TAXREP 3/00

CLIMATE CHANGE LEVY

Memorandum submitted in January 2000 to HM Customs and Excise by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a consultation paper issued in November 1999.

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INTRODUCTION

1. We welcome the opportunity to comment on the draft Finance Bill clauses exposed for comment in November.

2. We note that the clauses for the Climate Change Levy ('CCL') are in broad terms taken from VAT (and, to a lesser extent, Landfill Tax) law, and in light of the familiarity that taxpayers of CCL will have with that legislation, this is to be welcomed. However, as in all new taxes there are some areas that we feel require further comment, and it is with this in mind that we put forward our responses below.

3. As to the signposting of the legislation, we found helpful the listing of the contents of each Part of the Schedule at the beginning of each Part.

DETAILED COMMENTS

Part B: Taxable supplies

4. Paragraphs B1 and B11 provide that outputs from 'good quality' combined heat and power station ('CHP') should not be subject to CCL. Paragraph B2(1) provides that the levy is chargeable if it is supplied by an electricity utility, or by a CHP where the output is supplied to someone other than an electricity utility. We are concerned that, as the paragraph currently reads, the supply by the electricity utility in paragraph B2(1)(a) can be taken as overruling paragraph B2(1)(b). We suggest that this point is clarified in the legislation so that where electricity can be identified as supplied from a 'good quality' CHP to an electricity utility, the onward supply remains exempt from the levy.

5. Paragraph B11(2) states that the Treasury will prescribe, by regulation, conditions relating to paragraph B11(4). In relation to sub-paragraph B11(4)(a), the prescribed upper limit of a station's output needs to be set at a realistic level. Regulations within the electricity generation industry allow an exemption from licensing where outputs remain below 10MW, and we put this limit forward as a logical level to adopt.

6. In relation to sub-paragraph B11(4)(b), the commodities should include sewage gas and sewage sludge. And in relation to sub-paragraph B11(4)(c), the methods of producing outputs should include incinerators as well as other combustion methods.

7. Paragraph B14 would seem to envisage a self-supply being made where a person flares gas. It also appears to create a 'self-supply' where, in the case of a CHP station, the output is used for its own purposes. We would welcome clarification that this is not the intention of the legislation.

Part C: Time of supply

8. Paragraph C2 sets out the time of supply for the purposes of CCL. It envisages that a supply takes place each time an invoice is issued, or where payment in respect of a supply is made without an invoice being issued. We suggest that this paragraph be clarified by stating that the time of supply takes place at the *earlier* of either of these times.

Part F: Registration

9. Paragraph F3 sets out the requirement for a person to notify Customs when he is liable to be registered for CCL and the penalties for failure to do so. In light of the fact that CCL will normally be supplied on a continuous services basis, we suggest that the paragraph is broadened so that the penalty for failure to notify becomes effective only after a prescribed time limit. We recommended that the time limit for notification be within 30 days of first supply.

10. Paragraph F4(2) implies that group registration for CCL may be compulsory whereas Part L (Groups of Companies) makes it clear that this is not the case. We assume that Part L is definitive in this respect but would ask that this is clarified in the legislation.

Penalties

11. Paragraphs D2(3) and (4) extended by paragraphs K5 and K7 provide that failing to submit a CCL return or pay the levy by the due date may result in a fixed penalty, a daily penalty and also penalty interest.

12. We consider that the penalty regime is disproportionate. The fixed rate of penalty interest is excessively high. We suggest that the interest rate be set at the default rate used by Customs in VAT law, which is currently 7.5%.

13. Furthermore, the calculation of penalty interest on a compound basis is not in keeping with other tax legislation. This is not acceptable. Interest should be calculated on a simple interest basis.

Part P: Information and evidence

14. Paragraph P1 provides that the taxpayer or anyone connected with the making or receiving of supplies of taxable commodities shall provide Customs with information relating to the making or receiving of supplies of taxable commodities, or any connected activities as Customs may reasonable require. We are concerned that the power to ask for information from any connected person on any connected activities is too widely drawn. We recommend that this power be narrowed by the additional of 'involved with the making or receiving of said supplies', inserted after '...or in any connected activities,'.

15. Paragraph P9(7) allows Customs to deny access to *anything* if the officer in overall charge has reasonable grounds for believing that it will prejudice that investigation, the investigation of any other offence or any criminal proceedings involving that offence. We consider that there should be a right of appeal where the party under investigation believes that Customs' exercise of this power has been unreasonable.

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