



HM Revenue
& Customs

Public Interest Business Protection Tax

Who is likely to be affected

Persons holding assets for the benefit of an energy supply business or other public interest business where the value of the assets, including such assets held by connected persons, exceeds £100 million.

Investors which have, together with connected persons, at least 5% interest in companies and other entities which hold such assets. Investors which, together with connected persons, are entitled to at least 5% of the profits from the realisation of such assets. Persons connected with such investors.

General description of the measure

This measure will introduce a new tax on the profits that could arise where a business undertakes arrangements that realise a valuable asset for its own benefit and the benefit of its shareholders, and as a result precipitate or exacerbate the collapse of an energy supply business.

The tax will apply in respect of assets held for the benefit of gas and energy supply businesses but may be extended by future regulations to other public interest businesses for which a Special Administration Regime (SAR) is in place.

Policy objective

The government is taking action to protect against the possibility of steps being taken under which persons could seek to monetise valuable assets for their own benefit on which energy supply businesses depend, and as a result precipitate or exacerbate the collapse of the energy supply business. Such arrangements would lead to substantial increased cost falling on the government and energy consumers and would also risk disruption to the supply of energy.

The objective of the tax is to deter entry into such arrangements. In the event that an energy supply business (or other public interest business) did enter special measures in these circumstances, the tax is intended to ensure that as much of the costs that might otherwise fall on the general body of taxpayers and on consumers would be recouped as possible.

Background to the measure

The unprecedented rise in global energy prices in recent months has put severe strain on energy markets and energy consumers around the world. Companies that have entered into forward contracts to hedge the energy prices now have a valuable asset as the opportunity to buy energy at the lower price in the contract is not available to companies buying energy on the wholesale market today.

Ofgem and the Department for Business, Energy and Industrial Strategy (BEIS) have identified that there could be a structural risk relating to hedging positions taken out for energy supply businesses, and they are taking action to address it. The government is committed to taking steps to also ensure that no person exploits this period pending regulatory changes.

There is a potential risk that some companies in the energy market and their shareholders might monetise large profits on these assets for their own benefit, leaving the government and ultimately the wider public to be landed with the costs of ensuring the continuity of supplies of energy to customers.

The actions could, for example, involve the early termination of significantly 'in-the-money' forward energy contracts that were originally entered into to hedge the cost of supplying energy customers. The proceeds could then be distributed to shareholders, and not used to support the supply business as originally intended. This may therefore directly result in the electricity and gas supply companies becoming insolvent, and then requiring either a Supplier of Last Resort (SoLR) or SAR. In cases where the supply business is already in special measures, this could significantly increase the costs of the business continuing to supply energy to customers. The SoLR and SAR mechanisms are designed to protect the customers of failed suppliers but are intended as a safety net rather than being for the convenience of shareholders.

The government considers it unacceptable that, whilst consumers across the UK face rising energy bills, it would be possible for some companies and their shareholders to exploit this situation to the detriment of taxpayers and end consumers.

This tax is intended to be a temporary measure and will only apply for a 12 month period. However, this period may be extended if the government considers it necessary.

Action is being taken in the context of energy supply businesses. However, for the time the new tax is in place, the government will have the power, if necessary, to extend it to protect other public interest businesses covered by other special administration regimes.

Detailed proposal

Operative date

The measure will have effect for steps taken at any time where the energy supplier enters special measures on or after 28 January 2022 and before 28 January 2023.

Current law

The tax on the profits on assets withheld from public interest businesses is new legislation. The legislation makes use of the following existing provisions with some modifications to administer the tax.

- Enquiries, claims, appeals, date of payment, serving of documents, collection and recovery - Taxes Management Act 1970
- Serving of documents - The Income and Corporation Taxes (Electronic Communications) Regulations 2003 (S.I. 2003/282)
- Overpayment claims – Schedule 18 to Finance Act (FA)1998
- Penalty for failure to make a return – Schedule 55 to FA 2009

- Penalties for errors – Schedule 24 to FA 2007
- Late payment of tax – Schedule 56 to FA 2009
- Information and inspection powers – Schedule 36 to FA 2008
- Data gathering powers – Schedule 23 to FA 2011

Proposed revisions

Legislation will be introduced in the Finance Bill 2021-22 to establish a new tax, the “Public Interest Business Protection Tax”. The tax will be at a rate of 75% on the adjusted value of the assets. A reduction of 10% is made in calculating this amount to reflect potential losses to the underlying value of the business as a result of the steps taken.

In respect of an energy supply business that goes into Special Administration or is the subject of a SoLR direction to transfer its customers to another business, the tax would apply where:

- a person has an asset that is held for the benefit of a public interest business (carried on by them or a person connected with them),
- the person takes steps which result in the asset ceasing to be used for the benefit of the public interest business, and
- the steps taken materially contribute to the public interest business going into those special measures or materially contributes to a significant increase in the costs of the business while it is in special measures.

It would only apply where the combined value of all such assets held by the person and any connected person exceeds £100m.

The tax would be payable within 45 days of the time the first steps were taken.

The legislation provides for joint and several liability for the tax:

- In full, from any company that is under the common control as the business which has the principal tax liability, or where one has control of the other.
- From any investor in the business which has the principal tax liability, and from any person connected with such an investor, where the investor, together with any connected person, holds at least 5% interest in the principal taxpayer or receives at least 5% of the proceeds of the arrangements. In such cases, the person can make a claim to HMRC for the liability to be limited to the amount by which they potentially benefit from the arrangements.

Summary of impacts

Exchequer impact (£m)

2021 to 2022	2022 to 2023	2023 to 2024	2024 to 2025	2025 to 2026	2026 to 2027
Empty	Empty	Empty	Empty	Empty	Empty

The final costing will be subject to scrutiny by the Office for Budget Responsibility and will be set out at the next fiscal event.

Economic impact

There could be economic and fiscal impacts from the tax in the event it is applied to relevant arrangements with the impacts depending on the value of assets involved with such arrangements. The revenue raised from this measure would be intended to recoup some of the costs that may fall on the general body of taxpayers and consumers.

Impact on individuals, households and families

This measure is expected to have an impact on individuals who are to benefit from any arrangements giving rise to the tax where the tax is not paid by the business with the principal tax liability. These individuals would be jointly and severally liable for the unpaid tax, up to the amount that they potentially benefit from the arrangements. However, no liability arises where the individual and persons connected to them have less than 5% interest in the business.

Any individual on whom HMRC serves notice will need to pay the tax within 45 days.

The customer experience of the limited group of individuals affected by this measure may be negatively affected as the tax is new and will require engagement with HMRC. To support we will provide clear and targeted guidance to advise individuals of any steps they need to take.

This measure is not expected to have an impact on family formation, stability or breakdown.

Equalities impacts

It is not anticipated that there will be impacts for those in groups sharing protected characteristics.

Impact on business including civil society organisations

Those impacted will be limited to those with assets in excess of £100m which withhold those assets from a public interest business contributing to the public interest business failing. The administrative impact on these businesses is expected to be negligible.

Businesses may also be impacted where they are to benefit from the arrangements giving rise to the tax and where the tax is not paid by the business with the principal tax liability. These businesses will be jointly and severally liable for the unpaid tax, up to the amount that they have benefited, or could potentially benefit, from the arrangements. However, no liability would arise where the business and persons connected to them have less than 5% interest in the business with the principal tax liability.

One-off costs will include familiarisation with the new rules and could include upskilling staff. Further one-off costs could include establishing liability and compliance with the requirement to notify HMRC and notifying persons with an interest in the diverted asset of their joint and several liability. There is no requirement for businesses to provide any further information to HMRC and there are not expected to be any continuing costs.

The customer experience of the limited group of businesses affected by this measure may be negatively affected as the tax is new and will require further engagement with HMRC. To support we will provide clear and targeted guidance to advise businesses of the steps they need to take.

This measure will have no impact on civil society organisations.

Operational impact (£m)

Administration of the new tax and engagement with affected customers will be dealt with as part of HMRC's usual services to Large Businesses. There may be some additional staffing costs from administering the tax.

HMRC operational costs are yet to be fully determined for this change and there is further ongoing work to quantify those costs.

HMRC will make changes to its IT systems to accurately record this new change. The costs for these changes are currently unquantified.

Other impacts

Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be monitored to ensure the legislation is operating as intended and kept under review through regular communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact pibpt@hmrc.gov.uk.

Declaration

The Right Honourable Lucy Frazer QC MP, Financial Secretary to the Treasury, has read this tax information and impact note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.