

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2023 edition

Part 24B Council Regulation (EU) 2022/1854 of 6 October 2022 as regards Temporary Solidarity Contribution

December 2023



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PART 24B Council Regulation (EU) 2022/1854 of 6 October 2022 as regards Temporary Solidarity Contribution

Overview

Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices provided for the introduction of a temporary solidarity contribution by member states. This was implemented in Ireland in the Energy (Windfall Gains in the Energy Sector)(Temporary Solidarity Contribution) Act 2023 (“the Act of 2023”). The Act provides for a “temporary solidarity contribution” on the taxable profits of an energy company, defined in the Act as a company that generates at least 75 per cent of its turnover in a chargeable period from relevant activities, where chargeable period is defined as the 12 month period commencing on 1 January in each of the years 2022 and 2023 and relevant activities are defined in that Act as economic activities, carried on in the State or in a designated area (within the meaning of the Maritime Jurisdiction Act 2021), in the field of the extraction, mining or refining of natural gas, coal, petroleum or manufacture of coke oven products as referred to in Regulation (EC) No 1893/2006 of the European Parliament and of the Council. The Act provides for the amount of temporary solidarity contribution to be 75% of the taxable profits in 2022 and 2023 that are above 120% of average taxable profits in respect of reference years. This Part provides for the relevant definitions of ‘taxable profits’, and associated provisions required to ensure the operability of the measures included in the Act of 2023. This Part should be read in conjunction with the Act of 2023. The temporary solidarity contribution is a levy placed under the care and management of the Revenue Commissioners.

Interpretation

Section 697R – Interpretation

Summary

This section is the interpretation section for the Part. Some of the definitions are defined in the Act of 2023 and are reproduced below for ease of the interpretation of this Part.

Details

Definitions

(1)

‘**accounting period**’ means an accounting period determined in accordance with section 27;

‘**Act of 2023**’ means the Energy (Windfall Gains in the Energy Sector)(Temporary Solidarity Contribution) Act 2023;

‘**average taxable profits in respect of the reference years**’ shall be construed in accordance with section 697T(1);

‘**chargeable period**’ has the meaning assigned to it in the Act of 2023. For the purpose of this Part, a chargeable period is the 12-month period commencing on 1 January in each of the years 2022 and 2023;

‘**Council Regulation**’ means Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices;

‘**energy company**’ has the same meaning as it has in the Act of 2023. For the purpose of this Part, an energy company means a company that generates at least 75 per cent of

its turnover in a chargeable period from relevant activities. A company is defined in the Act of 2023 as a body corporate;

‘**relevant activities**’ has the same meaning as it has in the Act of 2023. For the purpose of this Part, relevant activities means economic activities carried on in the State or in a designated area (within the meaning of the Maritime Jurisdiction Act 2021) in the field of the extraction, mining or refining of natural gas, coal, petroleum or manufacture of coke oven products as referred to in Regulation (EC) No. 1893/2006 of the European Parliament and of the Council of 20 December 2006;

‘**taxable profits**’ shall be construed in accordance with section 697S(1);

‘**temporary solidarity contribution**’ has the meaning assigned to it in the Act of 2023. For the purpose of this Part, temporary solidarity contribution means a levy charged on the amount of the taxable profits in respect of a chargeable period which is above a 20% increase of average taxable profits in respect of the reference years, multiplied by a rate of 75 per cent.

Provides that any words or expressions used in this Part, which are also used in Council Regulation (EU) 2022/1854, will have the same meaning unless the context otherwise requires. (2)

Section 697S – Taxable Profits for purposes of temporary solidarity contribution

Summary

This section sets out the rules for determining the taxable profits of an energy company for a chargeable period.

Details

Introduces the definition of taxable profits for the purposes of the temporary solidarity contribution (“TSC”). The definition refers to an amount of total profits for an accounting period, calculated in accordance with **section 76(3)**, of the energy company. The amount referred to is so much of those profits that are derived from relevant activities. This amount is subject to reductions under subsection (1)(a) and (1)(b). (1)

In calculating the taxable profit, the amount of total profits is reduced by any charges on income paid by the company in the accounting period relating to relevant activities. (1)(a)

This subsection provides that the amount of total profits from relevant activities is reduced by the amount of capital expenditure incurred on the construction or acquisition of a tangible asset which is brought into use in the accounting period, where – (1)(b)

(a) the tangible asset is brought into use in any of the years 2018 to 2023, and

(b) the asset is used in the course of carrying on relevant activities,

and

in respect of which allowances are made under **Part 9** or **Chapter 2 of Part 24**.

For the purpose of subsection (1)(b), where a tangible asset ceases to be used in carrying on relevant activities at any time during a period of 5 years commencing on the date the asset was brought into use, then subsection (1)(b) shall not apply. The taxable profits shall be recalculated as if no deduction was taken for any amount of capital expenditure (2)

incurred on that asset. For the purpose of this subsection, reasonable periods of disuse are considered acceptable.

Where, as a result of a deduction for an amount of capital expenditure under subsection (1)(b), the taxable profits for the accounting period are less than zero, such that there is an excess capital expenditure, the taxable profits in the next accounting period shall be reduced by an amount equal to that excess. The amount calculated can be carried forward into subsequent accounting periods, reducing taxable profits until such time as the amount is fully exhausted. (3)

In calculating the taxable profits under subsection (1), no account shall be taken of: (4)

- (a) relief under *section 396(1)* in respect of an accounting period ending on or before 31 December 2017, or where subsection (5)(a) applies, in respect of a deemed accounting period that ends on 31 December 2017,
- (b) relief under *section 396(2)*, *396A(3)* or *397(1)* in respect of an accounting period that commences on or after 1 January 2024, or where subsection (5)(b) applies, in respect of a deemed accounting period that commences on 1 January 2024,
- (c) any amounts set off or surrendered under *section 420* or *section 420A* in an accounting period that falls wholly or partly within the period 1 January 2018 to 31 December 2023, or
- (d) an amount of temporary solidarity contribution incurred under the Act of 2023.

Restriction of losses incurred before 31 December 2017: (5)(a)

This subsection contains provisions relating to the apportionment of losses in respect of relevant activities where the accounting period in which that loss arose commenced before 31 December 2017 and ends on or after 1 January 2018 (referred to as the ‘original accounting period’). The period from the first day of the accounting period to 31 December 2017 is referred to as the ‘deemed accounting period’. This provision deems the loss to be allocated on a time basis in line with the length of the original accounting period in common with the deemed accounting period.

Restriction of losses incurred on or after 1 January 2024: (5)(b)

This subsection contains provisions relating to the apportionment of losses in respect of relevant activities where the accounting period in which that loss arose commenced before 31 December 2023 and ends on or after 1 January 2024 (referred to as the ‘original accounting period’). The period 1 January 2024 to the date the original accounting period ends is referred to as the ‘new accounting period’. This provision deems the loss to be allocated on a time basis in line with the length of the new accounting period in common with the original accounting period.

Accounting periods falling wholly or partly within the calendar year: (6)

For the purposes of calculating the temporary solidarity contribution, the taxable profits are calculated in respect of the calendar year. This subsection contains provisions relating to the circumstances where an accounting period falls wholly or partly within a calendar year. The taxable profits of the energy company for an accounting period are adjusted on a time basis in line with the length of the period in common to the calendar year and the accounting period compared with the length of the accounting period. The amounts

apportioned under this subsection are aggregated to determine the taxable profits in respect of the calendar year.

Section 697T – Average Taxable profits for purposes of temporary solidarity contribution

Summary

This section sets out the rules for determining the average taxable profit in respect of the reference years of an energy company.

Details

Provides a definition of ‘average taxable profits in respect of the reference years’ in relation to relevant activities in the years 2018 to 2021. (1)

Where relevant activities commenced on or before 31 December 2018, the average taxable profits in respect of the reference years are calculated as an annual average for the period 1 January 2018 to 31 December 2021.

Where the relevant activities commenced on or after 1 January 2019, the average taxable profits in respect of the reference years of the energy company are the annual average taxable profits arising from 1 January in the year the relevant activities commenced to 31 December 2021.

Where the amount of average taxable profits in respect of the reference years is calculated to be a negative amount (i.e. less than zero), the amount is deemed to be zero for the purposes of calculating the temporary solidarity contribution.

For the purposes of subsection (1), where the relevant activities commenced after 1 January 2018 but before 1 January 2022, the taxable profits of the calendar year in which those relevant activities commenced are grossed up to an annual equivalent amount. (2)

This subsection contains provisions to deal with scenarios where a successor company takes over the relevant activities of a predecessor company in the years 2022 or 2023 and the relevant activities are not permanently discontinued. (3)

This paragraph provides that, for the purposes of calculating the temporary solidarity contribution due by the predecessor company, the average taxable profits in respect of the reference years of the predecessor company must be apportioned on a time basis in line with the length of time that the predecessor carried on the relevant activities in that chargeable period relative to the calendar year. (3)(a)

This paragraph provides that, for the purposes of calculating the temporary solidarity contribution due by the successor company, the average taxable profits in respect of the reference years of the predecessor company must be apportioned on a time basis in line with the length of time that the successor carried on the relevant activities in that chargeable period relative to the calendar year, and such portion is deemed to be the average taxable profits in respect of the reference years of the successor company. (3)(b)

This paragraph provides that, where the relevant activities are taken over by a successor company in the year 2022, no adjustment is required under subsection (3)(b) in respect of the year 2023. The average taxable profits in respect of the reference years of the predecessor company is deemed to be the average taxable profits in respect of the reference years of the successor company. (3)(c)

Section 697U – Deductibility of temporary solidarity contribution for corporation tax

Summary

This section provides that the amount of temporary solidarity contribution incurred by an energy company may be taken as a deduction against its trading profits for corporation tax purposes.

Details

An energy company, when calculating the amount chargeable to corporation tax under Case I of Schedule D for an accounting period, may take a deduction in respect of the amount of temporary solidarity contribution incurred. (1)

This subsection provides that no deduction shall be allowed under subsection (1) where a deduction is allowed under any provision of the Tax Acts for the same amount. (2)