HM Revenue & Customs

Public Interest Business Protection Tax

Technical note

28 January 2022

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Introduction

On 28 January 2022 the Government announced that it was taking action to counter the risk that companies that hold derivative contracts and other assets might take steps to realise profits from those assets which result in the energy supply businesses which rely on those assets for their business to go into special measures or suffer increased costs in special measures with the result that the Government and energy customers suffer the resulting loss.

If there are any questions on aspects of this document or the tax itself, please email pibpt@hmrc.gov.uk.

1. Background

1. On 28 January 2022 the Government announced that it is introducing new legislation in the current Finance Bill to counter the risk that persons that hold derivative contracts and other assets on which energy supply businesses rely receive profits from those assets while the supply businesses that rely on those assets go into special measures or suffer increased costs while in special measures. This would have the result that the Government and energy customers suffer the resulting loss while companies profit, which would be unacceptable to Government.

2. A new tax (the Public Interest Business Protection Tax) will be introduced which will apply in such cases. The new tax will have effect where steps are taken to obtain value from assets which materially contribute to the energy supply business entering into special measures or to increased costs of the business while it is subject to special measures. It will apply where the energy supply business goes into special measures on or after 28 January 2022 and before 28 January 2023.

Energy supply business

3. Many energy suppliers in the UK operate as intermediary companies in that they buy energy (gas and electricity) on the market to sell to their customers.

4. To create a stable domestic energy regime there is a price cap on what an energy supply company can charge to customers on its default or standard variable energy tariff. This price cap is set twice a year, with the latest cap being set on 6 August 2021 and covers the period 1 October 2021 to 31 March 2022.

5. This leaves energy supply companies economically vulnerable if wholesale energy prices significantly increase whilst the price they can sell at stays static over the price cap period. Energy supply companies, therefore, will often enter into derivative contracts to protect them against increases in wholesale energy prices and help ensure that they can supply energy customers at the prices fixed under the cap. They will typically use a forward purchase agreement to buy energy in the future at a price fixed at the time the contract is entered into. These derivatives may be taken out by the energy supply company directly. Alternatively, another group company may enter into the contract and pass the benefit of this contract onto the energy supplier through intra-group arrangements.

6. In recent months, the market price of gas and electricity have significantly increased. This would normally leave an energy group that has hedged its costs broadly neutral – the group buys energy under the price that was fixed under the forward purchase agreement and sells it at or below the capped price. However, it has meant that the groups that have entered into such contracts now hold a valuable asset, as the opportunity to buy energy at the lower fixed price in the contract is not available to a person purchasing energy in the market today.

Special measures available to ensure continuity of supply

7. The supply of energy to customers in the UK is of vital importance. In cases where an energy supply company faces insolvency, there are two main routes available to ensure that consumers continue to be supplied:
    a. Supplier of Last Resort (SoLR)
    b. Special Administration Regime (SAR)

8. The starting assumption is that where a small supplier goes insolvent, the customers will be moved to a new supplier. Following a competitive process run by Ofgem, either the new supplier voluntarily takes on more customers, or is ordered to take on the new customers by Ofgem.

9. With the current high price of energy on the wholesale markets, the new supplier is likely to have additional, unanticipated costs with supplying these new customers. In particular, it is unlikely to have taken out any derivative contracts in respect of these new customers to protect it against the increase in wholesale energy prices. Under the licensing arrangements, the supplier can make a claim for a Last Resort Supply Payment (LRSP) from relevant networks operators where Ofgem has given consent to the amount claimed. The network operator then pays the claim and recovers the cost through increases to "use of system" charges which are charged to energy supply companies for their use of networks and those companies in turn pass on the costs to consumers through their energy bills. These costs would ultimately, therefore, be spread across all energy customers in the UK.

10. If Ofgem is unable to appoint a new supplier using the SoLR process, for example because of the size of the supplier that is in financial difficulty, the company could be placed into a Special Administration Regime (SAR). In such a case the Special Administrator would then run the company until it is either rescued, sold or has its customers transferred to other suppliers.

11. As in cases where a SoLR is appointed, the Special Administrator is likely to face significant costs of purchasing the energy on the wholesale market to supply to the company's customers if the energy supply company does not have the continuing benefit of the forward purchasing agreements. The government will have to make funding available to the Special Administrator to allow the company to continue to supply customers. Initially these costs would therefore fall onto the government. The government would seek to recover its funding from the ultimate disposal of the business. However, to the extent that the value of the business disposal is insufficient to repay the government's costs in full, the government could recover the shortfall by issuing shortfall directions under the terms of the licences held by the system operators who would then adjust their charges to recover this sum from suppliers who in turn would recover these costs from consumers. In this case the costs would initially be borne by government but ultimately mutualised across the retail energy market and borne by consumers.

The Issue

12. The government has become aware that there is a structural risk in the regulatory regime whereby assets such as hedges could be held separately to the energy supply business, such as in another company in the same group. As a result, the benefit of the assets could be separated from the business.

13. Those group companies and their shareholders could receive the value in the contract and distribute it to its investors, rather than using the asset for the benefit of the supply business as originally intended.

14. Given the high energy prices, if the energy supply company was to lose the benefit of these contracts, it is highly likely that the energy supply company would very quickly become insolvent and (absent other support) unable to carry on supplying customers. It would therefore be required to have a SoLR appointed or enter into the SAR.

15. Alternatively, the business may become insolvent despite still having the benefit of the assets such as the forward contracts. At that point, the company holding the asset might receive the value in the asset after the business enters special measures and distribute the proceeds to the shareholders rather than make it available to the administrators of the energy supply business or to meet the costs of the special administration regime.

16. The companies that hold these assets might therefore obtain a profit at the expense of the general public who will eventually meet the resulting costs through higher energy bills.

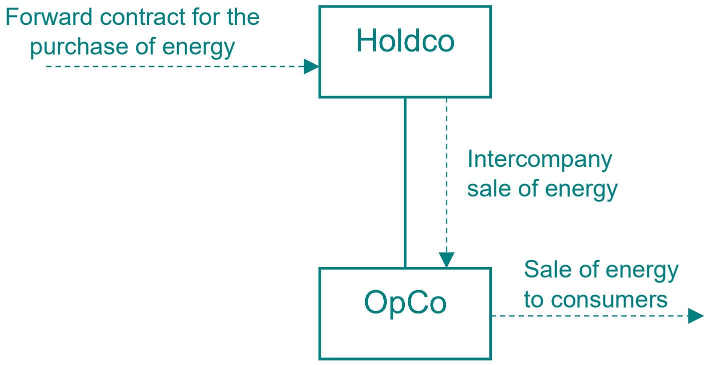
17. The government considers it unacceptable that the company enjoy this kind of windfall when the taxpayer and energy consumers are picking up the associated costs. It is for this reason the government considers it necessary to introduce the Public Interest Business Protection Tax.

18. The following three examples are a non-exclusive set of scenarios where this concern might arise.

    Example 1.1

19. In this example there are two companies involved, an operating company (OpCo) and its parent (Holdco). OpCo is an energy supply company, and therefore has to supply its customers at a price at or below the price cap.

20. HoldCo has entered into a forward contract for the purchase of gas in the future at a fixed price. It then sells the energy onto its subsidiary (Opco) at the same price as the forward contract. OpCo then sells the energy to consumers.



21. As a result, the group is hedged from exposures to the fluctuations in energy prices. In particular, although energy prices have increased, the energy supply business is protected from this increase through the operation of the forward purchase contract.

22. However, the group enters into an arrangement as follows:

    a) HoldCo closes out the forward contract at a very substantial profit.

    b) HoldCo informs OpCo that it will no longer supply OpCo at the price set in the forward contract. (It is assumed for this example that there is no obligation on HoldCo to supply the energy at this price and, as a result, no requirement on HoldCo to compensate OpCo for cancelling the supply of energy.)

    c) Without the benefit of the forward contract, OpCo will face insolvency. As a result, Ofgem would have to step in to appoint a SOLR or, in the case of the SAR, Ofgem (with the consent of the government) would place OpCo into the SAR. Given the current high price of energy, this results in very large costs being borne by the networks operators, with costs in both cases ultimately being mutualised and borne by the consumer.

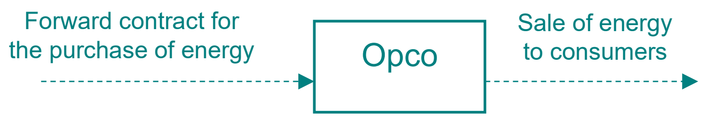
    d) Holdco Ltd would be placed into members voluntary liquidation (MVL), with a view to distributing the profit on the forward contract to its investors.

23. As a result of these arrangements, HoldCo has monetised the value in the forward contract, while allowing OpCo to fail and resulting in the government (for the SAR) and ultimately the wider public bearing the costs of the higher energy prices that the forward contract was intended to protect against.

Example 1.2

24. In this example there is a single company (OpCo) that both supplies energy to consumer and which takes out a forward contract to protect the company against the risk of increases in the wholesale energy prices.

25. OpCo has entered into a forward contract for the purchase of energy in the future at a fixed price. And it uses the energy purchased under the contract to supply its own customers.



26. As a result of the forward contract, the company is hedged from exposure to the fluctuations in energy prices. In particular, there is a cap on the price at which it can sell the energy to consumers. As a result, if energy prices increase, the forward contract is needed to avoid the company suffering significant losses.

27. In this scenario, it would be expected that company law requirements would prevent OpCo from making distributions to its shareholders at a time when the directors are aware that the company is imminent danger of being insolvent. However, companies may still attempt to exploit the situation, for example, through the following steps:

    a) OpCo closes out the forward contract at a very substantial profit. OpCo looks to distribute this profit to its shareholders.

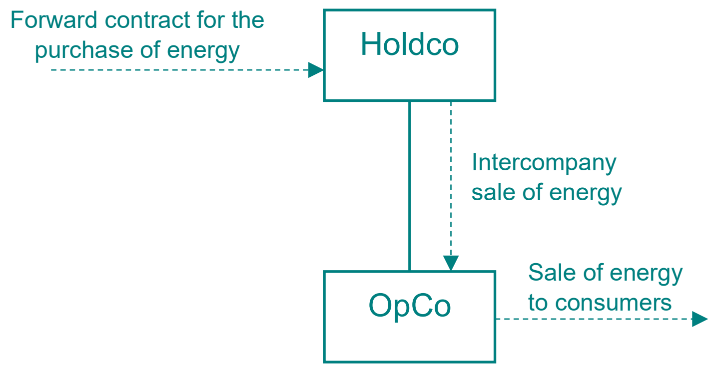
    b) Without the benefit of the forward contract, OpCo would face insolvency. As a result, Ofgem would have to step in to appoint a SoLR or, in the case of the SAR, Ofgem (with the consent of the government) would place OpCo into the SAR. Given the current high price of energy, this results in large costs being borne by the networks operators, with costs in both cases ultimately being mutualised and borne by the consumer.

28. As a result of these arrangements, OpCo has looked to monetise the value in the forward contract, while allowing itself to fail and resulting in the government and the wider public being landed with the costs of the higher energy prices that the forward contract was intended to protect against.

29. It should be noted that the company law position in this scenario means that there may be limitations on being able to repatriate the profit from closing out the contracts in the knowledge that the company will not be able to pay its debts as they fall due.

Example 1.3

30. In this example there are two companies involved. In the same way as in example 1, OpCo is an energy supply company and therefore has to supply its customers at a price at or below the price cap.



31. HoldCo has entered into a forward contract for the purchase of gas in the future at a fixed price. It then sells the energy onto its subsidiary (Opco) at the same price as the forward contract. OpCo then sells the energy to consumers.

32. Despite having the benefit of the sale of energy from HoldCo at the same price as the forward contract, OpCo suffers from adverse market conditions and cannot obtain sufficient support from the rest of the group. It therefore becomes insolvent. As a result, Ofgem would have to step in to appoint a SoLR or, in the case of a SAR, Ofgem (with the consent of the government) would place OpCo into SAR.

33. Following OpCo being placed into special measures, HoldCo enters into an arrangement as follows:

    a) HoldCo closes out the forward contract at a very substantial profit.

    b) HoldCo informs the special administrator of OpCo that it will no longer supply OpCo at the price set in the forward contract and instead it will retain the value of the contract for its own benefit. (It is assumed for this example that there is no obligation on HoldCo to supply the energy at this price and, as a result, no requirement on HoldCo to compensate OpCo for cancelling the supply of energy.)

34. Given the current high price of energy, this would result in very large costs being borne by the networks operators, with costs ultimately being borne by the consumer.

35. As a result of these arrangements, HoldCo has looked to monetise the value in the forward contract, without contributing the value of the hedges to OpCo in the way that was originally expected when HoldCo took out the contracts. This results in the government and the wider public being landed with the costs of the higher energy prices that the forward contract was intended to protect against.

2. Proposed new rules

36. The government will introduce a new tax (the Public Interest Business Protection Tax) to counter the risk of such arrangements, via a government amendment to the current Finance Bill at Report stage in the House of Commons. The new rule will operate as follows.

Conditions

37. The new tax will only apply in cases where, in respect of a public interest business that goes into “special measures”:

- the person holds the asset for purposes of it being used or being available for use for the benefit of a public interest business carried on by the person or a person connected with them (“qualifying purposes”),

- steps are taken by the person (or by the person together with others) that result in the asset not being used to some extent, or being no longer available for use to some extent, for the benefit of the public interest business (“disqualifying steps”),

- 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 that business, and

- the person was aware (or ought to have been aware) that taking the steps would result in the business entering special measures or a significant increase in the costs of that business.

38. The reference to a public interest business means a licensed energy supply company. The Treasury may, by regulations, extend the tax to other public interest businesses for which a Special Administration Regime (SAR) is in place.

39. Examples of steps that would constitute disqualifying steps include:

- Steps that result in the disposal of the asset where some or all of the disposal proceeds are not applied for the benefit of the public interest business (including where some of those proceeds are applied for a time, but subsequently cease to be).

- Steps that result in the public interest business being deprived in substance of the benefit of the asset, for example where the benefit of the asset is provided to the business at a greater cost to the business than would have reasonably been expected.

- Steps that facilitate a person benefiting from the asset or its disposal to the detriment of the public interest business.

- Arrangements which result in the asset no longer being held for use or being available for use for the benefit of the public interest business, including arrangements that include transactions to which the person is not party.

- Steps to direct, encourage or cause another person to do something which results in the asset no longer being used for qualifying purposes in relation to the public interest business.

40. References to the steps resulting in an increase in costs of the public interest business includes the case where there are costs incurred for a person that takes over some or all of the customers of the public interest business as a result of the special measures (eg. a company that takes on energy customers as a result of a SoLR order).

41. In assessing whether there is an increase in costs, consideration is to be given to the costs that would have been incurred had the public interest asset continued to be made available for the benefit of the public interest business.

42. For example, this would include cases where the public interest asset is a contract for the forward purchase of energy, and the person stops supplying energy to the public interest business on similar terms. It would also include cases where the asset is a financial derivative, and the person stops making that financial derivative available for the public interest business (such as to hedge the public interest business' costs of purchasing energy). In both cases, it is those increased costs that could result in increased costs being borne by the government or by consumers under the mutualisation process.

43. The new tax will only apply where the combined adjusted value of all the assets that would otherwise be subject to the tax, including those held by a connected person held in connection with the public interest business – exceeds £100m (referred to in the legislation as the £100 million condition).

44. The reference to a public interest business entering special measures means cases where:

    - a SoLR is appointed in respect of the energy supply business (or other similar arrangements for the transfer of customers to another business), or

    - the company carrying on the public interest business is placed into a SAR.

The effect

45. Where the conditions are satisfied, the person will be liable for a tax calculated as 75% of the asset's 'adjusted value'.

46. This is calculated by first taking the 'underlying value' of the asset. This will be the greater of the fair value of the asset immediately before the first disqualifying step or the consideration received by the person as a result of the disqualifying steps.

47. A reduction of 10% is then made to the underlying value to determine the asset's adjusted value. This adjustment is made to reflect that the person may have suffered

potential losses as a result of taking the disqualifying steps. For example, the person may have lost any value in their investment in the underlying public interest business as a result of the public interest business going into special measures.

48. The person becomes liable for the tax at the point at which the first of the disqualifying steps is taken.

49. The person with the liability for the tax is required to submit a return to HMRC within 30 days of the later of:

- when they became liable to the tax,
  when the public interest business went into special measures,
- when the £100 million condition is satisfied, and
- when the Finance Act received Royal Assent.

50. The initial tax liability is to be paid to HMRC within 15 days of the filing date for the return.

Example 2.1

51. Assume the scenario set out in Example 1.3 above.

52. OpCo faces financial difficulties and, as a result, is placed into Special Administration. Following this, HoldCo closes out the forward contract and deprives OpCo of the benefit of the contract. These are disqualifying steps which have materially contributed to increasing the costs of OpCo in the Special Administration.

53. Assume that the fair value of the forward contract at the time of the sale was £600m but HoldCo received an asset worth £550m as the proceeds of closing out the contract. The value of the asset for the purposes of public interest business protection tax is therefore £600m as this is the greater figure.

54. A deduction of 10% of the value of the asset is then taken from this figure to reach the 'adjusted value' of the asset:

    £600m x 10% = £60m

    £600m - £60m = £540m

Public Interest Business Protection Tax of £405m (£540m x 75%) is therefore due on the £600m that has been withheld by HoldCo and not passed onto OpCo. This would be required to be paid 45 days after the first step to deprive OpCo of the benefit of the asset was taken.

Joint and several liabilities (Paragraphs 4-6)

55. Where HMRC considers that there is a risk the full amount of tax due cannot be recovered from the person that took disqualifying steps in respect of the asset (the principal taxpayer), it can recover the tax from other parties under joint and several liability provisions.

56. Under Paragraph 4, HMRC can recover the unpaid tax in full from any company which is associated with the principal taxpayer. This would be the case where one is a company that controls the other, or where the two companies are under common control. However, a company that is itself subject to Special Measures is not liable under this rule.

57. Under Paragraph 5, HMRC can recover the unpaid tax from any person where the person, and the persons connected with them, receive consideration paid in connection with the disqualifying steps that give rise to the tax, and the total amount received equals or exceeds 5% of the adjusted value of the asset. In this case, the amount of the tax HMRC can recover is the amount of the proceeds received by that person and any person connected with them.

58. Under Paragraph 5, HMRC can also recover the unpaid tax from any person where that person, and the persons connected with them, hold qualifying interests equal to or exceeding 5% in the principal taxpayer. The amount HMRC may recover in those cases is limited to the proportion of the principal taxpayer's liability which corresponds to the proportionate interest in the principal taxpayer that the person, together with persons connected with them, hold.

59. A person has qualifying interests in the principal taxpayer where they are an equity holder in the principal taxpayer. The qualifying interest is the greater of their beneficial entitlement to profits available for distribution to equity holders or assets available for winding up to equity holders. Where a person's interests in the principal taxpayer varies during the disqualifying period, the qualifying interest shall be taken to be the highest amount in that period.

60. Chapter 6 of Part 5 CTA 2010 applies for determining this amount. In particular, a person's qualifying interests includes amounts for which they are entitled both directly and indirectly through another company or other companies.

61. In applying that chapter, sections 169-178 CTA 2010 are applied where relevant so that the highest proportion (rather than the lowest proportion) is used based on the different scenarios tested and sections 179-182 are assumed to be omitted.

62. The chapter is also to be read in such a way that it applies to a company without share capital, partnerships and unincorporated associations, and in relation to ownership through any trusts or other arrangements.

63. If a person is liable both because they, together with connected persons, receive proceeds from the realisation of the asset and because they, together with connected persons, have qualifying interests in the principal taxpayer, then their joint and several liability is the greater of the two amounts.

64. HMRC can only pursue the tax under the joint and several liability provisions from persons other than the principal taxpayer if it issues a notice requiring them to file a return containing a self-assessment in respect of the tax.

65. The tax is payable 45 days after HMRC issues the notice to the person concerned.

Safeguard for the joint and several liability (Paragraph 7)

66. The legislation contains a safeguard where a person is jointly and severally liable for the whole or part of the tax liability under Paragraph 5 and HMRC issues a notice to them. The safeguard does not apply for liabilities under Paragraph 4.

67. In this case, the person can make a claim for relief to limit the amount of the joint and several liability to the amount by which they potentially benefitted from the disqualifying steps.

68. Upon receiving such a claim, an officer of HMRC must reduce the amount of tax due by such an amount as they consider just and reasonable.

69. There are a number of ways that a person could potentially benefit from the transaction. These include:

    - Being entitled (whether absolutely or conditionally) to receive the profits realised as a result of the transaction.

    - Being entitled to any assets, or the distribution of the value of such assets, which have increased in value as a result of the transaction.

    - Selling or being able to sell those assets.

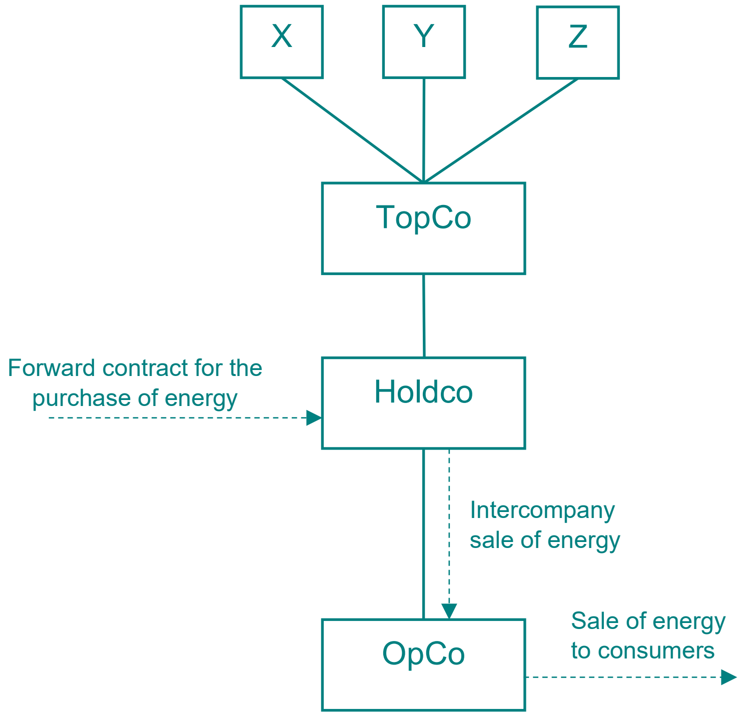
    - By being someone who can exercise a power or use their discretion about whether to receive the profits, assets or distribution.

70. In determining the amount the person potentially benefits from the disqualifying steps, costs can only be taken into account where they are actually paid.

71. In addition, in determining the amount the person potentially benefits from the disqualifying steps, no account is taken for any loss associated with the taking of the disqualifying steps to remove the asset from being held for the benefit of the public interest business. The calculation of the principal tax liability has already been reduced by 10% to reflect the potential losses that the principal taxpayer might have incurred as a result of them taking the disqualifying steps.

72. The following five examples are a non-exclusive set of scenarios illustrating how the joint and several liability provisions operate.

Example 2.2



73. Assume the same facts as with example 1.1, but now assume that HoldCo is 100% owned by TopCo which is itself owned by individual shareholders X, Y and Z that have 30%, 30% and 40% respectively. These shareholders are unconnected with each other.

74. HoldCo realises £600m from a hedging contract that was taken out to supply energy to OpCo and does not pass the value of the hedge onto OpCo. The contract also had a fair value of £600m at the time of these steps. HoldCo has therefore taken steps realising the benefit of the asset for its own benefit and not passing the value onto OpCo.

75. As a result of taking these steps, OpCo can no longer carry on trading without support, and is placed into Special Administration.

76. HoldCo enters members voluntary liquidation (MVL) and distributes the proceeds of £600m, less Corporation Tax (assumed to be 20%), from the asset diversion to TopCo i.e. £480m.

77. TopCo distributes the £480m to its shareholders X, Y and Z (who receive £144m, £144m and £192m respectively).

78. HoldCo is liable for the full amount of tax of £405m under Paragraph 4. This is 75% of the adjusted value of £540m (being £600m less £60m).

79. TopCo is an associated company of HoldCo as it controlled it at the time the steps were taken and so is also jointly and severally liable for the full £405m.

80. As a result of the steps, investor X, for example, receives £144m in cash.

81. X could be liable to pay the tax under the joint and several liability provisions. Their liability is limited to the greater of the amount they received or the proportion of the principal taxpayer's liability that corresponds to their qualifying interests in HoldCo.

82. The proportion of X's qualifying interests in HoldCo is 30%. Their liability is therefore the greater of:

- The amount of proceeds received, being £144m.
- 30% of the principal tax liability of £405m, being £121.5m.

83. In addition, X can make a claim to reduce their liability to ensure they pay no more than the amount they have potentially benefitted from the transaction. In this case, the amount they have potentially benefited from the disqualifying steps would be expected to be the £144m received.

84. X may have also lost value from HoldCo taking the disqualifying steps and causing OpCo to go into Special Administration. As a result, it is likely that HoldCo's shares in OpCo are now worthless. This factor cannot be taken into account in determining the amount of the potential benefit for X. The potential for losses arising from OpCo going into Special Measures as a result of the disqualifying steps was reflected in the reduction of 10% in calculating the adjusted value of the asset.

85. The situation for investors Y and Z is similar to that for investor X.

Example 2.3

86. The structure in this example is the same as Example 2.2. However, in this scenario TopCo retains the amounts received from HoldCo rather than distributing it to the shareholders.

87. TopCo is again liable for the full amount of tax of £405m as it was associated with HoldCo at the time the steps were taken.

88. The investors have not received any of the proceeds from the steps. Therefore their liability is limited to the proportion of the principal taxpayer's liability equivalent to the proportion of their qualifying interests in HoldCo.

89. As such the maximum liability of X, Y and Z is £121.5m, £121.5m and £162m, being 30%, 30% and 40% of HoldCo's liability of £405m.

90. Again, the investors can make a claim to reduce the amount of tax due to ensure they pay no more than the maximum amount they could have potentially benefitted from the transaction. However, on the face of it the amount they could potentially receive exceeds the tax for which they are jointly and severally liable.

Example 2.4

91. The structure in this example is the same as in Example 2.2, except that TopCo is a publicly listed company with investors that are unconnected with each other and none of whom have qualifying interests equal to or in excess of 5%. No investors have received 5% or more of the adjusted value of the asset.

92. None of the investors are subject to the joint and several liability provisions. The tax of £405m can only be recovered from HoldCo or TopCo.

Example 2.5

93. As in Example 2.4, TopCo is a Plc with investors none of whom individually have qualifying interests equal to or in excess of 5% or have received 5% or more of the adjusted value of the asset.

94. However, investors A and B are connected with each other. Both have 4% of qualifying interests in TopCo. Their total interest in TopCo is therefore 8%. The proportion of HoldCo's liability which corresponds to that interest is 8% of £405m, or £32.4m

95. TopCo distributes £450m to its shareholders. A and B together received £36m. This is the larger amount so both A and B are potentially liable for £36m under the joint and several liability provisions.

96. Again, both investors can make a claim to reduce their liability to the maximum amount they potentially benefitted as a result of the steps taken. In this case, they each receive £18m from TopCo and they each potentially benefit by a further £1.2m from TopCo retaining £30m which could be distributed to the investors in the future (4% of £30m is £1.2m). So each of A and B potentially benefit by £19.2m from the disqualifying steps.

Example 2.6

97. Assume the facts are as set out in Example 2.5, except that A and B suffer tax of 40% (say) on the receipt of the distribution from TopCo.

98. As above, both A and B are potentially liable for £36m under the joint and several liability provisions.

99. Again, both investors can make a claim to reduce their liability to the maximum amount they potentially benefitted as a result of the steps taken. In this case, they each receive £18m for TopCo and they each potentially benefit by a further £1.2m from TopCo retaining £30m which could be distributed to the investors in the future (4% of £30m is £1.2m).

100. However, account can also be taken of any tax paid by each of them. In this case it is assumed that each of A and B pay tax of £7.2m on the distribution of £18m that each receives.

101. So each of A and B potentially benefit by £12.2m from the disqualifying steps, and can each claim for their share of the joint and several liability to be reduced to this amount.

102. The legislation requires that only taxes paid can be taken into account in how the potential benefit is determined. As such, a person must wait until they have paid the taxes due before making a claim that reflects the impact of those taxes. There is a time limit of four years for making the claim from the time the person who claim it is became liable for the tax.

Interaction with other taxes

103. No deduction is available for any amount of public interest business protection tax payable when calculating profits or losses for the purposes of Income Tax, Capital Gains Tax or Corporation Tax.

104. No deduction is available for any amount of Income Tax, Capital Gains Tax or Corporation Tax in the calculation of the Public Interest Business Protection Tax.

Anti-avoidance

105. The legislation contains an anti-avoidance provision. This applies to counteract any arrangements if the main purpose or one of the main purposes of the arrangements is to reduce or avoid a charge to the tax or to otherwise circumvent the effect of the schedule.

Migration out of the UK

106. Where a company migrates out of the UK and the migration was in contemplation of other disqualifying steps, then this will also be a disqualifying step. As a result, in such a case the company would become liable for the tax at the point of the migration assuming this was the first disqualifying step.

Partnerships and trusts

107. Where a partnership is liable to the tax, all of the partners are jointly and severally liable for the tax. Likewise, where a trustee (or body of trustees) is liable for the tax, all of the trustees are jointly and severally liable for the tax.

Administration of the tax

108. Given that this is a separate new tax, the legislation includes an administration framework for the tax.

109. As set out above, where a person (the principal taxpayer) is liable for the new tax then they are required to submit a tax return to HRMC within 30 days, with the payment of tax to follow after a further 15 days.

110. Where HMRC wishes to pursue other persons for unpaid tax under Paragraphs 4 or 5 they must issue a notice to that person. They can only do so where they consider there is a risk that they full amount of tax cannot be collected from the principal taxpayer.

111. Where a person receives a notice in respect of Paragraphs 4 or 5 they must file a return to HMRC within 30 days, with the payment of tax to follow after a further 15 days.

112. As set out above, a person who is liable for the tax under Paragraph 5 may make a claim under Paragraph 7 to reduce the liability so that it does not exceed the amount they potentially benefit from the disqualifying steps.

113. The legislation contains provisions to allow HMRC to enquire into a return submitted, and for certain matters to be appealed to the tax tribunals. Where an issue is appealed to the tribunal there is to be no postponement of tax unless the circumstances of the appellant are exceptional such that it would not be just to refuse postponement of the payment of that amount.

114. HMRC would expect this exception to apply in cases where the amount of the tax is likely to exceed the amount that the person has received from the disqualifying steps.

115. The legislation also brings in the standard rules that apply for the administration of other taxes, such as in respect of revenue determinations, discovery assessments, overpayment claims, penalties, interest on underpaid tax and information powers.

116. The legislation contains a statutory gateway to allow information that is relevant to the Public Interest Business Protection Tax to be provided by BEIS or Ofgem to HMRC.

Regulations

117. The legislation provides the Treasury with certain powers to make regulations, which include:

- Expand the meaning of public interest business to other businesses which have a special administration regime and to expand the meaning of special measures (Paragraph 2).
- Provide for reliefs or exemptions from the tax (Paragraph 35).
- Apply, disapply or modify the application of any provision of the Taxes Act or the administration aspects of the tax (Paragraph 40).
- Extend the expiry of the tax (Paragraph 43 – see below).

Commencement

118. The new tax will apply in cases where a public interest business enters Special Measures on or after 28 January 2022. It does not matter if any disqualifying steps were taken before 28 January 2022, the tax can still apply.

119. The earliest any return will need to be filed is 30 days after the Finance Bill receiving Royal Assent. And the earliest any tax would be required to be paid will be 45 days from Royal Assent.

Expiry

120. The tax will expire and will not be triggered in cases where a public interest business enters special Measures from 28 January 2023. However, the Treasury have the power by regulations to specify a later expiry date, but no later than 28 January 2025.