ENERGY (OIL AND GAS) PROFITS LEVY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Energy (Oil and Gas) Profits Levy Bill as introduced in the House of Commons on 5 July 2022 (Bill 135).

- These Explanatory Notes have been prepared by HM Revenue & Customs (HMRC) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 On 26 May 2022 the Chancellor of the Exchequer announced that a new temporary 25% Energy Profits Levy would be introduced for oil and gas companies, reflecting their extraordinary profits.

2 The Energy (Oil and Gas) Profits Levy Bill makes provision in respect of that levy, to be known as the "energy (oil and gas) profits levy", or "the levy".

3 The Energy (Oil and Gas) Profits Levy Bill contains 19 clauses and 2 schedules.

4 The section below provides more detail on the design and application of the levy.

Policy background

5 Following record high oil and gas prices over the past year due to global circumstances, and to help fund more cost-of-living support for UK families, the government is introducing the energy (oil and gas) profits levy, a new 25% levy on the extraordinary profits the oil and gas sector is making.

6 The levy will apply to companies within the ring fence corporation tax regime. These are companies involved in the exploration for, and extraction of, oil and gas in the UK and on the UK Continental Shelf (UKCS).

7 Since last year, oil and gas prices have risen substantially, with oil prices nearly doubling since early last year, and gas prices more than doubling, resulting in significant increases in profits earned from UK oil and gas extraction.

8 The new levy is expected to raise around £5 billion over the first year.

9 The government has also been clear that it wants to see the oil and gas sector reinvest its profits to support the economy, jobs, and the UK's energy security. That is why, within the levy, a new 'super-deduction' style relief is being introduced to encourage firms to invest in oil and gas extraction in the UK.

10 The levy will have effect for profits arising on or after 26 May 2022. In future years, if oil and gas prices return to historically more normal levels, the government will phase out the levy. The legislation will include a sunset clause for the levy, effective at the end of December 2025.

11 Existing legislative provisions relating to the administration of corporation tax will apply to the levy as they apply to corporation tax.

12 The Bill was published in draft for consultation on 21 June 2022 and in light of the consultation the government has made, among other minor changes, changes in relation to determining the extent to which a repayment of petroleum revenue tax is subject to the levy

(clause 1) and to amend the wording in clause 5 on disqualifying purposes to make it clear that it does not apply to transactions with a genuine commercial purpose.

Legal background

13 The energy (oil and gas) profits levy is a new tax; there is therefore no existing legislation relating to it.

14 The Bill makes new legislative provision for the levy and applies legislation relating to the existing system of taxation for oil and gas companies carrying out oil-related activities, ring fence profits and corporation tax. The main legislation for that system is contained in CTA 2010 Part 8.

15 Except for such minor modifications as are necessary for the purpose of applying the legislation for the purposes of administering the levy, the Bill does not amend existing corporation tax provisions.

16 In this Explanatory Note the following abbreviations are used when referring to legislation –

"CAA 2001" means the Capital Allowances Act 2001

"CTA 2010" means the Corporation Tax Act 2010

"FA" followed by a year means the Finance Act of that year

"TMA 1970" means the Taxes Management Act 1970

Territorial extent and application

17 The Bill extends, and applies in relation to, the United Kingdom and the United Kingdom Continental Shelf.

18 The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

19 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Fast-track legislation

20 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards[1], the House of Lords Select Committee on the Constitution recommended that the Government "should provide more information as to why a piece of legislation should be fast-tracked[2]".

[1] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I
[2] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

The justification for fast-tracking the Bill is explained below.

Why is fast tracking necessary?

21 The levy was announced by the Chancellor of the Exchequer in Parliament on 26 May 2022 and applies with effect from the date of announcement. It is necessary that the legislation giving effect to the levy is fast tracked in order to provide certainty as to the nature of taxpayers' liabilities and entitlements under the levy and to curtail, as far as possible, the period in which the legislation is to operate retrospectively.

What is the justification for fast-tracking each element of the Bill?

22 Each element of the Bill is intended to operate interdependently to provide for a single coherent tax regime. The levy would therefore not operate as intended if only certain elements providing for it were to be fast-tracked.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

23 The Bill was introduced as soon as possible after the announcement of the intention to introduce the levy. The Bill reflects an important and significant policy. The principle of the policy was debated in the context of the ways and means resolution on which it was introduced.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

24 No consultation has taken place in relation to the policy dealt with in the Bill. This is not unusual for measures having the effect of increasing rates of taxation; particularly where, as here, the Government has already made a firm commitment to introduce the levy and to the main features of that tax. But a one-week technical consultation was held on the draft legislation, to allow stakeholders to review the legislation to ensure it worked as government intended. In light of the consultation the government has made, among other minor changes, changes in relation to determining the extent to which a repayment of petroleum revenue tax is subject to the levy (clause 1(5)(d) and (6)) and to amend the wording in clause 5 (2) on disqualifying purposes to make it clear that it does not apply to transactions with a genuine commercial purpose.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

25 The Bill includes a sunset clause so that from 31 December 2025 the levy will automatically cease to be in place.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion if not appropriate?

26 As is the case for all tax policy, the levy will be continuously kept under review.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

27 The Energy (Oil and Gas) Profits Levy is a new tax; there is therefore no existing legislation relating to it. The policy could in part have been achieved by an increase in the rate of ring fence corporation tax or supplementary charge, but that would not have targeted the extraordinary profits being seen by the oil and gas industry, and it would not have included the targeted measures provided for in this legislation so as to provide companies with incentives to continue investing in UK oil and gas.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

28 A European Convention on Human Rights analysis is included alongside these Explanatory Notes for the Joint Committee on Human Rights.

Commentary on provisions of Bill

Clause 1: Charge to tax

29 Clause 1 provides for a charge to the levy.

30 Subsection 1 provides that the levy applies to a company carrying on a ring fence trade and is charged at a rate of 25% on the levy profits in a qualifying accounting period, and that it is charged as if it were an amount of corporation tax.

31 Subsection 2 defines the charge as energy (oil and gas) profits levy, or as the levy.

32 Subsection 3 provides for the time limited application of the levy by defining a qualifying accounting period as being one beginning on or after 26 May 2022 and ending on or before 31 December 2025. It provides reference to clauses 15 and 16 for arrangements for dealing with accounting periods which straddle those dates.

33 Subsection 4 provides that the levy profits or loss for a qualifying accounting period are those that would be determined as a company's ring fence profits or loss, on the basis that adjustments for certain assumptions were to be made.

34 Subsection 5 provides that the assumptions are

a. The company incurs additional expenditure as provided for by clause 2(3) and that additional expenditure is allowable as a deduction in calculating the profits or loss of the ring fence trade

b. Financing and decommissioning costs are left out of account

c. Repayments of petroleum revenue tax arising from decommissioning are left out of account

d. Loss relief, group relief and group relief for carried forward loss under Part 4, 5 or 5A or section 303A to 303D of CTA 2010 are left out of account

35 Subsection 6 makes provision for determining the extent to which, for the purposes of subsection 5(d), a repayment of petroleum revenue tax is referable to decommissioning.

36 Subsection 7 provides that any reference in the Act to "qualifying levy profits or loss" means those profits or loss as determined in accordance with subsections (4) and (5).

37 Subsection 8 provides that relief for a qualifying levy loss may be available in accordance with Parts 1 or 2 of Schedule 1.

38 Subsection 9 applies, in accordance with clause 11, all enactments to the levy as apply generally to corporation tax.

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Clause 2: Additional expenditure treated as incurred for purposes of section 1

39 Clause 2 defines "investment expenditure" for the purposes of clause 1 (see in particular subsections (5)(a) and (b) which provide that such additional expenditure is allowable as a deduction in calculating the amount of the profits or loss of any ring fence trade).

40 Subsection 1 provides that this clause applies if, in a qualifying accounting period, a company has incurred investment expenditure.

41 Subsection 2 defines "investment expenditure" as expenditure that is capital expenditure, operating expenditure or leasing expenditure and which has been incurred for the purposes of oil-related activities, provided that it has not been incurred for disqualifying purposes and does not consist of financing or decommissioning costs.

42 Subsection 3 provides that the company is treated as incurring additional expenditure of 80% of the amount of the investment expenditure.

43 Subsection 4 provides that a just and reasonable apportionment is required if investment expenditure is incurred partly for the purposes of oil-related activities and partly for other purposes.

44 Subsection 5 provides that this clause needs to be read with clause 6.

Clause 3: Section 2: meaning of "operating expenditure"

45 Clause 3 specifies the conditions that must be met for expenditure to be operating expenditure for the purposes of clause 2.

46 Subsection 1 provides that the expenditure must have been incurred for the purposes of either increasing the rate at which oil is extracted, or the reserves of oil, increasing the number of years of carrying out oil extraction activities, or increasing the amount of tariff receipts earned. It cannot be expenditure on routine repair and maintenance, and it must be incurred in relation to an oil well or facility on qualifying matters.

47 Subsections 2 and 3 define categories of expenditure that are referred to in subsection 1. Specifically, subsection 2 defines when expenditure is incurred in relation to a facility on qualifying matters, and subsection 3 defines when expenditure is incurred in relation to an oil well on qualifying matters.

48 Subsection 4 provides that a just and reasonable apportionment is required if expenditure incurred is only part operating expenditure.

49 Subsection 5 defines the following terms that are referred to in subsection 1: facility, tariff receipts and upstream petroleum infrastructure for the purposes of clause 3.

Clause 4: Section 2: meaning of "leasing expenditure"

50 Clause 4 specifies the conditions that must be met for expenditure to be leasing expenditure for the purposes of clause 2.

51 Subsection 1 provides that the expenditure must represent payment in return for a mobile production or storage asset being made available, and it must be under a lease whose term is at least 5 years. It also provides that on the date the expenditure is incurred, no relevant tax relief can have been obtained in respect of the acquisition of the asset.

52 Subsection 2 restricts the expenditure to be treated as leasing expenditure to that which exceeds the total amount received by the company and its associated companies in respect of any qualifying leases. But it excludes i) amounts received from the lessee where the parties to the lease are associated companies, or ii) amounts previously set against expenditure which would otherwise have counted as leasing expenditure.

53 Subsection 3 defines qualifying lease for the purposes of subsection 2.

54 Subsection 4 provides a further condition that if a sub-lease is entered into or modified on or after 26 May 2022, then expenditure is not leasing expenditure if it exceeds the total amount of leasing expenditure incurred in relation to the head lease during the term of the sublease.

55 Subsection 5 provides a non-exhaustive list of circumstances when expenditure is not treated for the purposes of this section as representing payment in return for an asset being made available.

56 Subsection 6 defines the following terms that are used in subsection 1: lease, a mobile production or storage asset and relevant tax relief.

57 Subsection 7 provides that a just and reasonable apportionment is required if expenditure incurred only partly represents payment in return for a mobile production or storage asset.

Clause 5: Section 2: meaning of "disqualifying purposes"

58 Clause 5 is an anti-avoidance provision. It applies for the purposes of clause 2 and provides that expenditure is not to be treated as investment expenditure where it has been incurred for a disqualifying purpose.

59 Subsection 1 provides that expenditure is incurred for disqualifying purposes so far as it arises directly or indirectly in connection with, or in consequence of, any avoidance arrangements.

60 Subsection 2 provides that avoidance arrangements are any arrangements the main purpose, or one of the main purposes, of which is the securing of a relevant levy advantage and the arrangements are, or include steps that are contrived, abnormal or lacking a genuine commercial purpose.

61 Subsection 3 sets out a list of certain intended outcomes that are considered to constitute a

relevant levy advantage for the purposes of subsection 2. The list is non-exhaustive.

62 Subsection 4 confirms that the purposes of this clause, the term "arrangements" encompasses various other acts including transactions, series of transactions or schemes, irrespective of whether they are legally enforceable.

Clause 6: Recycling etc of assets to generate relief

63 Clause 6 ensures additional expenditure is only available for new assets. It applies for the purposes of clause 2 and specifies that expenditure is not to be treated as investment expenditure in certain cases where an asset has been recycled in order to generate relief.

64 Subsection 1 provides that expenditure is not investment expenditure if it is on the acquisition of an asset where expenditure was incurred previously by the company or another company in acquiring, leasing, bringing into existence or enhancing the value of the asset and any of that expenditure has been taken into account, or would on the applicable assumption, have been taken into account for the purposes of the levy.

65 Subsection 2 confirms that the clause applies to any case where the asset acquired is an interest in an oil field, as well as assets acquired in connection with a transfer of an interest in an oil field. Subsection 2 confirms that the cases specified in that subsection are given by way of example and are, accordingly, not an exhaustive list of the circumstances to which the clause applies.

66 Subsection 3 defines various expressions used in subsections 1 and 2. Specifically, it provides for the definition of leasing an asset. It also provides that the applicable assumption for the purposes of subsection 1 means the assumption that the Bill were in force and applied to expenditure incurred. Finally, it provides that any reference to an interest in an oil field is to the whole or part of the equity in an oil field.

Clause 7: When investment expenditure is incurred

67 Clause 7 provides for determining when investment expenditure is incurred.

68 Subsection 1 provides that capital expenditure is treated as incurred by reference to the rules in CAA 2001 and that operating expenditure or leasing expenditure is treated as incurred on the date on which it is paid.

69 Subsection 2 provides that investment expenditure incurred, or treated as incurred, either before 26 May 2022 or after 31 December 2025 is to be left out of account in determining a company's levy profits or loss for any qualifying accounting period.

Clause 8: Meaning of "financing costs" etc

70 Clause 8 defines financing costs. It is modelled on existing provision in section 331 of CTA 2010.

71 Subsection 1 applies the definition to the Bill.

72 Subsection 2 defines financing costs as meaning the costs of debt finance.

73 Subsection 3 provides a non-exhaustive list of the matters to be taken into account in calculating the costs of debt finance.

74 Subsections 4 to 6 apply for the purposes of subsection 3(d) (which refer to the financing cost implicit in a payment under a finance lease).

75 Subsection 4 brings into the definition of financing costs a payment which would fall to be treated as a finance charge or interest expense under a finance lease for the purposes of accounts, which is not treated as such in the accounts of the company.

76 Subsection 5 provides that repayments of financing costs implicit in a payment under a finance lease are also to be left out of account in calculating the qualifying levy profits of a company.

77 Subsection 6 defines a finance lease for the purposes of subsection 3(d).

78 Subsection 7 applies for the purposes of subsection 6 and provides that in the case of a right-of-use lease, the lessee and any person connected with the lessee are to be treated as being companies which are incorporated in the UK.

79 Subsection 8 defines the following terms that are referred to in clause 8: accounts, debtor relationship, exchange gains, exchange losses, lease, long funding finance lease, long funding operating lease and right-of-use lease.

Clause 9: Meaning of "decommissioning costs"

80 Clause 9 defines decommissioning costs.

81 Subsection 1 applies the definition to the Bill.

82 Subsection 2 provides that decommissioning costs means any expenditure which is decommissioning expenditure or site restoration expenditure, which qualifies for a capital allowance.

83 Subsection 3 applies for the purposes of subsection 2 and defines decommissioning expenditure as expenditure incurred in connection with one of the following purposes: demolishing plant or machinery, preserving plant or machinery pending its reuse or demolition, preparing plant or machinery for reuse or arranging for the reuse of plant or machinery. In addition, the subsection provides that the expression plant or machinery is to be defined by reference to CAA 2001.

84 Subsections 4 and 5 clarify the scope of certain expressions used in subsection 3.

85 Subsection 4 provides that, in determining whether expenditure has been incurred in preserving plant or machinery pending its reuse or demolition, it does not matter whether the plant or machinery is reused, demolished or partly reused and partly demolished.

86 Subsection 5 provides that, in determining whether expenditure has been incurred in preparing plant or machinery for reuse or arranging for the reuse of plant or machinery, it does not matter whether the plant or machinery is in fact reused.

87 Subsection 6 applies for the purposes of subsection 2 and defines site restoration expenditure as being expenditure incurred on the restoration of the site of a source to the working of which the ring fence trade concerned relates or land used in connection with working such a source.

88 Subsection 7 defines "restoration" by reference to CAA01.

Clause 10: Relief for qualifying levy losses

89 Clause 10 introduces Schedule 1 which makes provision about relief for qualifying levy losses.

Clause 11: Application of corporation tax provisions

90 Clause 11 applies general corporation tax principles to the energy (oil and gas) profits levy and provides for the levy to be treated for administrative purposes as an amount of corporation tax. This clause prescribes the framework within which the levy will operate and provides that the existing legislation is to apply with such modifications as may be necessary for the purposes of giving effect to the levy.

91 Subsection 1 ensures that all enactments which apply generally to corporation tax will apply to the levy.

92 Subsection 2 provides that the application of the enactments referred to in subsection 1 is subject to the provisions of the Corporation Tax Acts as well as provision in subsection 5 (which concerns unrelieved surplus advance corporation tax), and that the enactments in question are to apply with such modifications as may be necessary.

93 Subsection 3 confirms that the application of corporation tax enactments in subsection 1 include those enactments relating to matter such as returns of information, assessing and collecting of tax, rights of appeal, penalties, interest and insolvency. The list of matters referred to in subsection 3 is non-exhaustive and its purpose is to resolve any ambiguity as to the scope of the application of corporation tax enactments in subsection 1.

94 Subsection 4 confirms that the application of corporation tax enactments in subsection 1 gives the result that the provisions of the TMA 1970 treat the levy in the same way as corporation tax.

95 Subsection 5 excludes the levy from being treated in the same way as corporation tax under regulations concerning unrelieved surplus advance corporation tax.

Clause 12: Requirement to provide information about payments

96 Clause 12 introduces a requirement for companies making a payment of energy (oil and gas) profits levy to provide information about that payment to HMRC, so that receipts from the levy can be monitored.

97 Subsection 1 provides that the clause applies where the levy is chargeable on a company which makes a payment, or has a payment made on their behalf, that is wholly or partly in respect of the levy.

98 Subsection 2 provides that a 'responsible company' must notify an officer of HMRC on or before the date the payment is made, of the amount of the payment that is in respect of the levy.

99 Subsection 3 defines a 'responsible company' for the purposes of subsection 2 as being either the company discharging the liability of the chargeable company under relevant group payment arrangements or, in any other case, the chargeable company.

100 Subsection 4 defines 'relevant group payment arrangements' for the purposes of subsection 3 as being arrangements under section 59F(1) of the TMA 1970.

101 Subsection 5 provides that the requirement in subsection 2 to give notice is to be treated for the purposes of Part 7 of Schedule 36 to FA 2008 as if it were a requirement in an information notice. That ensures that the penalty regime for HMRC's information and inspection powers applies to a failure to comply with subsection (2).

102 Subsection 6 provides that this requirement to notify is subject to any provision to the contrary in the regulations under section 59E of the Taxes Management Act 1970, which sets out rules for when corporation tax is due and payable.

Clause 13: Adjustments

103 Clause 13 provides for necessary adjustments to be made if alterations are made to a company's ring fence profits or loss.

Clause 14: Consequential provision

104 Clause 14 introduces Schedule 2 which contains amendments of enactments that are consequential on the provisions of the Energy (Oil and Gas) Profits Levy Bill.

Clause 15: Transitional provision for accounting periods straddling 26 May 2022

105 Clause 15 provides for the arrangements for accounting periods that straddle the commencement date of 26 May 2022.

106 Subsection 1 provides a rule for accounting periods that straddle 26 May 2022 (referred to as a "straddling period"), treating them as separate accounting periods, such that the levy profits or loss of the deemed accounting period as starting on that date will be subject to the levy

provisions and apportioned according to the rules in clause 17.

107 Subsection 2 applies the Instalment Payments Regulations 1998 in the case of a straddling period to the levy separately from other taxes.

108 Subsection 3 applies for the purposes of subsection 2, and provides that, for the purposes of the levy, the Instalment Payments Regulations 1998 apply in respect of the deemed accounting period beginning on 26 May 2022 as if it were an accounting period for the purposes of instalment payments.

109 Subsection 4 makes a minor consequential modification to the reading of the Instalment Payments Regulations 1998 for the purpose of giving effect to the requirement in subsection 2 that those Regulations are to apply differently for the purposes of the levy. Specifically, subsection 4 provides that, for the purposes of the levy any reference in the Regulations to the total liability of a company is to be taken as a reference to the levy. However, in relation to any other tax chargeable on a company, those references to the total tax chargeable on a company are to be read as references to the amount that would be the company's total liability for the straddling period if the levy were left out of account.

110 Subsection 5 provides that, for the purposes of the application of the Instalment Payments Regulations 1998, a company is to be regarded as a large company for the deemed accounting periods created under subsection (1)(a) only if it is a large company for the straddling period.

Clause 16: Transitional provision for accounting periods straddling 31 December 2025

111 Clause 16 provides for the arrangements for accounting periods that straddle the 31 December 2025.

112 Subsection 1 provides a rule for accounting periods that straddle 31 December 2025 (referred to as a "straddling period"), treating them as separate accounting periods, such that the levy profits or loss of the deemed accounting period as ending on that date will be subject to the levy provisions and apportioned according to the rules in clause 17.

113 Subsection 2 applies the Instalment Payments Regulations 1998 in the case of a straddling period to the levy separately from other taxes.

114 Subsection 3 applies for the purposes of subsection 2 and provides that, for the purposes of the levy, the Instalment Payments Regulations 1998 applies in respect of the deemed accounting period ending on 31 December 2025 as if it were an accounting period for the purposes of instalment payments.

115 Subsection 4 makes a minor consequential amendment to the reading of the Instalment Payments Regulations 1998 for the purpose of giving effect to the requirement in subsection 2 that those Regulations are to apply differently for the purposes of the levy. Specifically, subsection 4 provides that, for the purposes of the levy, any reference in the Instalment

Payment Regulations 1998 to the total liability of a company is to be read as a reference to the levy. However, in relation to any other tax chargeable on a company, those references to the total liability of a company are to be read as references to the amount that would be the company's total liability for that straddling period if the levy were left out of account.

116 Subsection 5 provides that, for the purposes of the application of the Instalment Payments Regulations 1998, a company is to be regarded as a large company for the deemed accounting periods created under subsection (1)(a) only if it is a large company for the straddling period.

Clause 17: Rules for apportioning profits or loss to separate accounting periods

117 Subsection 1 provides that the clause applies for the purpose of apportioning a company's levy profits or loss to separate accounting periods where that is required under either clause 15 or 16.

118 Subsection 2 provides that profits or loss are to be apportioned as if claims for capital allowances are made to the separate accounting period in which the capital expenditure was incurred.

119 Subsection 3 provides that other than in those cases where the rule in subsection 2 applies, receipts, expenses, asset and liabilities of the ring fence trade are apportioned between the separate accounting periods on a just and reasonable basis.

Clause 18: Interpretation

120 Clause 18 sets out where the meaning of various terms used in the Energy (Oil and Gas) Profits Levy Bill can be found.

Clause 19: Short title

121 Clause 19 provides for the Bill to be known as the Energy (Oil and Gas) Profits Levy Act 2022 upon Royal Assent.

Schedule 1: Reliefs

Part 1: Carry back or forward of qualifying levy losses

122 Part 1 of the Schedule makes provision for carry back or carry forward of qualifying levy losses.

123 Paragraphs 1 to 4 provide for the carry back of qualifying levy losses to earlier qualifying accounting periods. A claim may be made to deduct the loss from qualifying levy profits of a previous qualifying accounting period that falls within 12 months ending before the loss-making periods begins. The claim must be made within two years after the end of the loss-making period. A terminal qualifying levy loss (ie where a company ceases to carry on a ring fence trade) can be deducted from qualifying levy profits of a previous qualifying accounting period that falls within 3 years ending before the loss-making period begins. Relief is not available for a loss unless the trade is carried out on a commercial basis.

124 Paragraph 5 provides for the carry forward of unrelieved qualifying levy losses to subsequent qualifying accounting periods.

Part 2: Group relief for qualifying levy losses

125 Part 2 of the Schedule makes provision for group relief for qualifying levy losses.

126 Paragraphs 6 to 8 provide that a surrendering company can surrender a qualifying levy loss for a qualifying accounting period to another company that is part of the same group and that that relief is known as levy group relief.

127 Paragraphs 9 and 10 provide that relief is contingent upon a claim being made and the surrendering company consenting to the claim, and that the relief is to be given by way of a deduction from the claimant company's qualifying levy profits for the claim period.

128 Paragraphs 11 and 12 apply provisions in CTA 2010, with minor modifications, for the purposes of the levy. Paragraph 11 provides that sections 138 to 142 of CTA 2010 (general limitations on amount of group relief to be given) are to apply for the purposes of the levy as they apply in relation to group relief under CTA 2010. Paragraph 12 provides that sections 154 and 155A to 156 of CTA 2010 (arrangements for transfer of member of group of companies etc) are to apply for the purposes of the levy as they apply for the purposes of part 5 of CTA 2010.

129 Paragraphs 13 and 14 provide that where a claimant company makes a payment to the surrendering company as part of an agreement between them concerning the surrender of a qualifying levy loss amount then that payment is not to be taken into account in calculating the qualifying levy profits or loss of either company, nor for the calculation of profits or loss for corporation tax purposes.

130 Paragraphs 15 and 16 define, for the purposes of Part 2 of the Schedule, the meaning of "company" and "group" respectively.

Part 3: General provision

131 Part 3 makes general provision for the purposes of the Schedule.

132 Paragraph 17 provides that relief from the levy is not to be given more than once.

133 Paragraphs 18 and 19 apply, with minor modifications, provision in CTA 2010 for the purposes of the levy. Paragraph 18 applies Part 14 of CTA 2010 (change in company ownership) and paragraph 19 applies Chapter 1 of Part 22 of CTA 2010 (transfers of trade without a change of ownership) in relation to relief under the Schedule as those provisions apply in relation to the corresponding relief from corporation tax.

134 Paragraph 20 provides for an anti-avoidance rule to counteract a tax advantage involving qualifying levy losses.

Schedule 2: Consequential amendments

135 This Schedule makes minor consequential amendments to TMA 1970, FA 1998, and the Instalment Payment Regulations 1998 for the purposes of administering the levy. It also inserts cross-reference into the provision in CTA 2010 dealing with oil activities so that the

CTA 2010 provision is read in conjunction with this Act.

136 Paragraphs 1 to 3 amends provision in TMA 1970, FA 1988 and the Instalment Payment Regulations 1998. The amended provision deals, respectively, with when corporation tax is due and payable and payment on behalf of group members, requirement to make a company tax return and payments by instalment. The amendments insert various refences to this Act and to the levy and their effect is to bring the levy into scope of the amended provisions.

137 Paragraph 4 inserts the cross-reference referred to in paragraph 124 above.

Commencement

138 The Bill comes into force on Royal Assent.

Financial implications of the Bill

139 The levy is expected to raise around £5bn in its first 12 months. The final costing will be subject to scrutiny by the Office for Budget responsibility and will be set out at the next fiscal event.

Parliamentary approval for financial costs or for charges imposed

140 The Bill requires a ways and means resolution to cover provision made in respect of the new levy imposed by clause 1 on ring fence profits of companies. The resolution was passed by the House of Commons on 5 July 2022.

Compatibility with the European Convention on Human Rights

141 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Chancellor of the Exchequer has made the following statement:

> "In my view the provisions of the Energy (Oil and Gas) Profits Levy Bill are compatible with the Convention rights."

142 The Government will publish an ECHR memorandum which explains in detail its assessment of the compatibility of the Bill's provisions with the Convention rights.

Related documents

143 The following documents are relevant to the Bill and can be read at the stated locations:

- Technical Note Energy Profits Levy – Technical Note - GOV.UK (www.gov.uk)
- Fact Sheet Energy Profits Levy Factsheet - 26 May 2022 - GOV.UK (www.gov.uk)

Annex- Territorial extent and application in the United Kingdom

[3]

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
All clauses and schedules	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Subject matter and legislative competence of devolved legislatures

There is no matter in the Bill that is within the legislative competence of the devolved legislatures.

[3] References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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These Explanatory Notes relate to the Energy (Oil and Gas) Profits Levy Bill as introduced in the House of Commons on 5 July 2022.

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