

CHAPTER 30

CLIMATE CHANGE LEVY

All references are to Schedule 6 of the Finance Act 2000, unless otherwise specified.

30.1 Introduction to Climate Change Levy (CCL)

CCL is an indirect tax controlled by Customs and was introduced as part of the UK's legal obligations to **reduce the emission of greenhouse gases**.

It is a levy that is imposed on **taxable supplies** of **taxable commodities** and we will come on to those in just a second.

First, we will introduce the legislation. Much of this you will find in Schedule 6 of the Finance Act 2000 and Statutory Instruments 2001/7 and 2001/838.

[sch.6 FA 2000](#)

[SI 2001/7](#)

We have just said that it is a levy imposed on taxable supplies of taxable commodities, but what do these encompass?

[SI 2001/838](#)

30.2 Taxable supplies

We'll take taxable supplies first. They generally cover supplies of:

- **electricity** by electricity utilities,
- **gas** by gas utilities, and
- **other supplies** made in the course or furtherance of a **business**.

[para 5-7](#)

Generally a taxable supply is anything other than an exempt or excluded supply.

Another type of taxable supply is a **deemed supply**, where for example, an electricity utility does not supply the electricity to a customer, but supplies it to itself to light and heat its own administration offices. These are also taxable supplies and liable to the levy.

[Para.23\(1\)](#)

30.3 Taxable commodities

What are taxable commodities? They cover:

[para.3](#)

- **electricity,**
- **gas,**
- **petroleum gas,**
- **coal and lignite,**
- **coke,** and
- **petroleum coke**

Certain commodities are not taxable commodities and these are detailed in the schedule. These include **hydrocarbon oil, road fuel gas** and **waste**.

[para.3\(2\)](#)

The reason the first two are excluded is that they are liable to **hydrocarbon oil duties** and you will find information on them in the Hydrocarbon Oil Duties Act 1979.

30.4 Exclusions

As with all levies and taxes there are some specific exclusions from this levy. The main exclusions cover use for **domestic** and **charitable purposes**. If we take domestic use first, what constitutes use for domestic purposes? There are a number of situations listed in the legislation. We will take the most obvious one, which is use for a **dwelling**.

[para.8](#)

In addition, use for a **relevant residential purpose** is classed as use for domestic purposes and therefore an excluded supply. This has the same type of meaning as for VAT, and further down you will see that a hospice and nunnery for instance, are included as 'relevant residential' places. Other domestic use would include supplies to a **caravan** or **houseboat**.

If we now look at charitable use, it means use by the charity **otherwise than in the course of a business**. However, if at **least 60%** is used for charity purposes then the **whole supply is treated as exempt**.

This 60% rule also applies where parts of premises are used for domestic and business purposes. Where less than 60% is used for either domestic or charitable purposes, then an apportionment needs to be made to calculate the CCL that is due.

30.5 Exemptions

Certain supplies are exempt from the levy. These cover supplies to a person who intends to **export** the commodity outside the UK so that the commodity will not be burned within the UK. Also covered in the same paragraph is where the commodity is supplied to someone else who doesn't burn it themselves but supplies it on to the end consumer. After all you can only burn the commodity and therefore harm the environment once! So no CCL is due on the initial supply to the wholesaler.

[para.11 - 21](#)

As **CCL is a 'single stage' tax**, Customs interpret the legislation in such a way that all wholesale transactions (of gas and electricity) are outside the scope of the tax. They also refer to these types of supplies as 'upstream' supplies. Being outside the scope of the levy means that there is no formal certification required from the customer.

In addition, supplies to be used in **certain forms of transport** are exempt. For instance, to propel a train or other vehicle which is used to transport passengers. This is subject to satisfying certain conditions.

Another example is supplies to **combined heat and power stations**. Again, this is subject to certain conditions. We'll take a look at combined heat and power stations in a bit more detail.

[para.15](#)

30.6 Combined Heat and Power Stations (CHPS)

Firstly, we need to understand what a 'combined heat and power station' is. A combined heat and power station is a **power station that produces electricity but also heats premises from, for example, the heat arising from the electricity it produces or steam produced from such heat**. So as well as selling the electricity it produces, as it may also produce a lot of heat and by using this heat to heat local premises -e.g. nearby buildings, this is environmentally beneficial.

Para 148(1)

A combined heat and power station or CHP for short **can either be 'fully exempt or 'partially' exempt**. In order to benefit from a total or partial CCL exemption, the power station is **certified under the DECC CHP quality assurance programme and is in possession of a secretary of state climate change levy exemption certificate** or LEC for short.

The reason that **these power stations receive CCL benefits is because they are energy efficient in their operation** so that they give significant fuel savings. They play a significant role in the reduction of CO₂ emissions. **CCL benefits can be obtained for both the taxable commodities supplied to the station as well as the electricity that the station itself produces**. These are known as 'inputs' and 'outputs' respectively.

Let's take a look at 'inputs' first and when this power station can obtain complete relief from CCL on the supplies it receives. **The CHP Quality Assurance programme determines what relief the power station is entitled to**. Under the programme the **quality index or QI and power efficiency or PE of the station is calculated from the fuel used, the electricity generated and the heat supplied**. For 'inputs' a power efficiency of at least 20% is normally needed to obtain complete relief.

In English this simply means that there is **set criteria that if the power station meets then it receives total relief on the supplies of taxable commodities it receives**. Where the criteria is not met, there is not total exemption but partial exemption.

The amount of relief depends on how close to the criteria the station is i.e. the more energy efficient you are the more relief you get. A little later on in this chapter you will see how the power station obtains the relief. It does so by the completion of forms PP10 and PP11.

Reg 34
SI
2001/838

You will learn more about these in a little while's time when we take a look at other reliefs. Basically the station performs a self assessment of the relief it is entitled to and this goes on the PP certificates. As this is an estimate, the station performs a reconciliation against the actual performance. If it turns out that they have claimed too much relief, they are liable to register and pay the amount over to Customs.

So what about the 'outputs' of a station? Well, it's a similar thing to what we've already looked at. **Efficiency criteria is set and if the power station meets it then all of its outputs are exempt from CCL.** This is the Quality Index or QI criteria threshold. **If the QI criteria is not met but the Power Efficiency Or PE criteria is met then partial relief is given.**

30.7 Exemptions continued

Another exemption is **supplies that are not used as a fuel.** This is covered in paragraph 18. Statutory instrument 1715/2005 provides a schedule of non fuel uses. Remember that one of the ideas behind the levy is stop pollution and harmful CO₂ emissions. **If the fuel isn't used for burning but is consumed within the process itself then there are no harmful emissions.** Look up the schedule now. You'll see a list on non-fuel uses, such as liquefied petroleum gas to be used as a propellant in aerosols. This is number eleven in the schedule. Or as another example, electricity to be used in battery formation. This is number three in the list.

[SI 1715/2005](#)

Another exemption is contained in paragraph 18A and this covers **commodities used in prescribed recycling processes.** Have a look at the paragraph and go back to the statutory instrument that we just looked at for non-fuel uses. You will see in schedule 2 of that instrument the prescribed recycling processes. You can see that it talks about the preparation of scrap metal for recycling.

Para 19

30.8 Renewable Sources

Another exemption is for **electricity produced from renewable sources.** You can see this in paragraph 19. It doesn't cover self supplies but would cover supplies to other persons provided certain conditions are satisfied. An example of electricity from a renewable source is electricity produced by wind. **Electricity generated from coal mine methane used to qualify but the exemption was removed from the 1st of November 2008.**

Other examples include the following:

- Hydro-electric power up to 10 megawatts;
- Tidal power;
- Wave energy; and
- Energy crops

A *Generator* of electricity has to **obtain accreditation from OFGEM for renewable source electricity they generate**. OFGEM issues them with **Levy Exemption Certificates** - or LECs. When the electricity is sold to a *supplier*, the LEC is transferred with it. This is part of the evidence that a supplier uses to prove that they have supplied renewable source electricity. **The supply of electricity will be exempt from the levy where the supply is made under a contract with his customer that contains a renewable source declaration.** This declaration is given by the supplier.

This declaration means that in a certain period called an '**averaging period**' **the amount of electricity supplied will NOT exceed the amount of renewable source electricity acquired (or generated)**. An 'averaging period' can last a maximum of 2 years. If the supplier calculates that the electricity supplied **HAS exceeded the amount of renewable source electricity acquired (or generated)** then he is **liable to register and account for the levy**.

Take a few minutes now to read paragraphs 11 to 20B which cover all the exemptions available.

30.9 Avoiding a double charge

The idea of climate change levy is to tax the final use of the commodity. Therefore, if a coal mine sells the coal to a wholesaler, who in turn sells it to the final customers, the levy should not be charged twice.

[para 21](#)

Paragraph 21 provides for regulations to be made by Customs to avoid a double charge. These are contained in regulation 34 onwards of the CCL 2001 regulations. **The wholesaler will notify the coal mine on a certificate PP11, which enables the coal mine to sell without charging CCL.** The wholesaler will charge CCL as appropriate to the end customers.

Reg 34
SI
2001/838

Remember we said above that Customs interpret the legislation to mean that wholesale - or upstream -supplies of gas and electricity are outside the scope of CCL and that no formal certification is required. Technically, wholesale supplies of coal might be treated by Customs in the same way. Where that is the case the PP11 would not be needed. For the avoidance of doubt some wholesalers still use the PP11 to ensure that they receive their supplies free of CCL.

30.10 Time of supply - gas or electricity

We have seen so far that CCL is due on the taxable supplies of taxable commodities. In order to account for the levy correctly, we need to identify the time of supply.

para.25

Paragraph 26 covers electricity and gas in a gaseous state supplied by electricity or gas utilities. The supply is deemed to take place when a CCL accounting document or **CCLAD** is issued by the person making the supply.

para 26

The accounting document is issued by the supplier **within 15 weeks** of supplying the electricity or gas to a **small scale user**, or **within 6 weeks** to someone who is not a small scale user. The CCLAD must detail the following:

- the quantity of the electricity or gas supplied,
- the period during which it was supplied,
- the supplier's name and address,
- the customer's name and address, and
- a reference number used by the supplier for the customer.

If a CCLAD is not issued then the supply is treated as taking place at the end of the respective 15 week or 6 week period.

[para.28](#)

For most electricity and gas utility supplies, the issue of an electricity bill or a gas bill is in reality the climate change levy accounting document.

30.11 Special Utility Schemes

These time of supply rules may be overridden where a special utility scheme is elected for by the supplier. Let's take a look at the special utility schemes. Special utility schemes are available for suppliers of **gas** or **electricity**.

[para. 29](#)

[reg.54 SI 2001/838](#)

In order to use the special utility scheme then we must **elect** to do so. It will cover a **specified period**, and could cover **all or any** supplies. So why would we opt for a special utility scheme?

Well, Customs have discretion as to when they authorise someone to use such a scheme, and Customs deem these schemes not a substitute for the normal rules that we have seen already.

The scheme may **cover supplies that do not fit into the normal method** that we have seen. For example, if a utility takes on a new customer or they make self supplies, or there are adjustments to be made. The scheme will set a **different tax point** and is intended to ease the administrative and commercial difficulties of using the normal method.

30.12 Time of supply - other commodities

We have covered the time of supply for gas or electricity, by gas and electricity utilities, but what about the time of supply for other commodities that are liable to the levy?

The time of supply for other commodities follows the VAT rules on time of supply. Therefore, the first thing we need to do is to establish the **basic tax point**.

[para.30-32](#)

This is where the commodity is removed or **made available** to the customer.

If however, before the basic point has occurred an **invoice has been issued** or **payment received**, then this **earlier tax point** will be the point at which CCL is accounted for.

There may be a later tax point, but this applies provided it has not already been fixed by the earlier one that we have just seen. A later tax point applies if, within **14 days of the basic tax point**, an **invoice** is issued for the supply.

This 14 day period can be extended by agreement with Customs to fit into the normal invoicing period for the company.

With Customs approval the tax point can be changed to accord with the supplier's accounting system.

[para.35](#)

30.13 Payment and repayments

Now we have decided what taxable commodities are, what taxable supplies are, and when the tax point arises, who makes payment of the levy?

Look at the following illustration:

[para. 40](#)

Gas is supplied to a customer. Provided the gas supplier is based in the UK, then it is the **supplier** who is liable to pay the levy. If however, the supplier is not a utility and is not based in the UK, then the **liability falls on the customer**.

If a person at any time has overpaid climate change levy, then they may be entitled to a repayment.

[para.63](#)

Remember the new time limit for a claim is **4 years** subject to the transitional rules we saw in the IPT chapters. Customs will repay the overpaid amount.

If the over payment is as a result of an **error by Customs**, they will repay it plus **interest** from the day it was originally paid, to the day they authorised repayment.

[para.66](#)

Note that the 'unjust enrichment' defence that you will have no doubt seen already for VAT purposes also applies to repayment of CCL.

[para 64](#)

The supplier must keep records in order that Customs can inspect them. Most records should be kept for **6 years**.

[para.125](#)

30.14 Full rates of CCL

Now we'll take a look at the rates of levy that apply to the different commodities.

[para.42](#)

Electricity is charged at a rate of **£0.00470 per kilowatt hour**.

Gas supplied by a gas utility is charged at the rate of **£0.00164 per kilowatt hour**.

Petroleum gas or gaseous hydrocarbon in liquid format is charged at **£0.01050 per kilogram** and **other taxable commodities** are charged at **£0.01281 per kilogram**.

VAT will be due at the standard rate on the **total price of the supply**. This includes the levy that has been charged.

30.15 Reduced rate

There is a **reduced rate** for certain supplies that are charged at **20%** of the full rates.

The **reduced rate is set to rise to 35% from 1st April 2011**.

Reduced rate supplies apply to facilities which are covered by a **climate change agreement**. The agreement is broadly given to businesses that make commitments to reducing their emissions and/or improve energy efficiency. The types of facilities are **energy intensive installations** as defined in Statutory Instrument 662 of 2001. This broadly means that at least 90% of energy supplied will be used in the installation and the taxable commodities supplied will be used for the purpose of carrying out an "eligible process".

[para. 44](#)

[SI 2001/662](#)

Eligible processes are listed in statutory instruments and include:

- heat-treating pre-formed metal components;
- manufacturing textiles; and
- growing of horticultural crops.

In addition to satisfying the above rules certain "energy intensity criteria" must also be satisfied.

Sch 59
FA 2009

To claim the reduced rate, the **facility will complete a certificate PP11**, which shows the supplies eligible for relief and send this to the supplier, and complete a **PP10, supporting analysis**, that estimates usage for the relief. **Copies of both forms are sent to Customs**.

Note that the reduced rate can be removed where targets set under the climate change agreement have not been met.

30.16 Registration

If our supplier of a taxable commodity needs to pay the levy to Customs how do they do this?

Firstly, they need to be registered. A person is required to be registered if they intend to make **taxable supplies**. This includes persons who **import** taxable commodities and make taxable supplies to end users or who are the end user themselves. However, the importer can choose to pay the levy upon completion of the C88 instead. Where this happens they are not liable to register for CCL.

[para.53](#)

[reg.2 SI 2001/7](#)

Note that if a partnership makes taxable supplies of taxable commodities, the firm is liable to register, although each partner is joint and severally liable for compliance with Climate Change Levy requirements.

[reg 12 SI 2001/7](#)

Compliance with a requirement by one of the Partners shall be sufficient compliance by them all.

If an other unincorporated body is required to register, then the requirement is the joint and several responsibility of every person holding office as president, chairman, treasurer, secretary or similar office. Where there is no such office holder, then every person who is a member of the committee has joint and several responsibility.

In cases of insolvency, a representative who controls the assets of the registered person shall be treated as if they were the registered person.

Let's look at someone who is liable to register. If a person intends to make taxable supplies, they must **notify Customs when they intend to make them**.

Illustration 1

Let's imagine that our supplier intends to make taxable supplies on the 22nd April.

For failing to notify a liability that arises from 1st April 2010, the penalty is governed by Schedule 41 to the Finance Act 2008. Look back at Chapter 26 for a reminder of how the penalty works.

Sch 41
FA 2008

The notification must be given to Customs within 30 days of forming the intention and this is done on Form CCL1.

In our illustration, the person intends to make taxable supplies on 22nd April, therefore, they need to notify by 22nd May.

Registration will be effective from the time that the requirement to register arose so this is the 22nd April.

[para.56](#)

Customs can cancel the registration if they are satisfied that the person has ceased to make taxable supplies.

30.17 Returns

Once the person has become registered and they are charging CCL to their customers, they need to make returns.

[reg.3 2001/838](#)

The person needs to make returns on form **CCL 100** for a **3 month period** as determined by Customs. Like VAT, IPT and a lot of other indirect taxes we have covered, returns must be made within **one month of the end of the quarter** to which they relate.

Alternatively, a person can take advantage of an **annual accounting scheme** and this is available where they have been **registered for a 12 month period** and the maximum amount of CCL on taxable supplies in the next 12 months is unlikely to exceed **£2,000**.

30.18 Bad Debt Relief

Where a supplier is not paid by a customer he may claim bad debt relief.

[reg.10 SI 2001/838](#)

The conditions which must be satisfied are:

- the supplier has accounted for and paid CCL;
- the supplier and recipient are not connected;
- a CCLAD has been issued;
- the whole or part of the debt has been written off in the supplier's accounts; and
- at least 6 months has elapsed since the due date for payment.

30.19 Criminal penalties

For fraudulently evading CCL, you could be subject to criminal penalties.

[para.92](#)

These carry the same type of sentences as we've seen already for some of the other indirect taxes, like IPT, for example.

Example 1

What are the potential penalties?

30.20 Appeals

Finally, what if we disagree with Customs? For example they have raised an assessment on us for underpaid CCL. The procedure for appealing is the same as for other indirect taxes such as IPT. Take a look at paragraph 121 of schedule 6. Can you see the types of decisions listed? Can you see the time limits in sub-paragraphs 3 and 8?

30.21 Case Law

To date we have one case on Climate Change Levy. In the **Young Tribunal case** in October 2008 the tribunal case quashed the penalty levied on the appellant.

Young (2008)
UK VAT V20826

The appellant had been claiming the 20% reduced rate by completing the required PP11 and PP10 forms. However, it transpired that they had not entered into the required Climate Change Levy Agreement entitling them to relief.

They were still required to effectively pay back the levy that they should have paid but the **penalty was quashed**. Customs were not "as diligent" in undertaking a timely verification of the claim. The incorrect claim had not been spotted for 5 years.

Answer 1

The correct answers were 6 months prison and a £5,000 fine when heard in the Magistrates Court, and 7 years prison and an unlimited fine when heard in the Crown Court.