

New Clause and Schedule: Public Interest Business Protection Tax

Summary

1. This New Clause and New Schedule introduce a new tax imposed on the profits that could arise where a business undertakes steps that seek to realise a valuable asset for their own benefit and the benefit of their shareholders, and as a result precipitate or exacerbate the collapse of a public interest business. The tax will apply in respect of assets held for the benefit of licensed gas and energy supply businesses but may be extended by future regulations to other critical public interest businesses. It has effect where the steps undertaken are in the context of a public interest business that enters the Special Administration Regime (SAR) or has a Supplier of Last Resort (SoLR) appointed on or after 28 January 2022 and before 28 January 2023.

Details of the clause

2. This New Clause introduces a New Schedule.

Details of the Schedule

Part 1: Charge

3. Part 1 sets out the core rules for the charge under the Public Interest Business Protection Tax.
4. Paragraph 1 sets out the conditions for when a charge is raised and the amount of the charge.
5. Paragraph 1(1) sets out that a person is subject to a tax charge of 75% of the “adjusted value of an asset” where a person takes “disqualifying steps in relation to a public interest business asset in disqualifying circumstances” and the “£100m threshold condition” is met.
6. Paragraph 1(2) sets out that the tax will be known as the Public Interest Business Protection Tax and that HM Revenue & Customs (HMRC) will be responsible for its collection and management.
7. Paragraph 1(3) specifies that a person takes “disqualifying steps in relation to a public interest business in disqualifying circumstances” where, in the context of a public interest business that goes into special measures:

- the person holds the asset wholly or partly for the purposes of the asset being used or available for use by a public interest business carried on by that person or by a person connected to them,
 - the person, together with any other person, takes steps in relation to that asset, which result in the asset not being used or not available for use for the benefit of the business to some extent,
 - the steps taken materially contribute to the public interest business going into special measures or materially contributes to a significant increase in costs of the business that is in special measures, and
 - the person was aware (or ought to have been aware) that taking the steps would have that effect.
8. The reference to “asset” means all forms of assets, including contractual rights, forward purchase agreements and derivative financial instruments.
 9. The tax charge applies separately to each asset, to each person holding an asset taking the steps and in respect of each public interest business that enters special measures.
 10. Paragraph 1(4) sets out that a person holds an asset for “qualifying purposes” if they hold it for use or available for use for the benefit of a public interest business carried on by the person or a person connected to them. Steps may be “disqualifying steps” whether or not the person receives any consideration for taking the steps or whether they directly participated in all of them.
 11. Paragraph 1(5) sets out five example circumstances that are specifically included as “disqualifying steps”.
 12. Paragraph 1(6) makes it clear that steps taken in contemplation of disqualifying steps (such as the migration of a company’s residency out of the UK) are considered to be disqualifying steps.
 13. Paragraph 1(7) deals with the timing of a step that would have been taken without the intervention of a public body.
 14. Paragraph 1(8) explains what is meant in paragraph 1(3)(d)(ii) by an increase in costs of the public interest business. In particular:
 - It includes the case where there is an increase in costs for a person that in substance takes over the carrying on of activities from 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).
 - In assessing whether there is an increase in costs, consideration is to be given to the costs that would have been incurred had the asset continued to be made available for the benefit of the public interest business.

15. The reference to increased costs 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.
16. Paragraph 1(9) sets out how the "£100m threshold condition" is determined.
17. Paragraph 1(10) sets out that "asset" includes part of an asset. This means, for example, that the legislation covers situations where part of an asset is realised and not used for the purposes of the public interest business. It also sets out that "disposal" has the same meaning as it does for TCGA 1992. This would include, for example, cases where an asset is disposed of by any sale, gift, exchange, surrender, redemption or release.
18. Paragraph 2 defines "public interest business" and "special measures" for the purposes of this schedule.
19. Paragraph 2(1)-(2) sets out that "public interest business" means an energy supply business. The Treasury may extend this definition in future to further types of business where there is a special administration regime in place.
20. Paragraph 2(3) sets out that a business enters "special measures" where (i) the person carrying it on enters Special Administration Regime (SAR) or (ii) it is subject to arrangements for the transfer of customers to another business (such as where a SoLR is appointed or similar arrangements). The Treasury may also extend this to other circumstances relating to insolvency.
21. Paragraph 2(4) defines certain terms for the paragraph.
22. Paragraph 3 defines the "adjusted value of assets" which is used as the basis for the new tax.
23. Paragraph 3(1) specifies that this is calculated by determining the underlying value of the asset and reducing it by 10%. This reduction is to reflect the loss to the underlying value of the business, for example due to the energy supply business entering special measures and therefore becoming worthless.
24. Paragraph 3(2) sets out that the underlying value of the asset is defined as the greater of the fair value of the asset immediately before the first disqualifying step and the value of any consideration received from the disqualifying steps.
25. Paragraph 3(3) deals with the case where the asset was only partly held for the purposes of being used or being available for use for the benefit of the public interest business.

Part 2: Joint and Several Liability

26. Part 2 sets out how and in what circumstances persons may be liable to pay the tax other than the principal taxpayer set out in paragraph 1.
27. Paragraph 4 sets out that a company will be jointly and severally liable for the full amount of the tax along with the principal taxpayer when it is associated with the principal taxpayer at any time during the disqualifying period. The “disqualifying period” is the period starting from the day of the first disqualifying step and ending on the latest date by which the principal taxpayer must make a return (see paragraph 8). A company will be associated with another company if one controls the other or if they are both under common control. Control for these purposes is defined in section 1124(2) Corporation Tax Act (CTA) 2010.
28. Paragraph 5 sets out the circumstances in which a person who receives any proceeds from the disqualifying steps, has an interest in the principal taxpayer or a person connected with either such persons is liable for an amount of the tax, either in full or in part.
29. Paragraph 5(1) covers the case where a person, together with persons connected with them, has received the proceeds of any consideration from a transaction which gives rise to the tax and the amount they receive is equal to or more than 5% of the adjusted value of the asset. This would include by whatever route the proceeds are received, for example by way of a dividend, distribution in winding up, sale of shares in a company holding the consideration, repayment of loans, making of new loans, whether through a single step or through multiple steps.
30. Paragraph 5(2) covers the case where a person, together with persons connected with them, have a qualifying interest (as defined in paragraph 6(1)) of at least 5% in the principal taxpayer during the disqualifying period (as defined in paragraph 4(4)).
31. Paragraph 5(3) set out the priority rule such that where a company is liable for the full amount of tax under paragraph 4 because they are an associated company of the principal taxpayer, they will not be liable under paragraph 5.
32. Paragraph 5(4) sets out that a person to whom this paragraph applies will be joint and severally liable with the principal taxpayer.
33. Paragraph 5(5) limits the amount of the joint and several liability under paragraph 5 to the greater of:
 - the amount actually received (directly or indirectly) by the person and persons connected to them if a person is liable under paragraph 5(1)
 - the proportion of the total tax liability that corresponds to the qualifying interests in the principal taxpayer held by the person and persons connected with them if a person is liable under paragraph 5(2)

34. Paragraph 5(6) sets out that the proceeds of consideration for the purposes of paragraph 5 do not include any amount received in respect of a loan between unconnected parties made in the ordinary course of a business of lending money on arm's length terms.
35. Paragraph 6 sets out the meaning of qualifying interests in the taxed company for the purposes of paragraph 5.
36. Paragraph 6(1) sets out that a person's qualifying interest in the principal taxpayer is defined by the greater of that person's beneficial entitlement to the profits of the principal taxpayer available for distribution, and their beneficial entitlement to the distribution of the assets on a winding up. Where a person's interest in the principal taxpayer varies during the disqualifying period (as defined in paragraph 4(4)), the qualifying interest is taken to be the greatest amount.
37. Paragraph 6(2) sets out that Chapter 6 of Part 5 of CTA 2010 applies for the purposes of determining a person's beneficial entitlement to the distribution of profits or assets on a winding up. In particular, a person's qualifying interests includes amounts for which they are entitled both directly and indirectly through another company or companies (by virtue of section 167(2) CTA 2010).
38. Paragraph 6(3) provides certain modifications to how Chapter 6 applies:
 - That sections 169-178 CTA 2010 are applied so that the highest proportion (rather than the lowest proportion) is used based on the different scenarios tested.
 - Sections 179-182 are omitted.
39. Paragraph 6(4) provides that the legislation is to be read in such a way that it applies to a company without share capital or to a partnership or unincorporated association, and in relation to ownership through any trusts or other arrangements.
40. Paragraph 6(5) defines corresponding ordinary holdings.
41. Paragraph 7 provides for a person who is jointly and severally liable to the whole or part of the tax under paragraph 5 (but not paragraph 4) to be able to make a claim for relief to limit the amount of the joint and several liability to the potential benefit to the person in connection with the steps which gives rise to the Public Interest Business Protection Tax.
42. Paragraph 7(2) sets out what is meant by potential benefit and specifies several examples by which a person would be considered to have benefited, could have benefited, or could benefit from the disqualifying steps.
43. Paragraph 7(3) sets out that a person may make a claim to HMRC so that they are not liable to the tax in excess of their potential benefit from the disqualifying steps.

44. Paragraph 7(4) sets out that no account of:
- any amount of costs associated with the realisation of the potential benefit, unless that cost has been paid before the making of the claim, or
 - any losses associated with taking the disqualifying steps that gave rise to the tax may be taken into account (as these are already reflected in the adjustment to the underlying value in paragraph 3(1)).
45. Paragraph 7(5) requires an officer of HMRC to whom a claim was made to reduce the amount of tax to which a person is jointly and severally liable by so much (if any) of the reduction claimed that the officer considers is just and reasonable.
46. Paragraph 7(6) sets out the ways a reduction can be given.
47. Paragraph 7(7) requires the officer's determination to be notified to the person making the claim.
48. Paragraph 7(8-10) sets out that if HMRC does not determine a claim, a person may apply to the tribunal for a direction for HMRC to make a determination within a specified period. This application is subject to Part 5 TMA 1970. The tribunal must give that direction unless it is satisfied that there are reasonable grounds for not making a determination within that time.

Part 3: Administration

49. Part 3 sets out the administrative provisions relevant for the new tax.
50. Paragraph 8 requires the person with the principal tax liability to file a return including a self-assessment and supporting documentation with HMRC 30 days from the later of (i) when they became liable to the tax, (ii) when the public interest business went into special measures, (iii) when the £100 million condition is satisfied, and (iv) when the Finance Act received Royal Assent. However, no self-assessment can be made after four years from when the person became liable for the tax. The person with the principal tax liability must pay the tax 15 days after the date by which the return must be filed. References to the person becoming liable to tax are to when the first disqualifying step is taken.
51. Paragraph 9 permits an officer of HMRC, where they consider there is a risk that the tax may not be paid in full, to serve notice on a person who is jointly and severally liable for the tax under either paragraph 4 or 5. The person on whom the notice is served must file a return within 30 days. The person must pay the tax 45 days from the date the notice was given. A person who has paid an amount of tax due under this section may recover that amount from the principal taxpayer.
52. Paragraph 10 sets out the time limits in relation to an assessment under paragraph 9. HMRC has three years from when tax liability of the principal

taxpayer is finally determined. No self-assessment under paragraph 9 can be made after the later of (i) three years from when the tax liability of the principal taxpayer is finally determined, and (ii) three months from the date the paragraph 9 notice was given.

53. Paragraph 11 sets out that the person making a return under paragraph 8 or 9 can amend the return within 12 months of the filing deadline for the return. HMRC can also, by notice, amend the return to correct obvious errors or omissions within nine months of the return or amended return being submitted. However, the amendment has no effect if the person submitting the return or amended return gives notice rejecting the amendment within 30 days.
54. Paragraph 12 sets out that if a return required by either paragraph 8 or 9 is not made within the time-limit, an officer of HMRC may make a determination to the best of the officer's information and belief of the amount of tax that should be charged. The person must pay the tax within 14 days from the date HMRC notifies the person of the determination.
55. Paragraph 13 sets out the power of HMRC to enquire into a return under paragraph 8 or 9. HMRC must raise an enquiry within 12 months after the return is delivered or amended.
56. Paragraph 14 sets out provisions dealing with the completion of enquiries through the issue of a 'closure notice'.
57. Paragraph 15 sets out the treatment for an amendment to the return that was made during the course of an enquiry under paragraph 12 to be given effect, where appropriate, at the point when a closure notice is issued.
58. Paragraph 16 gives HMRC the power to amend the return during the course of an enquiry if they are of the view that the self-assessment of tax payable is insufficient and there will be a loss of tax if it is not immediately amended.
59. Paragraph 17 sets out how the provisions of paragraphs 2 to 5 of Schedule 3ZA to TMA 1970 apply to this schedule for the purposes of determining when tax is payable or repayable following an amendment or correction to a self-assessment.
60. Paragraphs 18 to 20 sets out how HMRC may make discovery assessments to Public Interest Business Protection Tax.
61. Paragraph 21 sets out how an appeal can be made against specified matters in relation to the administration of the Public Interest Business Protection Tax. It also sets out that 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 the postponement of the payment of that amount.
62. Paragraph 22 sets out the duty of the person liable to tax to keep and preserve records and for the length of time that they need to do so. A penalty not exceeding £3,000 may be charged if records are not preserved.

63. Paragraph 23 sets out that Part 6 of TMA 1970 (collection and recovery) applies to the Public Interest Business Protection Tax.
64. Paragraph 24 sets out how the provisions of 51 to 51G of Schedule 18 to FA 1998 apply where a person seeks to make an overpayment claim regarding Public Interest Business Protection Tax that they consider to be overpaid.
65. Paragraph 25 sets out the time limit of four years for making a claim for relief under paragraph 7 or an overpayment claim under paragraph 23. The claim must be for an amount that is quantified at the time the claim is made. Schedule 1A TMA 1970 applies to these claims.
66. Paragraph 26 sets out how the provisions of Schedule 55 FA 2009 (penalty for failure to make a return) apply to returns required under paragraph 8 or 9.
67. Paragraph 27 sets out how the provisions of Schedule 24 to FA 2007 (penalties for errors) apply to returns made under paragraph 8 or 9, to any claim for relief or to any accounts in connection with ascertaining the liability to the tax.
68. Paragraph 28 sets out how the provisions of Schedule 56 to FA 2009 (penalty for failure to make payments on time) apply to Public Interest Business Protection Tax.
69. Paragraph 29 ensures that interest is charged for any amounts of the Public Interest Business Protection Tax that are underpaid or paid late.
70. Paragraph 30 sets out that Schedule 36 FA 2008 (information gathering powers) and Schedule 23 to FA 2011 (data gathering powers) apply in respect of the Public Interest Business Protection Tax.
71. Paragraph 31 sets out that s115 TMA 1970 (delivery and service of documents) applies to documents to be given, sent, served or delivered in respect of the Public Interest Business Protection Tax. It also amends the Income and Corporation Taxes (Electronic Communications) Regulations 2003 (S.I. 2003/282) so that it has effect for the Public Interest Business Protection Tax.
72. Paragraph 32 provides that HMRC is able to disclose information, including information about the tax, to a person it considers to be liable under the joint and several liability provisions (paragraphs 4 and 5) about the person it considers to be liable to the Public Interest Business Protection Tax under paragraph 1 (the principal taxpayer). They may also disclose such information to facilitate the recovery of amounts paid under the joint and several liabilities provisions from the principal taxpayer.
73. Paragraph 33 provides that where the person liable to the Public Interest Business Protection Tax is a partnership, all of the partners are jointly and severally liable for the tax. Likewise, where the person liable to the tax is a trustee (or body of trustees), all of the trustees are jointly and severally liable for the tax.
74. Paragraph 34 sets out that a person is chargeable to Public Interest Business Protection Tax whether or not they are resident in the UK.

75. Paragraph 35 sets out that the Treasury may make regulations providing for a relief or an exemption from the Public Interest Business Protection Tax.

Part 4: Supplementary

76. Part 4 sets out supplementary provisions in relation to the tax.
77. Paragraph 36 sets out 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 avoid the effect of any provisions of this schedule.
78. Paragraph 37 sets out, for the avoidance of doubt, that in calculating a liability to income tax, capital gains tax or corporation tax a person may not take a deduction in respect of the Public Interest Business Protection Tax.
79. Paragraph 38 sets out an information gateway which permits the Secretary of State and the Gas and Energy Market Authority, or anyone acting on their behalf, to disclose to HMRC information that is relevant to the Public Interest Business Protection Tax.
80. Paragraph 39 sets out that the provisions of The Provisional Collection of Taxes Act 1968 apply to Public Interest Business Protection Tax.
81. Paragraph 40 sets out that for the purpose of the administration of Public Interest Business Protection Tax, the Treasury has the power to make provision to apply, disapply or modify any provision of the Taxes Act or Part 3 of this Schedule as they relate or could relate to the tax.
82. Paragraph 41 sets out that the power to make regulations includes any consequential, supplementary, incidental, transitional or saving provision and any provision that can be made having retrospective effect. In cases where regulations (a) extend the tax (under paragraph 2), (b) limit, reduce or remove a relief or exemption from the tax; or (c) have retrospective effect (other than for a new or increased relief or new exemption) then a draft of the instrument must be laid before and approved by a resolution of the House of Commons (affirmative procedure). Otherwise any statutory instrument will be subject to annulment in pursuance of a resolution by the House of Commons (negative procedure).
83. Paragraph 42 sets out how terms used in this schedule may be defined.
84. Paragraph 43 sets out the commencement and expiry of the new tax. In particular, the tax applies where a public interest business becomes subject to special measures on or after the 28 January 2022 and before the 28 January 2023 as a result of disqualifying steps in disqualifying circumstances. It does not matter if any disqualifying steps were taken before 28 January 2022 or after 28 January 2023. The Treasury can make regulations providing for an expiry date to be later than 28 January 2023 but before 29 January 2025.

Background note

85. The government is taking action to protect against the risk of steps being taken under which persons could seek to monetise valuable assets which are used by or for energy supply businesses and as such contribute to the collapse of the energy supply business or lead to significantly increased costs for the business once it has entered special measures.
86. This clause introduces a tax that ensures that as much of the costs that might otherwise fall on the general body of taxpayers and on consumers can be recouped as possible. Where amounts cannot be collected from the company that has monetised the asset, the legislation also provides powers to collect the tax from companies under common control as well as on persons who otherwise potentially benefit.
87. This is intended to deter businesses from entering into such arrangements.
88. This tax is intended to be a temporary measure and is expected to expire as soon as the government is satisfied that it is no longer needed.