and gas producers and introducing the electricity generator levy.

¹ UK domestic electricity prices increased by 99 per cent in two years. CPI (2015=100) of 121.2 for February 2021, CPI (2015=100) of 240.9 for February 2023: Office for National Statistics, "CPI INDEX 04.5.1: ELECTRICITY 2015=100", <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7dt/mm23> [Accessed 17 April 2023].

² The Consumer Prices Index including owner occupiers' housing costs rose by 9.2% in the 12 months to February 2023: Office for National Statistics, "Consumer price inflation, UK: February 2023," <https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/february2023> [Accessed 17 April 2023].

³ Impact of the cost of living crisis is summarised in several releases, including Brigid Francis-Devine et al, *Rising cost of living in the UK* (TSO, 2022), House of Commons Library Research Briefing, <https://researchbriefings.files.parliament.uk/documents/CBP-9428/CBP-9428.pdf> [Accessed 7 December 2022], or Iana Liadze et al, *The Economic Costs of the Russia-Ukraine Conflict* (London: National Institute of Economic and Social Research, 2022), NIESR Policy Paper 32.

⁴ The initial version of this levy was discussed in Karolis Matikonis "Shortcomings of Energy (Oil and Gas) Profits Levy" (2022).

⁵ The Rt Hon. Rishi Sunak MP, Speech, *Cost of Living Support* (26 May 2022), <https://www.gov.uk/government/speeches/cost-of-living-support> [Accessed 17 April 2023].

⁶ Liz Truss was a firm opponent of windfall taxes, as expressed during oral answers to questions to Prime Minister, available at: Parallel Parliament, Oral Answers to Questions Elizabeth Truss Excerpts (7 September 2022) <https://www.parallelparliament.co.uk/debate/2022-09-07/commons/commons-chamber/oral-answers-to-questions> [Accessed 7 December 2022].

Tosun and Lucey summarised the impact of the reforms introduced during Liz Truss premiership in: Onur Kemal Tosun and Brian Lucey "Growth ... What growth?" (2023) *Finance Research Letters*, 52, 103594, <https://doi.org/10.1016/j.frl.2022.103594>

⁷ HM Treasury, *Autumn Statement 2022* (November 2022), <https://www.gov.uk/government/topical-events/autumn-statement-2022> [Accessed 17 April 2023].

In relation to the electricity generator levy, the draft legislation,⁸ explanatory note,⁹ technical note,¹⁰ and supplementary technical note¹¹ were published on 20 December 2022. A note titled “Implications of expanded levies on energy producers”¹² analysed these documents and argued that the policy prioritises reducing the short-term budget deficit over optimising long-term tax receipts, discourages long-term investment and is incompatible with the international commitments in relation to reducing carbon emissions. On 15 March 2023, the Government issued a further policy paper¹³ and after revisions, the legislation was enacted as part of the Finance Act 2023 (No 2).

Mechanisms of the levy

A levy of 45 per cent¹⁴ is imposed on groups and standalone companies that are connected to a national grid or local distribution networks.¹⁵ Such companies are deemed liable if they generate over 50 megawatt-hours of electricity per annum from nuclear, renewable, biomass, and energy from waste sources. Notably, the levy excludes electricity generated from gas, coal, and oil.¹⁶ The levy applies between 1 January 2023 and 31 March 2028.¹⁷ However, in the first year and in other circumstances where the qualifying period is less than 365 days, the 50 gigawatt-hour threshold is proportionally reduced.¹⁸

A novel approach for assessing liability is introduced, involving the estimation of receipts based on electricity generation. Specifically, exceptional generation receipts are estimated at an aggregate level across all in-scope generations of the group in respect of a qualifying period aligned to the accounting period of the company. To estimate the exceptional generation receipts, the receipts that are within the scope of this levy are reduced by generated electricity set at a benchmark price of £75 per megawatt-hour, allowable costs and the £10m allowance:¹⁹

$$\begin{aligned} \textit{Exceptional generation receipts} &= && + \textit{electricity generation receipts} \\ &&& - \textit{electricity generated at benchmark amount} \\ &&& - \textit{allowable costs} \\ &&& - \textit{£10m allowance} \end{aligned}$$

As an example, consider a hypothetical company that operates independently, without being part of a group, and earns an annual revenue of £100 million from selling electricity in the wholesale market. Out of this amount, £60 million is generated from electricity sold at a benchmark price of £75 per megawatt-hour. The remaining £40 million exceeds the benchmark price. A further £10 million revenue allowance is deducted from this amount. This means that the company's liability for the levy

⁸ Electricity Generator Levy [Draft as of 20 December 2022]

⁹ HM Treasury “Explanatory Note” (2022)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126015/Explanatory-note.odt [Accessed 17 April 2023].

¹⁰ HM Treasury “Electricity Generator Levy: technical note” (2022)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118358/Electricity_generator_levy_technical_note_final.pdf [Accessed 17 April 2023].

¹¹ HM Treasury “Electricity Generator Levy: supplementary technical note” (2022)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125818/Electricity_generator_levy_December_update__2_.pdf [Accessed 17 April 2023].

¹² Karolis Matikonis “Implications of expanded levies on energy producers”(2023) B.T.R.

¹³ HM Revenue & Customs “Policy paper Electricity Generator Levy” (2023)

<https://www.gov.uk/government/publications/electricity-generator-levy-introduction/electricity-generator-levy> [Accessed 26 April 2023].

¹⁴ FA 2023 (No 2) s.278(1)

¹⁵ FA 2023 (No 2) s.281(3)

¹⁶ FA 2023 (No 2) s.278

¹⁷ FA 2023 (No 2) s.278(9)

¹⁸ FA 2023 (No 2) s.278(4)(b)

¹⁹ FA 2023 (No 2) s.278(5)

is based on the remaining £30 million. Since the levy charge is 45 per cent, the company's liability would amount to £13.5 million.

Section 282: Electricity generation receipts

Generation receipts refer to the amounts that are fair and reasonable to attribute to the generation in that period, reflecting the wholesale purchase of electricity resulting from the generation.²⁰ For most companies, they are the amount they receive from third parties for the electricity they generate and sell via wholesale purchases during a qualifying period.²¹ Receipts should align with the timing of revenue recognition for financial reporting purposes, irrespective of whether the electricity was generated.²²

Calculating tax liability for the levy becomes more challenging for companies with more complex structures or varied ways of generating value from energy production, particularly if there are multiple companies involved in trading or hedging activities. The fair and reasonable basis and arms' length²³ provisions for transfer pricing are used to determine the appropriate levy amounts.²⁴ Only a few factors are specified for calculating generation receipts, such as settlement codes, imbalance charges, and payments/receipts from hedging.²⁵ Having said that, the legislation also adds an ambiguous provision that the Treasury may add further regulations to make provisions on what amounts should be attributed to generation or treated differently.²⁶

Sections 278(6) and 280: Revenue allowance and benchmark amount

Section 280(1) specifies a benchmark amount to determine the upper limit of receipts that would not be considered exceptional and hence exempt from the levy. The current benchmark amount stands at £75 per megawatt-hour,²⁷ subject to revision based on the customer price index commencing from 2025.²⁸ Unlike for generation receipts, the provisions state to ignore any electricity that was expected to be, but was not, generated unless it is under a settlement code.²⁹ The calculation of the levy involves subtracting these not exceptional receipts, which are obtained by multiplying the generated electricity by the benchmark price, in addition to subtracting a revenue allowance of £10 million³⁰ with no indexing equivalent to the benchmark price, from the total exceptional generation receipts.³¹

Sections 283-285: Allowable costs

Allowable costs, which are to be deducted from the generation receipts in addition to the revenue allowance and benchmark amount, are specified as exceptional fuel costs, exceptional revenue sharing costs, and qualifying electricity purchase costs.³² The latter is limited to only purchasing electricity to meet contractual agreements.³³ Similarly to receipts, these costs are at the

²⁰ FA 2023 (No 2) s.282(2)

²¹ FA 2023 (No 2) s.282

²² FA 2023 (No 2) s.281(3)

²³ The term "arm's length provision" means the provision that would have been made between independent parties dealing at arm's length, as defined in Part 4 of TIOPA 2010.

²⁴ FA 2023 (No 2) s.282 (7)-(8)

²⁵ FA 2023 (No 2) s.282(3)

²⁶ FA 2023 (No 2) s.280(1)

²⁷ FA 2023 (No 2) s.280(3)

²⁸ FA 2023 (No 2) s.282(5)

²⁹ FA 2023 (No 2) s.281(4)(b)

³⁰ FA 2023 (No 2) s.278(6)

³¹ FA 2023 (No 2) s.278(5)

³² FA 2023 (No 2) s.282(3)

³³ FA 2023(No 2) s.282(6)

arms' length, in the case of transfer pricing, as defined in Part 4 of TIOPA 2010.³⁴ These costs can only be attributed to a generating undertaking for a qualifying period if they are fairly and reasonably attributable to generation receipts, reflect the expenses of the undertaking or its members, and are not already included in the determination of those receipts.³⁵

Sections 284 and 285 provide complex methods for calculating exceptional generation fuel costs and exceptional revenue sharing costs. In terms of the former, when the revenue is shared with the third party,³⁶ the difference between the cost at the benchmark cost and the actual price paid to the third party should be deducted,³⁷ provided that the third party bears a fixed proportion of the cost of the levy.³⁸ Whilst to estimate the exceptional generation fuel costs, generators must determine the amount of fuel costs exceeding the baseline fuel cost in the period.³⁹ The baseline fuel cost is the lower of the average generation fuel costs per megawatt hour for a specified reference period, or £65 per megawatt hour,⁴⁰ with no indexing equivalent to the benchmark price. The provisions in terms of the reference period require the station to generate on at least 50% of the days over a 3-month period within a reference period of 12 months.⁴¹ If this cannot be met, a fair and reasonable estimate of the costs should be used. If a station uses multiple types of fuel, exceptional generation fuel costs can be calculated separately for each type and if two or more stations use the same fuel type, the same reference period must be used.⁴²

Sections 286-300: Groups, partnerships and joint ventures

Significant consideration is also given to the definitions and rules of allocating liabilities between companies in a group, minority and majority shareholders, partnerships, and joint ventures⁴³ that generators, funds, and limited recourse funders should carefully consider. Regarding companies within a group, the calculation of exceptional generation receipts is conducted at the group level. While the lead member is responsible for paying the electricity levy on behalf of the group, all members share joint liability for the levy.⁴⁴ For groups that have at least one significant minority shareholder, the group can decide to hold that company solely responsible for the overall levy liability or its share.⁴⁵ In the case of partnerships with at least one partner who is not a member of the group, the primary consideration is the partnership's profits, calculated as the sum of each partner's share of the profits, including those who are members.⁴⁶

Numerous complex provisions have been included in the context of joint ventures⁴⁷ to prevent members from claiming multiple £10m allowances and to account for output hedging/selling occurring at the individual member level instead of the joint venture level. The main principle in the legislation seems to be to tax the exceptional generation receipts of a qualifying joint venture and subsequently tax or relieve the amounts that arise to its members concerning their interest in the joint venture. Generation receipts and allowable costs are allocated to each member based on their ordinary share capital or profits in cases where there is no ordinary share capital, while the £10m allowance is

³⁴ FA 2023 (No 2) s.283(7)

³⁵ FA 2023 (No 2) s.283(2)

³⁶ Detailed requirements in FA (No 2) 2023 s.285(7) need to be satisfied in order for a person to be considered a third party.

³⁷ FA 2023 (No 2) s.285(1)-(2)

³⁸ FA 2023 (No 2) s.285(6)

³⁹ FA 2023 (No 2) s.284(1).

⁴⁰ FA 2023 (No 2) s.284(3)

⁴¹ FA 2023 (No 2) s.284(4)

⁴² FA 2023 (No 2) s.284(6)-(7)

⁴³ FA 2023 (No 2) s.286-291.

⁴⁴ FA 2023 (No 2) s.288.

⁴⁵ FA 2023 (No 2) s.289.

⁴⁶ FA 2023 (No 2) s.290(2)-(3).

⁴⁷ As defined in FA 2023 (No 2) s.291.

determined at the group level.⁴⁸ For each member, the allocated allowable costs must be deducted from the allocated generation receipts, with further provisions outlining the attribution and surrender of amounts.⁴⁹ In certain scenarios, this may result in negative amounts, which can be used to decrease the exceptional generation receipts for other joint venture members.⁵⁰ Despite initial reluctance,⁵¹ the Government has also introduced legislation permitting a company to be treated as transparent as an alternative. This would then entail the company being taxed as a partnership.⁵²

Sections 301-312: Management and administration etc.

The levy adheres to the current corporation tax rules, such as self-assessment, penalties, and payment, with only minor substitutes in wording.⁵³ Nevertheless, companies are required to include additional statements of matter in their tax returns.⁵⁴ The legislation includes various provisions to increase clarity, such as explicitly stating that no deductions for corporation tax purposes are permitted for the levy.⁵⁵ Additionally, the legislation encompasses further definitions and provisions, including information sharing and anti-avoidance measures. Specifically, Section 307, an anti-avoidance provision similar to those in other tax legislation, has been included to prevent tax avoidance through unwarranted corporate restructuring, contracts for differences, or behind-the-meter supply arrangements.

Shortcomings of the levy

Despite significant improvements, some provisions remain ambiguous and may be subject to future changes by the Treasury.⁵⁶ There are some inconsistencies between the legislation and announcements or supplementary technical note, likely resulting from outdated information or omissions. For example, although the supplementary technical note excludes electricity generated under private wire agreements from the levy,⁵⁷ the broad definition in the legislation⁵⁸ does not seem to achieve this, especially when considering the previous definitions of the distribution and transmission systems.⁵⁹ Furthermore, the definition of relevant generating stations only excludes oil,

⁴⁸ FA 2023 (No 2) s.292(7).

⁴⁹ FA 2023 (No 2) s.297.

⁵⁰ FA 2023 (No 2) s.297-298.

⁵¹ The Government previously dismissed the concept of treating a company as transparent because it would require to develop a basis for attributing output and revenue to individual members and to consider the treatment of exceptional generation receipts attributed to non-material members in: HM Treasury “Electricity Generator Levy: supplementary technical note” (2022) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125818/Electricity_generator_levy_December_update__2_.pdf [Accessed 17 April 2023], p. 19-20.

⁵² FA 2023 (No 2) s.300(2)

⁵³ FA 2023 (No 2) s.304(2)

⁵⁴ FA 2023 (No 2) s.302(4)

⁵⁵ FA 2023 (No 2) s.309(2)

⁵⁶ The draft legislation consisted of many ambiguous provisions, Electricity Generator Levy [Draft as of 20 December 2022] cl.4(5), 5(1)(d), 5(7), 9(2)(b), 17(6) but it was now reduced to two, FA 2023 (No 2) s.282(5) and 301(6).

⁵⁷ “It [the levy] will not apply to electricity generated and used under a private wire arrangement or “behind the meter” generation that is not exported.” In: HM Treasury “Electricity generator levy technical note” (2022) <https://www.gov.uk/government/publications/electricity-generator-levy-technical-note> [Accessed 12 December 2022], 1.27

⁵⁸ “Grid connected electricity generation” of a relevant generating station for a qualifying period means— “electricity generated by the station in that period for the purpose of giving a supply to any premises or enabling a supply to be so given where that supply would involve the use of a licensed distribution system or a licensed transmission system” in FA 2023 (No 2) s.281(3).

⁵⁹ “distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system ... “transmission system” means a system which - (a)consists (wholly or mainly) of high voltage lines and

coal, natural gas, water-driven plants,⁶⁰ but not diesel generators, which could be unfairly subject to the levy. These contradictions arise from overly broad definitions of generation attribution and receipts and narrow definitions of exclusions.

Moreover, certain provisions in the legislation may not be fair. For instance, differences in attribution legislated with section 281(4) seem to unfairly boost generation receipts that are then not accounted for in the benchmark price. Additionally, there is little justification for the £10m allowance, and the benchmark price is deemed fair only because it is "considerably higher than the average wholesale electricity price in the decade up to 2021."⁶¹ The benchmark price is legislated to adjust based on the consumer prices index starting from the financial year ending in 2025, but that is not the case for the other fixed values, such as the £10m allowance, which could have significant implications, particularly in light of recent fluctuations in the customer price index.⁶²

EU price cap on market revenues as an alternative

Increases in electricity prices in other European nations have led to the adoption of measures comparable to the levy. The price cap on market revenues was introduced with Council Regulation (EU) 2022/1854. This EU legislation partially mitigates ambiguity and bypasses complexities related to the allocation of allowances, exceptional costs, and multiple thresholds in the levy. Instead, the regulation sets a higher price cap of €180 (~£159⁶³) per megawatt hour,⁶⁴ which significantly exceeds the benchmark price of the levy. Any revenue exceeding this cap must be surrendered. This regulation applies for a much shorter duration than the levy, operating between 1 December 2022 and 30 June 2023.⁶⁵ Moreover, the EU legislation lists all categories of electricity production that fall under the cap, eliminating ambiguity.⁶⁶

Although Council Regulation (EU) 2022/1854 applies to all European Union member states and does not require national implementation, in practice detailed measures must be developed and implemented in each country. Members may also deviate from the regulation.⁶⁷ For example, the Irish Cabinet, after some case analysis,⁶⁸ approved the General Scheme of the Energy (Windfall Gains in the Energy Sector) 2023 Bill, which establishes a lower cap of €120 (~£106) per megawatt hour for wind and solar energy,⁶⁹ resulting in higher wind and solar energy windfall taxes in Ireland than in the rest of Europe, including for many generators in the UK. In Ireland, the €180 (~£159) per megawatt

electrical plant, and (b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another" in Electricity Act 1989 s.4(4).

⁶⁰ FA 2023 (No 2) s.279(1)(a)

⁶¹ HM Treasury "Electricity generator levy technical note" (2022)

<https://www.gov.uk/government/publications/electricity-generator-levy-technical-note> [Accessed 12 December 2022], p. 10.

⁶² The Consumer Prices Index including owner occupiers' housing costs rose by 8.9% in the 12 months to March 2023: Office for National Statistics, "Consumer price inflation, UK: March 2023" (26 April 2023), <https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/march2023> [Accessed 7 December 2022].

⁶³ This and other figures in € were converted to £ by using the exchange rate provided by Bank of England on 3 May 2023: Bank of England "Daily spot exchange rates against Sterling" (2023) <https://www.bankofengland.co.uk/boeapps/database/Rates.asp?Travel=NIXAZx&into=GBP> [Accessed 3 May 2023].

⁶⁴ EU Regulation 2022/1854 Articles 6 and 7

⁶⁵ EU Regulation 2022/1854 Article 22(2)(c)

⁶⁶ EU Regulation 2022/1854 Article 7(1)

⁶⁷ EU Regulation 2022/1854 Articles 8 and 9

⁶⁸ The analysis justifying the thresholds has been conducted by Department of the Environment, Climate and Communications "Draft Regulatory Impact Analysis" (2023) <https://assets.gov.ie/250667/045ce449-3ab4-47ca-9069-b742e19db27f.pdf> [Accessed 3 May 2023]

⁶⁹ Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H14(1)(a)

hour cap only applies to geothermal, hydropower, waste, nuclear, lignite,⁷⁰ with some allowable deductions only for hard coal and crude petroleum products, solid or gaseous biomass fuels (excluding biomethane), and peat.⁷¹

Although still intricate, the estimation process for liability is more conceptually straightforward than that of the levy. To determine market revenue, the electricity operator releases an index price for each half-hour, which is the weighted average price of quantities traded for all generators and suppliers.⁷² Monthly market revenues are calculated by multiplying the corresponding index price by each unit's relevant quantity during each half-hour.⁷³ The relevant quantity of the generating unit is then multiplied by the cap level (based on the fuel source),⁷⁴ and the resulting figure is subtracted from the market revenue.⁷⁵ The revenue may then be adjusted based on provisions⁷⁶ related to hedging and counterparties.

Broader implications

The UK government's focus on balancing the budget seems to have taken precedence over optimising tax receipts without discouraging further activity. This is evident in the duration of the levy, which is likely driven by the desire to reduce the fiscal deficit rather than to capture temporary excess profits.⁷⁷ Despite the emphases in the Chancellor of the Exchequer's speech when introducing the levy on taxing “genuinely ... windfall profits caused by unexpected increases in energy prices,”⁷⁸ the levy has been legislated until the end of March 2028 without any explanation for this extended period. In contrast, the comparable EU price cap is currently legislated only for 9 months ending on 30 June 2023, and UK's energy support measures, such as the Energy Price Guarantee and Energy Bill Relief Scheme, are not budgeted beyond 2024.

The left-hand chart in Figure 1 indicates that, according to the Office for Budget Responsibility estimates, windfall taxes would generate £40 billion in tax revenue (£14 billion of which would come from the levy), surpassing the cost of energy support measures by £5 billion. However, the right-hand chart shows the annual costs of the energy support and the projected tax receipts from windfall taxes between 2022-23 and 2027-28. This highlights the impracticality of the levy, which assumes that electricity generators will continue to earn excessive profits until 2027-28, while customers will only require support until 2023-24. This assumption is unlikely to hold, as energy producers may not continue to generate excessive profits beyond 2023-24, and if they do, consumers will likely need support as well.

⁷⁰ Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H14(1)(c)

⁷¹ Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H14

⁷² Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H15(1)

⁷³ Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H15(2)

⁷⁴ Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H16

⁷⁵ Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H17

⁷⁶ Energy (Windfall Gains in the Energy Sector) 2023 Bill (Ireland) H18

⁷⁷ This levy was one of the key instruments to offset the increased borrowing costs, as explained in Karolis Matikonis “Implications of expanded levies on energy producers”(2023) B.T.R.

⁷⁸ The Rt Hon Jeremy Hunt MP, Speech, The Autumn Statement 2022 (17 November 2022), <https://www.gov.uk/government/speeches/the-autumn-statement-2022-speech> [Accessed 17 April 2023].

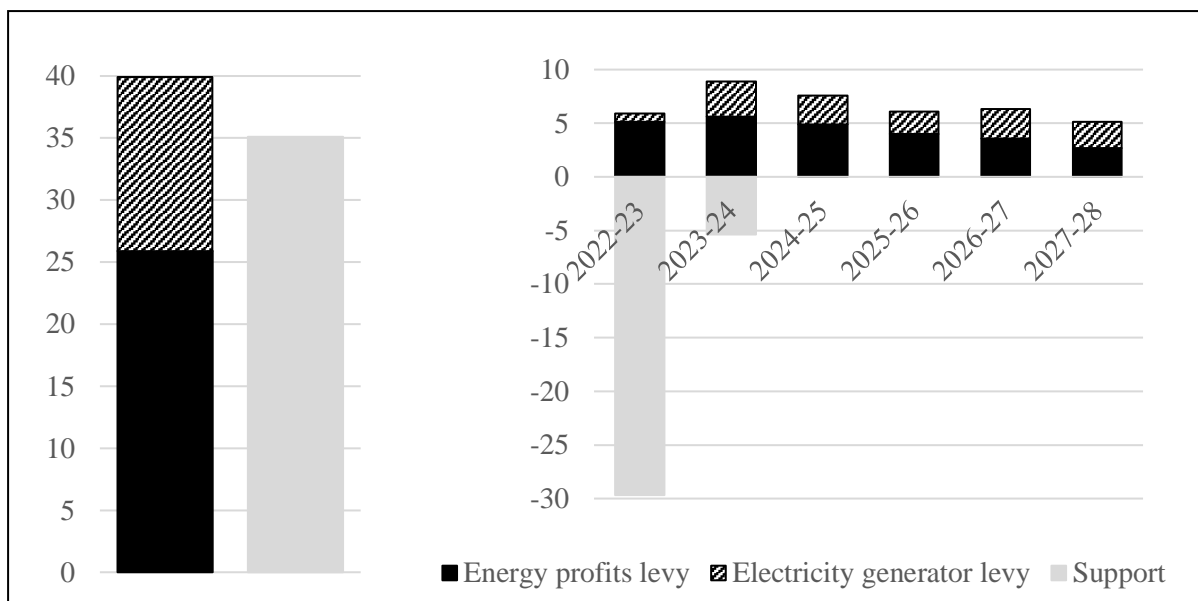


Figure 1: Forecasted aggregate collections from windfall taxes against expenditure for the energy support (left) and annual trends between 2022–23 and 2027–28 (right) in billion £⁷⁹

Although the estimation of future revenue and the precise impacts of windfall taxes pose considerable challenges, primarily due to the limited availability of empirical data and the diverse structures of past windfall taxes, scholarly discourse widely acknowledges⁸⁰ that such taxes can significantly influence companies' long-term investment decisions. This influence stems from the creation of uncertainty and distortion for investors, particularly when these taxes are applied to future profits, as is the case with the levy at hand. For example, the windfall tax introduced by the UK government in 1997 to offset the gains derived from the privatisation of utility companies⁸¹ garnered various criticisms, including adverse effects on investor confidence⁸² and subsequent job losses.⁸³

The imposition of this long-term levy may thus impede the UK's significant progress in promoting renewable energy sources and reducing emissions. The Climate Change Act 2008 initially set a goal of reducing emissions by no less than 80% below 1990 levels by 2050,⁸⁴ which has recently been revised to 100%.⁸⁵ The UK government has introduced various policies over the past two decades to support renewable energy generation, including the Renewable Obligation scheme,⁸⁶ the

⁷⁹ Writer's construction. Data source: Office for Budget Responsibility, *March 2023 Economic and fiscal outlook – charts and tables: Annex A* (2023), <https://obr.uk/download/march-2023-economic-and-fiscal-outlook-charts-and-tables-annex-a/?tmstv=1683191189> [Accessed 4 May 2023].

⁸⁰ This is well summarised in the recent commentary on windfall taxation in energy sectors in Baunsgaard, Thomas and Nate Vernon, "Taxing Windfall Profits in the Energy Sector" (2022) IMF Note 2022/00X, International Monetary Fund, Washington, DC.

⁸¹ FA 1997 (No. 2), Part I

⁸² Chennells concludes that the tax was efficient and feasible but not fair and could have long term reputational effect amongst investors in Lucy Chennells, "The Windfall Tax" (1997) *Fiscal Studies*, 18(3), 279-291.

⁸³ Tickell comments on the employment losses from the windfall tax in Adam Tickell, "A Tax on Success? Privatization, Employment and the 'Windfall Tax'" (1998) *Area*, 30(1), 83-90.

⁸⁴ Climate Change Act 2008 s.1(1).

⁸⁵ The Climate Change Act 2008 (2050 Target Amendment) Order 2019

⁸⁶ Energy Act 2008 s.37

Feed-in Tariff scheme,⁸⁷ and the Contract for Difference scheme.⁸⁸ These initiatives have incentivised the sourcing and generation of electricity from renewable sources⁸⁹ and facilitated the entry of renewable energy generators into long-term contracts that guarantee a set price for the electricity they produce.⁹⁰ As a result of these efforts, more than 40% of UK electricity is currently derived from renewable sources.⁹¹

Moreover, the introduction of a new levy contradicts the uniformly approved objective⁹² in the recent review of electricity market arrangements, to “deliver a step change in the rate of deployment of low carbon technologies, and reduces our dependence on fossil fuelled generation.”⁹³ Despite the continued Government’s commitment to similar objectives, the introduction of this new levy may undermine support for renewable energy. This is further exacerbated by the windfall tax package, which provides substantial investment allowances exclusively to oil and gas producers subject to the energy profits levy, while neglecting primarily renewable electricity generators subject to the electricity generator levy.⁹⁴

Conclusions

The prolonged imposition of the levy in the UK may undermine investor confidence and deter longer-term investments in renewable energy generation, impeding the country's advancement in promoting sustainable energy sources and reducing emissions. Therefore, it is critical to conduct more extensive⁹⁵ consultations and engage the public in discussions to comprehensively assess the potential impacts of such taxes, thus mitigating ambiguity and circumventing complexities. This is particularly vital, considering the possible impact not only on the energy industry and energy security but also on the environment.

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⁸⁷ Energy Act 2008 s.41

⁸⁸ Energy Act 2013 ch.2

⁸⁹ Energy Act 2008 s.37-43

⁹⁰ Energy Act 2013 ch.2

⁹¹ Department for Energy Security and Net Zero, “National statistics Energy Trends: UK renewables,” (published 2013, updated 2023) <https://www.gov.uk/government/statistics/energy-trends-section-6-renewables> [Accessed 17 April 2023].

⁹² Department for Business, Energy & Industrial Strategy “Review of electricity market arrangements: summary of responses” (2023) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140189/review_of_electricity_market_arrangements_summary_of_responses.pdf [Accessed 4 May 2022].

⁹³ Department for Business, Energy & Industrial Strategy “Review of electricity market arrangements” (2023) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098100/review-electricity-market-arrangements.pdf [Accessed 4 May 2022], p.15.

⁹⁴ Karolis Matikonis “Implications of expanded levies on energy producers”(2023) B.T.R.

⁹⁵ The process leading up to the legislation of the levy lacked formal consultation with stakeholders, with only informal email discussions initiated in the technical note: HM Treasury, Electricity generator levy technical note (17 November 2022), <https://www.gov.uk/government/publications/electricity-generator-levy-technical-note> [Accessed 4 May 2023].

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