NOTICES OF AMENDMENTS
Wednesday 25 June 2014

CONSIDERATION OF BILL

Mr Chancellor of the Exchequer

NC6

To move the following Clause—

"Exclusion of incentivised electricity or heat generation activities

(1) ITA 2007 is amended as follows.

(2) In section 192 (EIS: meaning of "excluded activities")—

(a) in subsection (1), omit the "and" at the end of paragraph (ka) and after that paragraph insert—

"(kb) the subsidised generation of heat or subsidised production of gas or fuel, and", and

(b) in subsection (2), omit the "and" at the end of paragraph (f) and after paragraph (g) insert ", and

(h) section 198B (subsidised generation of heat and subsidised production of gas or fuel)."

(3) In section 198A (excluded activities: subsidised generation or export of electricity)—

(a) for subsection (3) substitute—

"(3) The generation of electricity is "subsidised" if—

(a) a person receives a FIT subsidy in respect of the electricity generated,

(b) a renewables obligation certificate is issued in connection with the generation of the electricity, or

(c) a scheme established in a territory outside the United Kingdom, and corresponding to that set out in a renewables obligation order under section 32 of the Electricity Act 1989, operates to incentivise the generation of the electricity.",

(b) in subsection (6), omit the "or" after paragraph (c) and after paragraph (d) insert ", or

(e) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society.", and

(c) in subsection (9), at the end insert—

""renewables obligation certificate" means a certificate issued under section 32B of the Electricity Act 1989 or Article 54 of the Energy (Northern Ireland) Order 2003."

(4) After that section insert—

"198B Excluded activities: subsidised generation of heat and subsidised production of gas or fuel

(1) This section supplements section 192(1)(kb).

(2) The generation of heat, or production of gas or fuel, is “subsidised” if a payment is made, or another incentive is given, under—

(a) a scheme established by regulations under section 100 of the Energy Act 2008 or section 113 of the Energy Act 2011 (renewable heat incentives), or

(b) a similar scheme established in a territory outside the United Kingdom,

in respect of the heat generated, or gas or fuel produced.

(3) But the generation of heat, or production of gas or fuel, is not to be taken to fall within section 192(1)(kb) if Condition A or B is met.

(4) Condition A is that the generation or production is carried on by—

(a) a community interest company,

(b) a co-operative society,

(c) a community benefit society,

(d) a NI industrial and provident society, or

(e) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society.

(5) Condition B is that the plant used for the generation of the heat, or production of the gas or fuel, relies wholly or mainly on anaerobic digestion.

(6) Section 198A(9) (definitions) applies for the purposes of this section as for the purposes of section 198A.”

(5) In section 303 (VCTs: meaning of “excluded activities”)—

(a) in subsection (1), omit the “and” at the end of paragraph (ka) and after that paragraph insert—

“(kb) the subsidised generation of heat or subsidised production of gas or fuel, and”, and

(b) in subsection (2), omit the “and” at the end of paragraph (f) and after paragraph (g) insert “, and

(h) section 309B (subsidised generation of heat and subsidised production of gas and fuel).”

(6) In section 309A (excluded activities: subsidised generation or export of electricity)—

(a) for subsection (3) substitute—

“(3) The generation of electricity is “subsidised” if—

(a) a person receives a FIT subsidy in respect of the electricity generated,

(b) a renewables obligation certificate is issued in connection with the generation of the electricity, or

(c) a scheme established in a territory outside the United Kingdom, and corresponding to that set out in a renewables obligation order under section 32 of the Electricity Act 1989, operates to incentivise the generation of the electricity.”,

(b) in subsection (6), omit the “or” after paragraph (c) and after paragraph (d) insert “, or

(e) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society.”, and

(c) in subsection (9), at the end insert—

““renewables obligation certificate” means a certificate issued under section 32B of the Electricity Act 1989 or Article 54 of the Energy (Northern Ireland) Order 2003.”

(7) After that section insert—

“309B Excluded activities: subsidised generation of heat and subsidised production of gas or fuel

(1) This section supplements section 303(1)(kb).

(2) The generation of heat, or production of gas or fuel, is “subsidised” if a payment is made, or another incentive is given, under—

(a) a scheme established by regulations under section 100 of the Energy Act 2008 or section 113 of the Energy Act 2011 (renewable heat incentives), or

(b) a similar scheme established in a territory outside the United Kingdom,

in respect of the heat generated or gas or fuel produced.

(3) But the generation of heat, or production of gas or fuel, is not to be taken to fall within section 303(1)(kb) if Condition A or B is met.

(4) Condition A is that the generation or production is carried on by—

(a) a community interest company,

(b) a co-operative society,

(c) a community benefit society,

(d) a NI industrial and provident society, or

(e) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society.

(5) Condition B is that the plant used for the generation of the heat, or production of the gas or fuel, relies wholly or mainly on anaerobic digestion.

(6) Section 309A(9) (definitions) applies for the purposes of this section as for the purposes of section 309A.”

(8) The amendments made by subsections (2) to (4) have effect in relation to shares issued on or after the day on which this Act is passed.

(9) The amendments made by subsections (5) to (7) have effect in relation to a relevant holding issued on or after the day on which this Act is passed.”

EXPLANATORY NOTE

NEW CLAUSE 6: EXCLUSION OF INCENTIVISED ELECTRICITY OR HEAT GENERATION ACTIVITIES.

SUMMARY

1. New Clause 6 amends the list of excluded activities within the tax-advantaged venture capital schemes, so that a company whose trade consists substantially in the generation or electricity or heat which attracts Renewables Obligation Certificates (ROCs) or payments under the Renewable Heat Incentives (RHI) scheme will no longer qualify for investment under the Seed Enterprise Investment Scheme (SEIS), the Enterprise Investment Scheme (EIS) or the Venture Capital Trusts (VCT) scheme (with some limited exceptions). The restriction will apply in respect of both UK ROCs and RHI schemes, and overseas equivalents. The clause also extends the list of non-excluded community companies involved in the production of electricity from renewable sources, to European Co-operative Societies.

DETAILS OF THE NEW CLAUSE

2. The tax-advantaged venture capital schemes exist to incentivise investment in smaller companies carrying on, or preparing to carry on, qualifying trades. A trade is qualifying if it is carried on commercially and with a view to profit, and if it does not consist to a substantial extent in "excluded activities".

3. The legislation listing the activities which are "excluded" for the purpose of the schemes can be found at sections 192 to 199 Income Tax Act 2007 (ITA) for EIS; those sections apply also for SEIS by virtue of section 257DA ITA. The equivalent VCT provisions are at sections 303 to 310 ITA.

4. Legislation already exists at section 198A and 309A to exclude the generation or export of electricity attracting feed-in tariffs or overseas equivalents, with exceptions made for electricity generated or exported by community interest companies, community benefit societies, co-operative societies and Northern Irish industrial and provident societies. Companies producing electricity by anaerobic digestion or hydro power are also excepted from the exclusion.

5. New Clause 6 extends the existing exclusions at sections 198A and 309A in respect of the subsidised generation or export of electricity, to cases where a ROC is issued in connection with the generation or export, or where the production of the electricity has been incentivised by a similar overseas scheme.

6. The new clause adds new sections 198B and 309B to exclude the generation of heat, or the production of gas or fuel, where the generation or production attracts a payment (or other incentive) under the RHI scheme or a similar overseas scheme.

7. As is the case with the feed-in tariffs exclusion, community interest companies, community benefit societies, co-operative societies and Northern Irish industrial and provident societies will not be affected by the new restrictions. The amendment extends that list of excepted entities to European Co-operative Societies, for all forms of renewable incentive.

8. The new clause ensures that the new restriction will not apply where the electricity is generated by anaerobic digestion or by hydro power, nor where heat is generated, or gas or fuel produced, by anaerobic digestion.

BACKGROUND NOTE

9. The tax-advantaged venture capital schemes are designed to encourage investment by individuals in qualifying early-stage and developing companies, by offering a range of tax reliefs to investors who meet the conditions of the relevant scheme. There has been concern about the proportion of investment into renewable energy companies whose activities are relatively low-risk and which already benefit from generous government subsidies. Much of this investment activity is explicitly marketed as lower risk or aimed at capital preservation, emphasising the generous tax reliefs, the relatively predictable income stream from the energy generation, and the generous government subsidies in the form of ROCs and RHI to attract investors.

HM Revenue
& Customs

Limiting SEIS, EIS and VCT investments into companies benefiting from the DECC Renewable Heat Incentive and Renewable Obligation Certificate

Who is likely to be affected?

Companies benefiting from the Department of Energy & Climate Change (DECC) Renewable Heat Incentive (RHI) and Renewable Obligation Certificate (ROCs) seeking Seed Enterprise Investment Scheme (SEIS), Enterprise Investment Scheme (EIS) and Venture Capital Trust scheme (VCT) investment (tax-advantaged venture capital schemes). Investors and some fund managers in these companies may also be affected.

General description of the measure

This measure amends the list of excluded activities within the tax-advantaged venture capital schemes, so that a company whose trade consists substantially in the generation or electricity or heat which attracts ROCs or payments under the RHI scheme will no longer qualify for investment under SEIS, EIS or VCTs (with some limited exceptions). The measure will apply in respect of both UK ROCs and RHI schemes, and overseas equivalents.

Policy objective

The measure will ensure that the venture capital schemes continue to be effective in supporting start-ups and growing businesses and that the schemes continue to provide value for money. It will ensure that tax reliefs provided by the venture capital schemes continue to be targeted on investment for smaller, riskier, early stage and developing companies, which may face barriers in raising external finance. By providing tax reliefs which encourage investment, it will make it easier for these companies to become established and to grow. The change ensures the venture capital schemes continue to support smaller and growing businesses in a targeted and effective way.

Background to the measure

The Government announced in Budget 2014 its intention to exclude companies benefitting from ROCs and RHIs from tax-advantaged venture capital schemes. The tax-advantaged venture capital schemes are designed to encourage high-risk investment opportunities to help early-stage and developing companies raise equity finance by offering a range of tax reliefs to investors who meet the conditions of the relevant scheme. There has been concern about the proportion of investments into renewable energy that is relatively low-risk and benefits from generous government support. Much of this investment activity is explicitly marketed as lower risk or capital preservation, emphasising the generous tax reliefs, the predictable income stream from the energy generation and certain proven technologies, and the generous government support in the form of ROCs and RHI to attract investors.

Detailed proposal

Operative date

For EIS and SEIS, the changes take effect in respect of shares issued on or after the date on which Finance Bill 2014 receives Royal Assent. For the VCT regime, the changes take effect in respect of investments made by a VCT on or after that date.

Current law

The current EIS legislation can be found at Part 5 Income Tax Act 2007 (ITA) and Schedule 5B Taxation of Chargeable Gains Act 1992 (TCGA). The SEIS legislation is at Part 5A ITA and Schedule 5BB TCGA. The VCT legislation can be found at Part 6 ITA. These schemes exist to incentivise investment in smaller companies carrying on, or preparing to carry on, qualifying trades. A trade is qualifying if it is carried on commercially and with a view to profit, and if it does not consist to a substantial extent in "excluded activities".

The legislation listing the activities which are "excluded" for the purpose of the schemes can be found at sections 192 to 199 ITA for EIS and SEIS; and at sections 303 to 310 ITA for VCT. Legislation already exists at section 198A and 309A to exclude the generation or export of electricity attracting Feed in Tariffs or overseas equivalents, with exceptions made for electricity generated or exported by community interest companies, community benefit societies, co-operative societies and Northern Irish industrial and provident societies. Companies producing electricity by anaerobic digestion or hydro power are also excepted from the exclusion.

Proposed revisions

The legislation forming part of Finance Act 2014 will extend the existing exclusions in respect of the generation or export of electricity, to cases where a Renewable Obligations Certificate is issued in connection with the generation or export, or where the production of the electricity has been incentivised by a similar overseas scheme. A new exclusion will be added for the generation of heat or the production of gas or fuel, where the generation or production attracts a payment under the Renewable Heat Incentive scheme or a similar overseas scheme.

As is the case with the Feed in Tariff exclusion, community interest companies, community benefit societies, co-operative societies and Northern Irish industrial and provident societies will not be affected by the restrictions, and that list of excepted entities will be extended to European Co-operative Societies for all forms of renewable incentive. The restriction will also not apply where the electricity is generated by anaerobic digestion or by hydro power, nor where heat is generated, or gas or fuel produced, by anaerobic digestion.

Summary of impacts

<table>
<tr><td rowspan="6">Exchequer impact (£m)</td><td>2014-15</td><td>2015-16</td><td>2016-17</td><td>2017-18</td><td>2018-19</td></tr>
<tr><td>nil</td><td>+30</td><td>+60</td><td>+50</td><td>+40</td></tr>
<tr><td colspan="5">These figures form part of the venture capital tax package set out in Table 2.1 of Budget 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Budget.

This measure, when combined with, the measure to prevent VCTs from returning share capital to investors within three years of the end of the accounting period in which the VCT issued the shares, has the following combined Exchequer impact that appears in Table 2.1.</td></tr>
<tr><td>2014-15</td><td>2015-16</td><td>2016-17</td><td>2017-18</td><td>2018-19</td></tr>
<tr><td>nil</td><td>+35</td><td>+65</td><td>+55</td><td>+45</td></tr>
<tr></tr>
<tr><td>Economic impact</td><td colspan="5">Smaller, higher risk companies tend to face barriers in raising equity finance, and tax relief is given under tax-advantaged venture capital schemes to incentivise such investment.</td></tr>
</table>

	If companies carrying out lower risk activities can obtain investment under the tax-advantaged venture capital schemes, the schemes may fail to serve their purpose effectively. Excluding companies carrying out lower risk activities (for example, because they are already in receipt of another form of government support, as with ROCs and RHI schemes) should focus investment on those companies that are the intended beneficiaries of the schemes.
Impact on individuals and households	Individuals investing under the schemes benefit from a range of tax reliefs including income tax relief on the amount subscribed for shares in eligible companies and favourable capital gains tax treatment on eligible investments.
Equalities impacts	Compared to the self-assessment population, tax-advantaged venture capital scheme investors tend to be male, located in the South of England and have higher overall income levels. The changes to the schemes are not likely to change that position. From the data available it is reasonable to conclude that these changes will not have any further impact on those groups affected by equality legislation.
Impact on business including civil society organisations	The changes proposed will limit the availability of tax reliefs for investment in some smaller companies benefiting from existing government support, whose trades involve the production of electricity or heat from renewable sources. These changes will therefore have some impact on those companies, although this is necessary to ensure that the reliefs remain properly targeted and the impact of the changes will be fairly small, within the existing framework of the reliefs. The following types of company will not be affected by this change as they are excepted from the legislation, irrespective of the means by which energy is produced. These are community interest companies, community benefit societies or Northern Irish industrial and provident societies. Co-operative societies will also be exempt. VCTs will incur some one-off administrative costs since they will need to ensure that their investments meet the new conditions (though these are expected to be negligible).
Operational impact (£m) (HMRC or other)	The additional costs for HM Revenue and Customs in implementing this change are anticipated to be negligible. There will be some small costs in updating forms and guidance.
Other impacts	<u>Small firms impact test:</u> Tax-advantaged venture capital schemes are reliefs intended to help small firms, and changes to them may therefore have an impact on such firms. <u>Competition assessment:</u> The changes should not have any impact on competition as they do not affect or limit suppliers' ability to compete.

Monitoring and evaluation

Uptake of the reliefs in terms of numbers of investors and investees, amounts of investment and the distribution of levels of investment will continue to be regularly monitored and published.

Further advice

If you have any questions about this change, please contact Kathryn Robertson on 03000 585729 (email: kathryn.robertson@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Exchequer 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.