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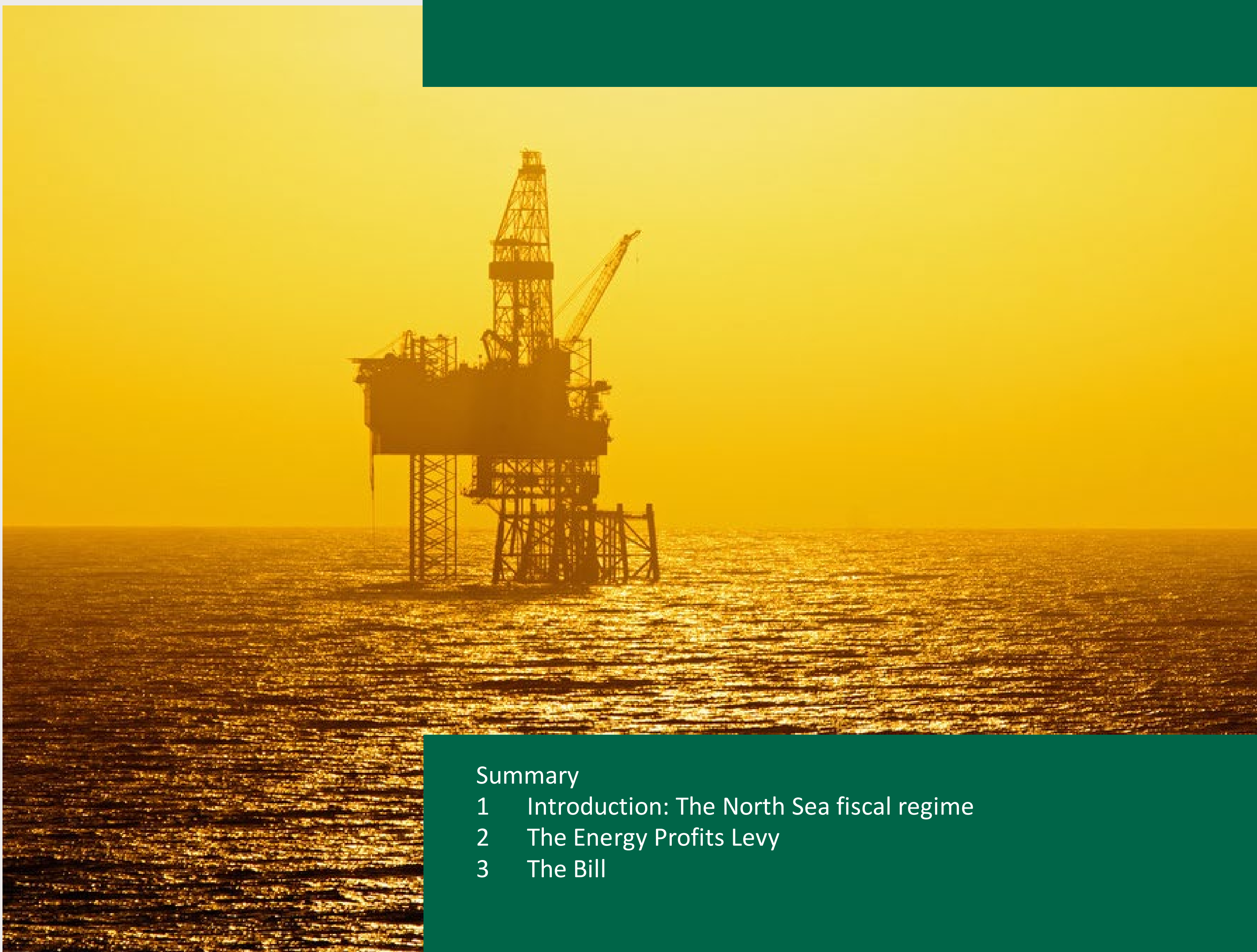
By Antony Seely

Energy (Oil and Gas) Profits Levy Bill 2022-23



Summary

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Summary

What taxes are paid on North Sea oil and gas?

Companies operating in the North Sea pay three separate profit-related taxes on oil and gas production: ring fence corporation tax, supplementary charge, and petroleum revenue tax (PRT). Total receipts from these taxes were £3.1 billion in 2021/22.

What did the Government announce in May 2022 about a windfall tax?

Following speculation that the Government would introduce a one-off 'windfall tax' in response to increased world oil and gas prices and the boost in profits from North Sea oil and gas production, on 26 May 2022 the then Chancellor Rishi Sunak announced measures to support households. These are to be funded in part by a new tax on the profits from North Sea oil and gas production: the Energy Profits Levy.

How will the Levy work?

Details of the Energy Profits Levy were set out in a factsheet published by HM Treasury.

Currently, the oil and gas sector pay a 40% headline rate tax on profits from oil and gas production in the UK and the UK Continental Shelf (UKCS). This consists of 30% ring fence corporation tax and 10% supplementary charge. At present the rate of petroleum revenue tax (PRT) is zero.

The Energy Profits Levy is an additional 25% tax on UK oil and gas profits on top of the existing 40% headline rate of tax, taking the combined rate of tax on profits to 65%.

The Levy takes effect from 26 May 2022. HM Treasury estimates that it will raise around £5 billion in its first 12 months

Companies will not be able to offset previous losses or decommissioning expenditure against profits subject to the levy. The Government's purpose in restricting relief this way is to "to appropriately tax the extraordinary profits" that the sector is making at present. An Investment Allowance will apply, set at 80%, available to companies at the point of investment.

The Treasury also published a technical note that provided a few more details on how the Energy Profits Levy would work in practice. This confirms that the Energy Profits Levy is "temporary" and "will be phased out when oil and gas prices return to historically more normal levels." The legislation to establish the new charge will include a clause to remove the tax after 31 December 2025.

How will the Levy be introduced?

The Levy is to be legislated for via a standalone Bill. On 21 June HM Revenue & Customs published a draft of this legislation, and a draft version of its explanatory notes, seeking technical feedback before the Energy (Oil and Gas) Profits Levy Bill is introduced. The consultation closed on 28 June.

The Energy (Oil and Gas) Profits Levy Bill [Bill 135 of 2022-23] was introduced on 5 July 2022. The Bill, with its explanatory notes, is published on the Bill's page on Parliament.uk, which also provides details of its parliamentary progress.

HM Revenue & Customs has published a tax information and impact note on the Bill.

As noted, the Levy has effect for profits arising on or after 26 May 2022.

Following an announcement by the Leader of the House on 30 June that the Bill would be 'fast tracked', the Bill completed all of its stages in the House of Commons on Monday 11 July. The Energy (Oil and Gas) Profits Levy Act 2022 received Royal Assent on 14 July 2022.

Further reading

Commons Library briefing Taxation of North Sea oil and gas explains how profits from North Sea oil and gas production are taxed, and how the fiscal regime that applies to North Sea oil and gas production has been reformed in recent years, including the Government's introduction of the Energy Profits Levy.

1 Introduction: The North Sea fiscal regime

Companies operating in the North Sea pay three separate profit-based taxes on oil and gas production: ring fence corporation tax, supplementary charge, and petroleum revenue tax (PRT).

Total receipts from these taxes were £3.1 billion in 2021/22: composed of receipts from 'offshore' corporation tax (the sum of ring fence corporation tax and supplementary charge) of £3.7 billion and receipts from PRT of -£555m. By comparison receipts from 'onshore' corporation tax were £62.6 billion in the same year.[1]

HM Revenue & Customs (HMRC) provide an overview of the North Sea fiscal regime, which is adapted in the text below.

1.1 What is Ring Fence Corporation Tax?

This is calculated in the same way as the standard corporation tax applicable to all companies but with the addition of a 'ring fence' and the availability of 100% first year allowances for virtually all capital spending. The ring fence prevents taxable profits from oil and gas extraction in the UK and UK Continental Shelf being reduced by losses from other activities or excessive interest payments.

The current rate of tax on ring fence profits is 30% and is set separately from the rate of mainstream corporation tax.

Ring Fence Corporation Tax rates

Rate period	Rate for Ring Fence Corporation Tax
1 Jan 2002 to present date	30%

1.2 What is Supplementary Charge?

This is an additional charge on a company's ring fence profits (but with no deduction for finance costs). Further information regarding the history of the rates of Supplementary Charge (SC) can be found in the table below.

1 Office for National Statistics, Public Section Current Receipts [accessed 7 July 2022]. See also, PQ738, and, PQ739, 18 May 2022.

Supplementary Charge tax rates

Rate period	Rate for supplementary charge
17 April 2002 to 31 December 2005	10%
1 Jan 2006 to 23 Mar 2011	20%
24 Mar 2011 to 31 Dec 2014	32%
1 Jan 2015 to 31 Dec 2015	20%
1 Jan 2016 to present date	10%

1.3 What is Petroleum Revenue Tax?

This is a field-based tax (as opposed to company-based tax, as in the case of Ring Fence Corporation Tax (RFCT)) charged on profits arising from oil and gas production from individual oil and gas fields which were given development consent before 16 March 1993. With effect from 1 January 2016, the Petroleum Revenue Tax (PRT) rate was reduced to 0%. It has not been abolished, as companies can still generate repayment of historic taxes. PRT is a deductible expense in computing profits chargeable to RFCT and SC. Similarly, PRT repayments are treated as income in RFCT or SC tax calculations.

Petroleum Revenue Tax rates

Rate period	Rate for Petroleum Revenue Tax
1 Jan 1975 to 31 Dec 1992	75%
1 Jan 1993 to 31 Dec 2015	50%
1 Jan 2016 to present date	0%

Decommissioning of UK oil and gas infrastructure

The Oil Taxation Act 1975 allows participators in an oil and gas field liable to Petroleum Revenue Tax to carry-back losses almost indefinitely against profits it has previously made from the field, or which previous participators in the field had made. This may result in the repayment of tax.

Offshore Corporation Tax is comprised of Ring Fence Corporation Tax and Supplementary Charge. The Corporation Tax Act 2010 allows for a company's decommissioning loss to be carried back against its own historical profits dating back to April 2002. Again, this may result in a repayment of tax.[2]

2 HMRC, Background and guidance to interpreting oil and gas statistics, 21 July 2021

Further information on the North Sea fiscal regime is in an overview of the tax system published by the North Sea Transition Authority, and in HMRC's Oil and Gas Taxation Manual.

1.4 UK oil and gas revenues

Recent trends and forecast

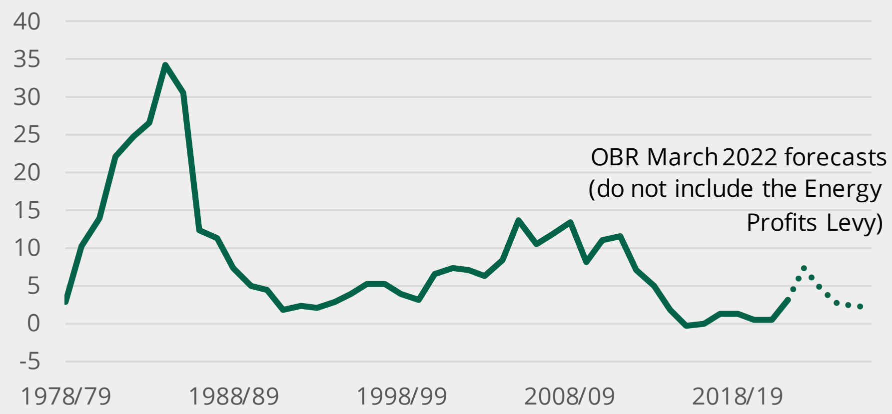
UK oil and gas revenues were at historic lows during much of the mid- to late-2010s, largely due to falling production and higher tax-deductible spending. Recently, however, receipts have increased significantly, following a dramatic rise in oil and gas prices since late 2021.

The Office for Budget Responsibility (OBR) forecast that oil and gas receipts will increase to £7.8 billion in 2022/23.[3] Receipts were around £0.6 billion in 2019/20. The OBR forecast that receipts will fall back after 2022/23, reflecting predicted falls in both oil and gas prices in 2023 and 2024 and falling production.[4] The Library briefing Oil Prices discusses recent trends in oil prices.

The OBR's forecasts were produced in March 2022 before the Government introduced the Energy Profits Levy (see section 5). The Treasury estimate that the Levy will raise around £5 billion during its first year.[5] The OBR's next forecast – which will account for the Levy – is scheduled for autumn 2022.

UK Oil and Gas revenues are volatile

Real terms, £ billion. Outturns 1978/79-2021/22; Forecasts 2022/23-2026/27



3 OBR, Economic and fiscal outlook, CP 648, March 2022 Table 3.4

4 OBR, Oil and gas revenues [accessed on 13 June 2022]

5 HM Treasury, Energy Profits Levy Factsheet, 26 May 2022

Notes: Prior to 1999/00 revenues are presented on a cash basis (ie recorded in the period they are received by HMRC). From 1999/00 revenues are presents on an accruals basis (ie recorded when a taxable event occurred), which is consistent with the National Accounts.

Sources: HMRC. Statistics of government revenues from UK oil and gas production, July 2021; OBR. Public finances databank – April 2022, ONS. Public sector current receipts: Appendix D; HM Treasury. GDP deflators at market prices, and money GDP March 2022 (Quarterly National Accounts)

Revenues since the late 1970s

Oil and gas revenues were highest during the late 1970s and much of the 1980s.

Trends in oil and gas revenues can be explained by factors affecting taxable profits and the effective tax rate paid on those profits. The OBR explain that:[6]

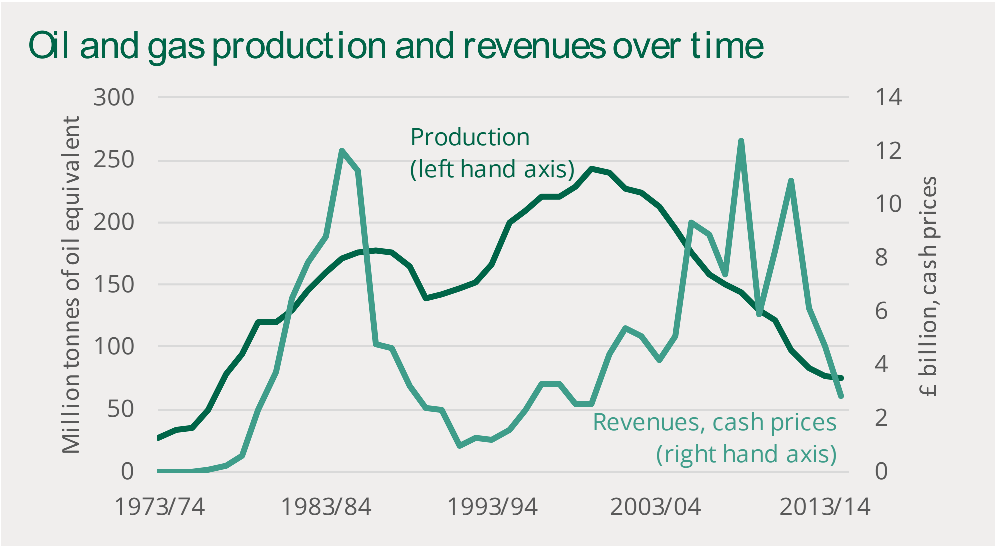
- between 1979/80 and 1984/85 receipts increased driven by a 40% rise in production, strong growth in sterling oil prices, higher profit margins and an increasing effective tax rate;
- between 1984/85 and 1991/92 receipts fell significantly. Sterling oil prices fell sharply over the period but the largest driver was a reduction in the effective tax rate paid on North Sea profits. This reflected a cut in the main rate of offshore corporation tax from 45 to 33% and strong growth in operating and capital spending;
- between 1991/92 and 2008/09 receipts increased strongly. Prices and the effective tax rate explained the rise, with oil prices hitting an all-time high in cash terms in mid-2008 and the introduction of the supplementary charge of corporation tax at 10 per cent in April 2002 and the increase to 20 per cent from January 2006.

6 OBR, Oil and gas revenues [accessed on 13 June 2022]

Breakdown of changes in oil and gas revenues
£ billion

	1979/80 to 1984/85	1984/85 to 1991/92	1991/92 to 2008/09	2008/09 to 2014/15
Annual revenue at start of period	2.3	12.0	1.0	12.4
Annual revenue at end of period	12.0	1.0	12.4	2.8
Change	9.7	-11.1	11.4	-9.6
of which:				
Production[1]	1.8	-0.9	-0.1	-6.2
Oil and gas prices[1]	6.4	-2.8	5.3	3.4
Gross profit margin[1]	0.2	-0.8	-0.1	-1.1
Effective tax rate	1.3	-6.6	6.2	-5.6

Notes: 1 Production, price and profit data has been taken on a calendar year basis
Source: OBR. Economic and fiscal outlook - December 2014, Box: 4.4



Source: OBR. Economic and fiscal outlook - December 2014, Box: 4.4

Receipts fell between 2008/09 and 2019/20 largely driven by falling production and higher tax-deductible spending. The rates of petroleum revenue tax and the supplementary charge were cut substantially.[7]

[7] OBR, Oil and gas revenues [accessed on 14 June 2022]

2 The Energy Profits Levy

2.1 The Chancellor's announcement of a new windfall tax

Since early 2021 the cost of living has been increasing across the UK. In April 2022 consumer prices, as measured by the Consumer Prices Index (CPI), were 9% higher than a year before, driven in part by significant rises in energy prices.[8]

In this context the then Chancellor Rishi Sunak gave a statement on 26 May 2022 setting out a number of measures to support households, to be funded in part by a new one-off levy charged at a rate of 25% on profits from North Sea oil and gas production.[9] In his statement Mr Sunak set out the case for the new levy, noting that the sector was making extraordinary profits "not as the result of recent changes to risk taking or innovation or efficiency [but] as the result of surging global commodity prices", and argued that it was "possible to both tax extraordinary profits fairly and incentivise investment.":

> And so, like previous governments, including Conservative ones – we will introduce a temporary, targeted, Energy Profits Levy. But, we have built into the new Levy a new Investment Allowance, similar to the super-deduction… that means companies will have a new and significant incentive to reinvest their profits.
>
> The new Levy will be charged on profits of oil and gas companies at a rate of 25%. It will be temporary, and when oil and gas prices return to historically more normal levels, the Levy will be phased out – and with a sunset clause written into the legislation. And, crucially, with our new investment allowance, we are nearly doubling the overall investment relief for oil and gas companies. This means that, for every £1 a company invests, they'll get back 90 per cent in tax relief […] [The new Levy] raises around £5bn revenue over the next year so that we can help families with the cost of living.[10]

The 'super deduction' the Chancellor mentioned in his speech is a tax allowance introduced as part of a package of reforms to the corporate tax

8 For more details see, Commons Library briefing CBP9428, Rising cost of living in the UK, and, Commons Library briefing CBP9491, Domestic energy prices.

9 HM Treasury (HMT) press notice, Millions of most vulnerable households will receive £1,200 of help with cost of living, 26 May 2022

10 HC Deb 26 May 2022 cc449-452. see also, HMT, Statement by the Chancellor of the Exchequer on Cost of Living Support, 26 May 2022.

system in Budget 2021.[11] Companies may claim 130% capital allowances on qualifying plant and machinery investments that they make between 1 April 2021 and 31 March 2023.[12] Another part of the Chancellor's reforms is an increase in the main rate of corporation tax from 19% to 25% from April 2023. Many commentators have noted that without this extra investment allowance, the rise in the main rate of tax represented a strong financial incentive for companies to defer investments, to wait for the higher tax relief against the new 25% rate.[13]

In his statement the Chancellor also raised the prospect of also introducing a charge on the profits being made by some companies in the electricity generation sector:

> We understand that certain parts of the electricity generation sector are also making extraordinary profits. The reason for this is the way our market works. The price electricity generators are paid is linked not to the costs they incur in providing that electricity…but rather to the price of natural gas – which is extraordinarily high right now.
>
> Other countries like France, Italy, Spain and Greece have already taken measures to correct this. As set out in the Energy Security Strategy, we are consulting with the power generation sector and investors… to drive forward energy market reforms and ensure that the price paid for electricity is more reflective of the costs of production.
>
> Those reforms will take time to implement. So, in the meantime, we are urgently evaluating the scale of these extraordinary profits…and the appropriate steps to take.[14]

The Energy Profits Levy is to take effect from 26 May 2022. At this time the Treasury confirmed it would be legislated for via a standalone Bill.[15]

Details of the Energy Profits Levy were set out in a factsheet published by HM Treasury. Companies would not be able to offset previous losses or decommissioning expenditure against profits subject to the levy. The Government's purpose in restricting relief this way was to "to appropriately tax the extraordinary profits." An Investment Allowance would apply, set at 80%, available to companies at the point of investment.

The factsheet gave a worked example of how this would work for an assumed £100 of capital spending, reproduced in the text box below:

11 For more details see, Commons Library briefing CBP9178, Corporate tax reform.

12 HMT, Budget 2021: Super-deduction, 3 March 2021

13 See, for example, comments by Torsten Bell (Resolution Foundation) and Paul Johnson (Institute for Fiscal Studies) when giving evidence on the 2021 Budget to the Treasury Committee (Oral evidence: Budget 2021, HC 1196, 10 March 2021 Qs158-9).

14 HMT, Statement by the Chancellor of the Exchequer on Cost of Living Support, 26 May 2022

15 HM Treasury, Energy Profits Levy Factsheet, 26 May 2022

	Tax rate	Relief	Relief rate	Amount of relief (assuming £100 investment)
Ring Fence Corporation Tax	30%	First year capital allowance	100%	30
Supplementary Charge	10%	First year capital allowance	100%	10
Supplementary Charge	10%	Investment allowance[1]	62.5%	6.25
Total tax relief under current scheme				46.25
Energy Profits Levy	25%	First year capital allowance	100%	25
Energy Profits Levy	25%	Investment allowance[2]	80%	20
Additional tax relief under new scheme				45
Total tax relief under new scheme				91.25

Notes
[1] This can be claimed when the investment starts generating income.
[2] Unlike the Supplementary Charge investment allowance, this can always be claimed in the first year (ie, in the year of investment expenditure).

In this context it is worth underlining that oil and gas companies are not entitled to claim the super-deduction for their operations within the ring fence corporate tax regime.[16]

HM Treasury also published a technical note that provided a few more details on how the Energy Profits Levy would work in practice. This confirmed that the Energy Profits Levy would be "temporary" and be "phased out when oil and gas prices return to historically more normal levels." It underlined that the legislation to establish the new charge would "include a sunset clause, which will remove the tax after 31 December 2025."[17]

On 21 June HM Revenue & Customs (HMRC) published a draft of this legislation, and a draft version of its explanatory notes, seeking technical feedback before the Bill was introduced.[18] The consultation closed on 28 June. During this period the Chancellor met with oil and gas executives to her their concerns about the potential impact of the Levy. It was reported that executives asked for details on the circumstances in which the Levy

16 "Assets used wholly within a ring fence trade will be excluded from the super-deduction, as they already have a 100% allowance, with assets used partly in a ring fence trade temporarily qualifying for a 100% first-year allowance." (HMRC, New temporary tax reliefs on qualifying capital asset investments from 1 April 2021), 3 March 2021). See also, PQ9927, 10 June 2022

17 HM Treasury, Energy Profits Levy: Technical Note, 26 May 2022. The note advises those with questions about the Levy to contact nicola.garrod@hmrc.gov.uk or matthew.weightman@hmrc.gov.uk.

18 HMRC, Draft legislation: Energy (Oil and Gas) Profits Levy Bill, 21 June 2022

would be withdrawn, and made the case for the investment allowance to apply to a wider range of investments.[19]

The Energy (Oil and Gas) Profits Levy Bill 2022-23 was published on 5 July. The explanatory notes to the Bill state that "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."[20] This is discussed further in section 3 of this briefing, which looks more closely at the Bill.

As Mr Sunak set out in his statement to Parliament, the receipts from the Energy Profits Levy are to be used to meet part of the cost of a range of the measures the Chancellor announced to support households.[21] The total cost of these new support payments is estimated to be £15.3 billion, while the Energy Profits Levy is expected to raise £5 billion in its first 12 months. The Treasury has confirmed that the final costings of these measures will be subject to scrutiny by the Office for Budget Responsibility and set out at the Budget.[22]

This issue is discussed further in the text box below.

The procedure for making official policy costings

The Treasury estimates that the Energy Profits Levy will raise "around £5 billion over the next year."[23] However, this is not a full costing of the policy, and it has not been certified by the independent Office for Budget Responsibility (OBR).

Normally, policies like the levy are announced at a fiscal event, such as the autumn budget. The levy would be one of several policies costed and scrutinised as part of the OBR's forecast process leading up to the fiscal event.[24]

19 "Oil and gas bosses warn Rishi Sunak of windfall tax hit to investment", Times, 24 June 2022; Sunak faces challenging demands from oil and gas industry", Guardian, 23 June 2022.

20 Bill-135 EN, 5 July 2020 para 12. See also, Bill-135 EN, 5 July 2020 para 24. HMRC's consultation page simply notes that "There were minor changes to the legislation as a result of the technical consultation, and a change in relation to the treatment of repayments of petroleum revenue tax." (Draft legislation: Energy (Oil and Gas) Profits Levy Bill, updated 7 July 2022).

21 A detailed description is provided in HMT, Cost of living support factsheet, 26 May 2022. This is accompanied by, HMT, Illustrative analysis of the impact of the May 2022 Cost of Living Support package and February 2022 Energy Support package on households, 26 May 2022.

23 HM Treasury. Energy Profits Levy Factsheet - 26 May 2022, 15 June 2022

24 OBR. Forecast process and papers [accessed on 22 June 2022]

New policies are costed and scrutinised in an iterative way, as part of the forecast process. The process begins with the OBR discussing the scrutiny it thinks the policy requires with the Treasury and responsible department. The department then sends a note to the OBR, setting out the details of the policy and estimating the amount of money it will raise or cost in each year of the forecast. The analysis is discussed and changed until the OBR is happy to endorse the estimates as 'reasonable and central'.

The OBR say that for tax policies, discussions "focus on identifying the relevant tax base and judging the potential behavioural impact of the measure from the experience of similar measures or from estimates of relevant elasticities".[25]

When the OBR publishes its forecast it includes analysis of new policy measures, including an explanation of the impact that the policy measures have had on the forecasts. The Treasury also publish a policy costings document setting out the assumptions and methodologies underlying the costed policies.

There is more detail in the OBR's Briefing Paper Policy costings and our forecast.

It is anticipated that the Energy Profits Levy will go through this process at Autumn Budget 2022, after the Bill has been debated by Parliament.

The Health and Care Social Levy provides another example of this timing for the publication of official forecasts. The Levy was announced on 7 September 2021, and at the time the Treasury published an estimate of what the new tax would raise.[26] The Government introduced legislation to introduce the Levy on 8 September, and the Health and Social Care Levy Act 2022 received Royal Assent on 20 October 2021.[27] A full costing was published and certified in the OBR's Economic and Fiscal Outlook, published alongside the Autumn Budget and Spending Review 2021 on 27 October 2021.[28]

On 7 July 2022 the OBR published a report on the long-the near-term threats to the fiscal outlook and the long-term health of the public finances.[29] In its report the OBR noted that in its next Economic and Fiscal Outlook (EFO) it would scrutinise the Treasury's estimate of the yield from the Energy Profits Levy in its first year. Further to that, it presented estimates of the yield from the Levy over its full lifetime, completed following consultation with the Treasury. The OBR anticipates the Levy to raise £4.5 billion in 2022/23, "to

24 OBR. Forecast process and papers [accessed on 22 June 2022]

25 OBR. Forecast process and papers [accessed on 22 June 2022]

26 Prime Minister's Office, Build Back Better: Our Plan for Health and Social Care, CP 506, 7 September 2021

27 Commons Library briefing CBP9310, Health and Social Care Levy Bill 2021-22, provides further details.

28 OBR, Economic and fiscal outlook – October 2021, CP 545, October 2021 pp207-9, para A10-A19

29 OBR press notice, Overview of the July 2022 Fiscal risks and sustainability, 7 July 2022

adjust for the scheme starting partway through the current fiscal year." It estimates it will raise £4.0 billion in 2023/24, falling to £2.5 billion in 2024/25 "reflecting declining oil and gas prices in our March 2022 EFO." Finally the Levy is forecast to raise £2.1 billion in 2025/26, to reflect its removal at the end of December 2025.[30]

Further details of the Government's support measures are in a Library briefing on the primary legislation bringing in two elements of this package.[31] Although not directly related to the Levy, the Department for Work and Pensions has published guidance on how households can get extra financial support if they are getting certain benefits or tax credits.[32]

2.2 Recent debate on introducing a windfall tax

The rise of world oil and gas prices in the first months of 2022 saw major oil and gas producers announcing substantial increases in profits, and calls for the Government to introduce some form of windfall tax.[33] As Gemma Tetlow at the Institute for Government has explained in a short note on the debate "the term 'windfall tax' is used to describe a one-off tax levied on companies deemed to have made unreasonably high profits, normally due to unusually favourable market factors. They are used by governments as a way of adding to their tax take in a given year by retrospectively increasing taxes on companies or sectors experiencing the unexpected 'windfall'."[34]

Generally the case against this type of tax has been that, even if a windfall tax effectively captures profits that companies have made through no effort of their own, its retrospective nature is unfair, and creates uncertainty in the tax system, discouraging investment and damaging economic activity. Proponents have argued that a windfall tax has less impact on economic activity than other taxes because it is retrospective. Companies' decisions about future investments will not be affected by a tax on past activities, provided, of course, that they believe the tax is truly a 'one off'.[35]

There have been two occasions in recent times where a windfall tax has been introduced in the UK, although the scope, structure and operation of these two taxes were quite different: first, a levy introduced by the Conservative Government in 1981 on bank deposits, in the context of the sector's record profits from high interest rates; and second, a tax introduced by the Labour Government on utility companies that had been privatised by

30 OBR, Fiscal risks and sustainability, CP 702, July 2022 pp90-91 (Box 3.3)

31 Commons Library briefing CBP9565, The Social Security (Additional Payments) Bill 2022-23.

32 Department for Work and Pensions, Cost of Living Payment, updated 20 June 2022

33 Barry Naisbitt et al, Should the UK impose a windfall tax on energy companies' profits?, Economics Observatory, 20 May 2022. For a survey of initiatives in other countries see, "Windfall taxes and an 'anti-Putin shield': how Europe is tackling energy crisis", Guardian, 3 May 2022

34 Gemma Tetlow, Windfall taxes, The Institute for Government, 17 May 2022

35 as above (see, "What are the arguments for and against windfall taxes?")

its Conservative predecessor. In the latter case the Labour Government's case for the tax was that the privatised utilities had enjoyed 'excess' profits as a consequence of having been undervalued and laxly regulated when sold to the private sector.[36]

In March 2021 the Treasury Committee published its report on the prospects for tax reform in the aftermath of the coronavirus crisis, and as part of this, considered the case for and against some form of windfall tax. The Committee's conclusion was as follows:

> Some firms and sectors have seen a significant increase in turnover as a result of the pandemic, and some witnesses made arguments in favour of a windfall tax on the profits which have resulted.
>
> There are downsides to a windfall tax, including its potentially retrospective nature. There would also be complexities, including the difficulties of identifying sectors to which any such tax should apply, ensuring that such a tax is fairly targeted at firms which have benefited excessively within those sectors, and identifying the element of a firm's profits which could be reasonably attributed to excessive profits generated by the pandemic.
>
> For these reasons, introducing such a tax would be problematic, but that is not to say that it would be impossible to introduce a windfall tax in certain circumstances in the future, if that was the political choice made. The Treasury would clearly need to conduct a thorough assessment of its feasibility and of the revenue which it might raise.[37]

For some commentators the general objections to a windfall levy have less force in the case of the North Sea oil and gas sector because one of the main drivers for its increased profits has been the impact of Russian military action in Ukraine on world energy prices. In turn this has meant a 'windfall loss' for consumers, particularly those on lower incomes who spend a higher proportion of their income on energy.

In January 2022 the Shadow Chancellor Rachel Reeves made the case that an extra levy on North Sea oil and gas profits could be used to provide support for households energy bills.[38] Ms Reeves proposed increasing the corporation tax rate on North Sea 'ring fence' profits by 10 percentage points, and initially the Opposition suggested this could raise around £1.2 billion.[39] With further price rises the Labour Party revised this estimate to £2 billion.[40] In answer to a PQ in March 2022 about the possible yield from increasing this rate of tax Treasury Minister Lucy Frazer said "the

36 A 2004 Library briefing discusses both taxes in more detail: Commons Library briefing CBP338, The Windfall Tax, 28 April 2004.

37 Treasury Committee, Tax After Coronavirus, HC 664, 1 March 2021 p3

38 Labour Party press notice, Labour slams decade of failure on British energy; with plan to save families £200 to ease immediate crisis costs, 8 January 2022; "Labour proposes windfall tax on North Sea oil and gas to reduce bills", Guardian, 8 January 2022

39 "UK urged to impose windfall tax on offshore oil and gas operators", Financial Times, 9 January 2022; "How would a UK windfall tax on oil and gas profits work?", Guardian, 28 April 2022

40 "Windfall tax on North Sea oil and gas could raise £2bn, says Labour", Guardian, 10 May 2022

Government does not typically provide assessments of changes to ring fence Corporation Tax and does not propose doing so in this case."[41]

In March 2022 the Institute for Fiscal Studies (IFS) and the Chartered Institute of Taxation (CIOT) hosted a debate on the case for a windfall tax.[42] During the debate Michael Jacobs (Professor of Political Economy, University of Sheffield) argued for redistributing receipts from a windfall levy to lower income households, and suggested that companies were unlikely to change investment plans given they had not expected the profits they were now receiving. By contrast Heather Self (Partner at accountancy firm Blick Rothenberg) argued that this type of charge broke a 'fundamental principle': that companies should be able to know the tax consequences of any investment.[43] Chris Sanger (Global Government and Tax Risk Leader, EY) noted that the 1997 windfall tax on privatised utilities had been widely expected, as it had been official Labour Party policy for some years before the 1997 General Election. This advance notice had prevented the 'contamination of the tax system' by uncertainty, which was something that a new windfall levy would risk.[44]

Finally Stuart Adam, senior economist at the IFS, suggested that one option would be to increase the existing rates of tax on North Sea oil profits. Although it was fair to be concerned that higher tax rates might hit future UK investment, North Sea oil and gas was an unusual case. The location of these operations was fixed – so the international competitiveness would not be an issue – and the current fiscal regime was close to a cash-flow tax, so that imposing higher rates should not discourage investment.[45]

There was a similar division of opinion reported in the Financial Times at this time, where an editorial opposed a levy on the grounds that stability in tax policy was "key to promoting both investment and spending – both of which drive economic growth."[46] By contrast the paper's economics editor, Chris Giles, wrote in favour of a tax on the grounds that it was reasonable given that Ministers who crafted the current tax regime could not have foreseen the extraordinary circumstances that the industry now found itself in. Further to that, it was a moral issue that oil and gas companies, their executives and investors should not, as a collective, benefit from the impact of the military action being waged against the people of Ukraine.[47]

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41 PQ140537, 21 March 2022

42 CIOT press notice, Oil tax to leave a slippery slope?, 3 March 2022

43 Writing in the Tax Journal just before the Chancellor's statement Ms Self said, "my own view is that a windfall tax … will be too little, too late, for those most in need." ("Self's assessment: tax and the cost of living crisis", 24 May 2022).

44 CIOT press notice, Oil tax to leave a slippery slope?, 3 March 2022

45 Stuart Adam, Is it time for a windfall tax?, Institute for Fiscal Studies, 1 March 2022

46 "Editorial: Windfall taxes on energy companies are a bad idea", Financial Times, 28 February 2022. Similarly an editorial in the Times argued "for a government to confiscate profits on the grounds that they are too high is arbitrary and dangerous" ("Leader: Watt nonsense", 3 May 2022).

47 "Comment: The UK needs a windfall tax on North Sea oil and gas companies", Financial Times, 17 March 2022

Writing on Twitter tax law specialist Dan Neidle at Tax Policy Associates argued that investment in the North Sea would not be affected by a windfall tax if that tax was well designed: that it taxed the past, not the future, and was accompanied by a "credible promise that it's an exceptional one-off."[48]

Vanessa Houlder, writing the Financial Times Lex Newsletter some weeks later, raised a different objection: that some renewable energy companies were also enjoying record profits, but a windfall tax that sought to capture these gains would impede the UK's transition to renewables.[49]

Apart from arguments for and against a new windfall tax, some commentators suggested that it would be a mistake to see a windfall levy as a sufficient response to the impact that higher prices were having on consumers.

In an evidence session with the Treasury Committee in January, well before the most recent price increases, Torsten Bell, director of the Resolution Foundation, noted that price rises were delivering a redistribution from UK households to a small number of companies producing energy "who are either foreign producers of energy or some domestic producers." One could use a "small tax to redistribute some of that windfall", but not all of it, as many producers "are abroad and you haven't got a Saudi Arabia tax ready to roll, and they are not going to accept one." Given that, "the level of revenue you are going to be able to extract via this mechanism is going to be relatively small […] You are still going to need to borrow money to provide the scale of support to low-income households that you need, but you should get on with some of it."[50]

A similar point was made more by the Guardian's financial editor, Nils Pratley, who, commenting on the Labour Party's campaign for a levy, wrote:

> On the party's original January formulation of its tax, the projected total from across the entire North Sea industry was just £1.2bn. Even if one assumes that a higher oil price (and thus corporate profits) would add a bit, we're not talking about game-changing sums. For context, it would cost £10bn to give 10m lower-income households a £1,000 saving on their bills for a single year.[51]

48 Dan Neidle (@DanNeidle), "Just on @LBC with @ShelaghFogarty saying that a windfall tax shouldn't affect investment if it's well designed: needs to tax the past, not the future, and needs to be accompanied by a credible promise that it's an exceptional one-off.", Twitter, 12 May 2022 [Accessed on 30 May 2022]. Available at: https://twitter.com/DanNeidle/status/1524725953590669314

49 "The Lex Newsletter: windfall energy profits are widespread but hard to tax", Financial Times, 4 May 2022. See also, "Sunak orders plan for windfall tax on electricity generators", Financial Times, 23 May 2022; "Comment: Will he or won't he? Rishi Sunak needs to stick or twist on windfall tax", Guardian, 24 May 2022

50 Treasury Committee, Oral evidence: The cost of living, HC 1094, 31 January 2022 Q65

51 "Windfall tax wouldn't stop BP's £18bn parade of projects", Guardian, 3 May 2022. See also, "Looney's tune on windfall taxes is unpersuasive", Guardian, 12 May 2022; "Comment: A windfall tax is no quick fix for a deepening crisis in the cost of living", Times, 25 May 2022.

Although there has been a lot of speculation about the Government planning a one-off tax on North Sea oil and gas production,[52] prior to the Chancellor's statement on 26 May, Ministers provided very little detail about the options the Treasury were reviewing.

In answer to a PQ about the Government's plans, Treasury Minister Helen Whately simply noted "companies engaged in the production of oil and gas on the UK Continental Shelf subject to headline tax rates on their profits that are currently more than double those paid by other businesses", going on to add, "all taxes are kept under review and any changes are considered and announced by the Chancellor."[53] The issue was raised in a debate in the House of Commons on 17 May on 'Tackling Short-term and Long-term Cost of Living Increases'. On this occasion the Chancellor said, "unlike the Labour party, we Conservatives do not believe that windfall taxes are the simple and easy answer to every problem." He continued:

> However, we are pragmatic, and we want to see our energy companies, which have made extraordinary profits at a time of acutely elevated prices, investing those profits back into British jobs, growth and energy security. I have made it clear and said repeatedly that, if that does not happen soon and at significant scale, no option is off the table."[54]

At Prime Ministers Questions the following day the Prime Minister, when asked for his view on introducing a windfall tax, said the Government did not want to do it although it would "look at all sensible measures, but we will be driven by considerations of growth, investment and employment."[55]

2.3 Initial reactions to the Energy Profits Levy

Following the Chancellor's statement to the House, the Shadow Chancellor Rachel Reeves said "Labour welcomes the fact that the Government are finally acting on our calls to introduce a windfall tax", while noting the Opposition "first called for a windfall tax on oil and gas producers five months ago."[56] The Chair of the Treasury Committee Mel Stride said "I broadly commend the announcement", while for the SNP Kirsty Blackman said "I am glad that the Chancellor has put in place the windfall tax" adding,

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52 For example, "Sunak pressed to impose energy windfall tax", Financial Times, 17 May 2022; "Boris Johnson says no option off the table as Rishi Sunak looks to windfall tax", Times, 23 May 2022

53 PQ444, 13 May 2022

54 HC Deb 17 May 2022 cc582-3. See also, "Rishi Sunak demands oil and gas companies increase UK investments", Financial Times, 11 May 2022

55 HC Deb 18 May 2022 c679. See also, "Boris Johnson says windfall tax 'not the right thing' but refuses to rule out U-turn", Guardian, 12 May 2022; "Hopes for a windfall tax blocked by No 10 team", Times, 18 May 2022.

56 HC Deb 26 May 2022 c454, cc453-4

"I am very disappointed that it covers only oil and gas companies. It should have gone much wider."[57]

One interesting point was raised by Dame Angela Eagle who asked the Chancellor about the Government's plans for the Energy Profits Levy after its first year: "If the excess profits of the energy companies persist beyond this year, will the windfall tax persist?" In response Mr Sunak said, "We will put a backstop sunset clause in the legislation with the energy profits levy. It will remain in place until prices return to a more normal level. In the past, that was specified specifically. We will take the time to get that right, but it will not be automatic in 12 months. It will depend on when prices return to a more normal level."[58]

During the exchanges Greg Smith raised a concern that businesses affected by the Levy would pass on the cost through higher prices, particularly of domestic heating oil and liquefied petroleum gas. In response the Chancellor said, "in general, the evidence from previous iterations shows that that does not happen, mainly because those commodities are traded at international prices, so the domestic tax regime does not change the price that is being passed on, but I am happy to take my hon. Friend's point away."[59]

The Institute for Fiscal Studies (IFS) published a response to the Chancellor's statement later the same day. As part of this IFS director Paul Johnson noted, "the Treasury says the energy profits levy - which takes the tax rate on North Sea profits from 40% to 65% - is expected to raise £5bn this year. This is a reasonable tax to raise under the circumstances, but the Chancellor should have been clearer over when and how this additional levy will be phased out as gas and oil prices change."[60]

The IFS noted that the 65% tax rate was "broadly typical of the historical rates of North Sea taxation since the 1970s", but raised concerns that "a new 'super-deduction' means that North Sea investment will be massively subsidised while the higher tax rate is in place." IFS Senior Economist Stuart Adam said, "The new super-deduction means that investing £100 in the North Sea will cost companies only £8.75, with the remaining cost paid by the government. So a massively loss-making investment could still be profitable after tax. It is hard to see why the government should provide such huge tax subsidies and thereby incentivise even economically unviable projects."[61]

Writing on Twitter Judith Freedman, Oxford Emeritus Professor of Tax Law, observed that "logic suggests that if incentives work as intended, tax take will be reduced", which would be "another reason not to link help given with

[57] HC Deb 26 May 2022 c457, c458
[58] HC Deb 26 May 2022 c465
[59] HC Deb 26 May 2022 c
[60] Stuart Adam et al, IFS response to government cost of living support package, 26 May 2022
[61] as above

tax raised in this one way."[62] This criticism was also made by Liberal Democrats Treasury spokesperson Christine Jardine,[63] although tax law specialist Dan Neidle at Tax Policy Associates noted that it was important to make a distinction between investment that companies had already planned and **additional** investments they decided to make to take advantage of the new allowance.[64] Mr Neidle was critical of the Government's proposal that the allowance should only apply for three years – that is, the anticipated life-span of the Levy – on the grounds that investment required **long term** planning: "Short-term allowances don't incentivise investment, they just give money away."[65]

The Chartered Institute of Taxation (CIOT) issued a press notice in which CIOT Director John Cullinane said:

> "Emergency, temporary, unconsulted-on measures are bad for the tax system and should only be introduced in the most exceptional circumstances. But these are pretty exceptional circumstances, and the new tax appears quite carefully targeted. The biggest risk with a temporary windfall tax like this is that businesses generally may conclude that, when they make money in the UK, a retrospective tax will come and claw back much of those profits, so it undermines the investment proposition for the UK. This is possible but given how exceptional the situation is right now in the energy market it seems unlikely too many wider conclusions will be drawn about this setting a new precedent."[66]

There were a variety of responses to the Chancellor's announcement of the Levy in the press.[67] An editorial in the Guardian argued "the windfall tax has been introduced at a scandalously late hour", and was critical that "fossil fuel firms can avoid the windfall tax by reinvesting profits but renewable companies cannot."[68] By contrast a leader in the Times argued the tax was a mistake: "popular does not make a policy sound … the new tax risks

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62 Judith Freedman (@JudithFreedman), "Logic suggests that if incentives work as intended, tax take will be reduced- another reason not to link help given with tax raised in this one way." (Twitter), 26 May 2022 [accessed 26 May 2022]. Available from: https://twitter.com/JudithFreedman/status/1529797891405012994

63 "Loophole could let North Sea oil and gas giants slash UK windfall tax bill", Observer, 29 May 2022

64 Dan Neidle (@DanNeidle), "It's not clear what the complaint is here. Is it that firms could increase investment, and therefore reduce their tax? If so, that's exactly the opposite of the problem. The real issue is that *existing* investment plans will reduce their tax.", Twitter, 29 May 2022 [accessed 30 May 2022]. Available from: https://twitter.com/DanNeidle/status/1530886836045893632

65 Dan Neidle (@DanNeidle), "Pointless to have an investment allowance in a tax that only runs for three years. Investment requires long-term planning, and so investment allowances should be long-term. Short term allowances don't incentivise investment, they just give money away.", Twitter, 27 May 2022 [accessed 30 May 2022]. Available from: https://twitter.com/DanNeidle/status/1530134794666917889

66 CIOT press notice, CIOT comments on windfall tax announcement, 26 May 2022

67 Generally there was more comment on the Government's support measures for households than the new Levy: for example see, "Sunak U-turns on 'energy profits levy' in £15bn cost of living package", Guardian, 26 May 2022; Torsten Bell et al, Back on target: analysis of the Government's additional cost of living support, Resolution Foundation, 27 May 2022

68 "The Guardian view on energy windfall taxes: cynical, but welcome", Guardian, 27 May 2022

deterring investment by undermining confidence in the predictability of the tax regime."[69]

Writing in the Financial Times business columnist Helen Thomas argued that while there might be good ways to tax windfall gains "this isn't it"; in particular the provision of upfront investment incentives which, in her view, were unlikely to have an impact on companies' investment decisions, while the Chancellor's comments about possible action to recover excess profits from electricity generators were unlikely to convince business that the Levy was "a one-off […] targeted on a very particular set of gains."[70] An editorial in the paper was also critical of the Levy, suggesting that "clear and predictable future taxation" was required to ensure sufficient investment to support the sector's transition to a "cleaner energy economy."[71]

The Guardian's financial editor, Nils Pratley, noted that the Government's multi-year aspect of the Levy – the Government's proposal that it would remain place until December 2025 if oil and gas prices remained high – "is crucial and took the industry by surprise: "the effect of temporary allowances on projects that can take a decade to deliver is hard to decipher. Sunak will have a design triumph on his hands if companies end up investing more, while also paying more tax, but it is impossible at this stage to say that outcome is guaranteed."[72] The paper reported that both BP and Shell had raised concerns about the impact of the Levy on investment in the sector,[73] while Wood Mackenzie, a global energy consultancy, has proposed that it would be preferable to have a system where tax rates varied automatically with world prices to reduce uncertainty.[74] The Times quoted Neivan Boroujerdi from the consultancy as suggesting that "fiscal uncertainty in the UK will remain a key issue for investors."[75]

Subsequently there were reports that some oil and gas companies were planning new investments to take advantage of the investment allowance for the Levy,[76] while others – small and medium-sized producers – were reconsidering their investment plans.[77] Finally, writing in the Tax Journal after the Government had published the legislation to implement the Levy, Phil Greatrex (CW Energy) argued that it would add "an extra layer of

69 "The Times view on Rishi Sunak's cost-of-living support: Big Spender", Times, 27 May 2022

70 "Comment: Sunak's windfall tax comes with added complexity", Financial Times, 26 May 2022

71 "Editorial: A striking U-turn to alleviate the UK cost of living crisis", Financial Times, 27 May 2022. See also, "Comment: Rishi Sunak is playing Twister with his contortions on tax and spending", Sunday Times, 29 May 2022

72 "Comment: Sunak's design for the windfall tax is complex, but is it any good?", Guardian, 26 May 2022

73 "BP to review North Sea investments following windfall tax announcement", Guardian, 26 May 2022; "Shell says windfall tax threatens North Sea oil and gas investment", Guardian, 27 May 2022

74 "Rishi Sunak's North Sea levy prompts call for energy tax overhaul", Financial Times, 27 May 2022.

75 "Windfall tax wipes £4bn from energy firms", Times, 28 May 2022

76 "Sunak's tax breaks could lead to more than £8bn of North Sea energy projects", Guardian, 6 June 2022; "Serica Energy reassures on impact of UK windfall tax", Financial Times, 6 June 2022

77 "North Sea producers warn windfall tax has forced rethink of UK projects", Financial Times, 16 June 2022

complexity to an already extremely complex tax regime, and will have an adverse effect on industry confidence." He added that the new tax would "provide no encouragement to the sector to invest in alternative energy projects given the levy will reduce the profits available to invest and such expenditure cannot qualify for the levy investment allowance", and that "any reduction in investment will also have an adverse impact on the support sector, which has not had the same benefit of high commodity prices."[78]

The impact of the investment allowance on potential receipts from the Levy was raised by the Shadow Chancellor, Rachel Reeves, in an Urgent Question on 6 June. On this occasion Ms Reeves said, "we calculate that a third or more of any revenue from the new levy might be handed straight back in tax breaks … how can the Minister be sure how much this new levy will raise when the Chancellor has added this gigantic get-out clause?"[79] In response to this issue the Financial Secretary Lucy Frazer said "we recognise that companies should invest, because it is good for jobs, good for investment, good for our competitive industries and good for our energy security for the future." She also noted that "The investment relief should not be available for investments that are deadweight. It should be for new investments."[80] The Minister also addressed the question of the timing of the Government's announcement:

> Labour has been calling for this levy since January. [The hon. Lady] will know that January was not the right time to introduce it because we did not know then what the price cap would be. Ofgem estimated that in the week when this announcement was made. She will also know that in January, inflation was not at 9%. The Chancellor has taken this decision carefully, considering the circumstances and not just making policy on the basis of ideology.[81]

The following day there was a short debate on this issue in the Lords. Speaking for the Opposition Lord Tunnicliffe asked for details of the Government's estimate of the Levy's yield, and questioned "why are the Government continuing to incentivise fossil fuels rather than renewables, which do not benefit from the tax breaks in this announcement?" In response for the Government Baroness Penn said:

> The energy profits levy is expected to raise around £5 billion in the first 12 months … The Government will publish a tax information and impact note alongside legislation to introduce the levy, which will come before Parliament shortly, and the OBR will take account of the levy, including the allowance, at its next forecast.
>
> On the noble Lord's point about renewables, no, they will not benefit from the investment allowance, because they are not subject to the additional levy, but I reassure noble Lords that we are absolutely committed to increasing

78 "Analysis: new windfall tax on the UK oil and gas sector", Tax Journal, 15 July 2022
79 HC Deb 6 June 2022 c541
80 HC Deb 6 June 2022 c544, c545
81 HC Deb 6 June 2022 c542

> investment in renewables. We have R&D tax credits, the super-deduction and a number of other schemes in place to support them.[82]

The Chancellor appeared before the Treasury Committee on 6 June to discuss the Government's cost of living support package, and several MPs asked questions about the Energy Profits Levy.[83]

Dame Angela Eagle asked the Chancellor if he would consider raising more than £5 billion from the Levy, in the context of the significant tax reliefs to encourage oil and gas development:

> **Dame Angela Eagle**: The subsidies already going into North sea oil—in tax breaks for continuing to explore there—are very substantial, aren't they? … You are really only raising, in the windfall tax, the subsidies you have already given to people to carry on operating in the North sea, aren't you?
>
> **Rishi Sunak**: I don't look at it like that. We are raising what I think is a meaningful amount of revenue—£5 billion—but doing so in a way that is supportive of investment in the North sea, with a new investment relief that doubles the amount of investment and tax relief that exists in the system […]
>
> **Dame Angela Eagle**: Would you consider taking more than £5 billion?
>
> **Rishi Sunak**: As I said, I think this strikes the right balance between taxing of profits fairly and incentivising investment.[84]

In her questions to the Chancellor Julie Marson asked about the scope of the Levy, raising the concern that as most profits made by major oil and gas companies were not from the North sea, "there is a case to say that the windfall profits are actually being taxed twice—they are being made elsewhere and then we are taxing them twice":

> **Rishi Sunak**: No. We have a very specific UK tax regime that has been in place for decades that applies specifically to the UK continental shelf .. It applies very specifically to the activities of fossil fuel extraction there, so it is a ring-fenced regime that doesn't apply to profits they or any other companies make elsewhere.
>
> **Julie Marson**: Is it fair to say that companies cannot offset their losses from this particular tax?
>
> **Rishi Sunak**: Yes, it is something we have done similarly in the past. For example, the bank levy and the residential developer property tax work in the same way. What we are trying to do is to tax genuinely excess profit. I don't think it would be reasonable and it would undermine the policy rationale around that to allow losses that had nothing to do with that to be offset against it […]
>
> **Dan York-Smith (Director of Strategy, Planning and Budget, HMT)** : That is exactly right […] The other bits of the North sea regime—the 30% ring-fenced

82 HL Deb 7 June 2022 c1092

83 "Suank backs PM and denies claim about timing of cost of living aid", Financial Times, 6 June 2022

84 Treasury Committee, Oral evidence: The cost of living, HC 343, 6 June 2022 Qs 152-3

> corporation tax rate and the supplementary charge—allow carry forward, but this additional 25% on top won't allow carry forward for the reasons that the Chancellor said.[85]

Ms Marson noted that the Chancellor had said the Levy would be withdrawn when prices returned to 'normal', and asked if he could define that term:

> **Rishi Sunak**: […] The last time this was done, a price target was published, which was $74 or $75 for Brent, so that is one benchmark. If you look at average Brent price over the last five or 10 years, that will give you something like $60 or $70 for oil. If you look at what most of these companies communicate to their shareholders and what they consider to be normalised oil prices, and at what they are telling their own investors, they tend to use numbers in the range of $60 or $70, so that gives you a sense.
>
> We have a complicated situation because we have got gas and oil, so we need to think a little bit about that. To provide reassurance, this is not meant to be a permanent feature of the tax regime. There will be a sunset clause of just over three years in the legislation, as a backstop, but obviously if prices come back to the range that I have discussed, you would expect this to fall away sooner.[86]

Gareth Davies asked the Chancellor about the design of the investment allowance, and in his answer Mr Sunak underlined that companies would be entitled to claim relief "immediately at the moment of investment":

> **Rishi Sunak**: That is different from how the investment relief that currently exists within that regime operates, where it does not apply until that project starts generating revenue, which is often not for years […] Five years is the average. … It is not just the rate that is more generous, but, because it applies immediately, on an NPV basis, it will be considerably more generous than what currently exists.[87]

Mr Davies asked if the Government would consider carrying the allowance forward "and keeping it going as an investment incentive, even when the tax element of the levy expires":

> **Rishi Sunak**: Probably not. There is an extra levy and that comes with this extra investment relief. There is already a generous treatment of investment within the ring-fence regime; they benefit from full expensing on capital investment, so the status quo regime is already pretty generous. […]
>
> **Dan York-Smith**: Part of the investment effect is the fact that it's temporary—both the higher tax rate is temporary and therefore the higher investment allowance is temporary. The incentive to invest while the value of your investment relief is so high, when the payback may come when the tax has fallen away, is part of the reason you get the temporary investment effect, a little bit like the wider super-deduction, where its time-limited nature brings forward investment.[88]

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85 as above Qs 174-5

86 as above Q176

87 as above Q177

88 as above Q179

Finally Alison Thewliss asked the Chancellor about the Government's plans for taxing excess profits being made in the electricity generator sector:

> **Rishi Sunak**: […] Given that it is a live tax policy, I cannot say much more, other than what I said in the statement […] [The profits being made in that sector] is a result of how the market works, which is the price of electricity being set at the marginal supplier—which at the moment is natural gas, at these very elevated levels—so there will be lots of people whose costs of producing electricity are much lower than that. [...]
>
> **Alison Thewliss**: You said that you believe that there is an extraordinary profit; you must have an idea of what that extraordinary profit is if you are bringing forward a policy to tax it.
>
> **Rishi Sunak**: We are in the process of talking to the companies to figure out the scale of what we think the profits are. There are lots of different particular circumstances that companies might be in. For example, if they have already sold forward the energy at a particular price, that will mean that a desktop analysis looking at the current spot price will not take that into account, so we need to go through the analysis with the companies.[89]

Ms Thewliss went on to raise concerns that the Government's plans were having a negative impact on investment in renewables:

> **Alison Thewliss**: […] How do you expect to achieve net zero targets and to meet the commitments of COP26 from just last year if you are going to disincentivise investment in renewable generation?
>
> **Rishi Sunak**: We already have a very generous investment regime in place, because of the super-deduction, which means that any investment in renewables happening right now benefits from the most generous treatment of capital investment not just in the UK's recent history but pretty much anywhere in the world. It is the most generous treatment of capital investment that exists anywhere at the moment, because of the super-deduction. That is the regime we have in place, so anyone wanting to do that now should crack on—they will benefit from that relief.[90]

The issue was also raised with the then Economic Secretary John Glen when he gave evidence to the Lords Economic Affairs Committee on 14 June, as part of their ongoing inquiry into UK energy supply and investment. The Chair of the Committee, Lord Bridges, asked the Minister about the impact of the Chancellor's statement on investment, given that there were concerns that the industry as a whole was actually enjoying windfall profits:

> **John Glen MP**: […] Your quite reasonable point to make is that the degree of uncertainty before we have landed that full intervention is not ideal. But we are in a situation where what is happening in Ukraine is not ideal, and the

89 as above Q182, Q185

90 as above Q189. On this issue see, "Windfall tax on UK electricity generators would curb investment, Labour warns", Financial Times, 5 June 2022; "Electricity generator SSE warns Sunak over windfall tax threat", Financial Times, 12 June 2022: "Sunak's plans for windfall tax 'may deal hammer blow to investment'", Times, 28 June 2022

> interventions that we are having to make to support many vulnerable people across society are not where we want to be.
>
> **The Chair**: Might it not have been better to come up with this detail before you announced the policy, rather than have this uncertainty?
>
> **John Glen MP**: Again, there is a balance of factors here, is there not, because we were also being told that we needed to act early and quickly to give those who were not able to heat their homes some reassurance about what the Government were going to do. As ever, there was a judgment that the Chancellor had to make.[91]

The Treasury Committee held a follow-up evidence session on the Government's cost of living support package on 8 June, and several MPs asked one of the witnesses - Mike Tholen, Director of Sustainability, Offshore Energies UK – about the industry's view of the Energy Profits Levy.

Dame Angela Eagle asked about the industry's view of the new investment allowance, and in his answer Mr Tholen referred to the past pattern of tax reforms to the fiscal regime:

> **Mike Tholen**: It is perversely seen as a necessary thing. In the last 20 years we have seen three major increases in the taxation of the sector, some of which have dropped over time, and after each of those increases, sometimes straightaway or sometimes subsequently, we have seen investment incentives come in to try to rebalance the drive to invest in the North Sea after a period where we have seen otherwise investor sentiment being damaged.
>
> It is from that perspective that some of the foreign companies I speak to, looking in at the sector in one or two muted ways, describe the UK as being a very noisy place to do business in all of a sudden. These incentives are needed to try to rebalance the attractiveness of the sector. Hopefully, if we see the tax come off, we will see the need for these incentives go as well.[92]

In answer to a follow-up question Mr Tholen noted that companies had quite a variety of views about the impact of the Levy on their investment:

> **Dame Angela Eagle**: Do you expect the new investment allowance, which is pretty generous at 80%, to increase investment in the North Sea, or do you think that the fact that there has been a windfall tax announcement will actually drive people away?
>
> **Mike Tholen**: We are hearing pretty much every single answer to that question, as you would imagine.
>
> **Dame Angela Eagle**: Yes and no, in other words.
>
> **Mike Tholen**: I am afraid so. As you would imagine, it is a very diverse basin and for some companies the extra taxation has meant less cash investment in the first place. In others, they will look to see if they can accelerate

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91 Economic Affairs Committee, Oral evidence: UK energy supply and investment, 14 June 2022 Q277. See also, PQ23452, 30 June 2022; PQ25965, 5 July 2022.

92 Treasury Committee, Oral evidence: The cost of living, HC 343, 8 June 2022 Q275

> investments in a period when the Government and we all know we are very short of energy. The thing that could completely blow all the predictions about energy prices this winter off course is something untoward happening as a result of the Russian invasion of Ukraine. The sector as a whole is really trying, in one sense, to rise above the discussions around taxation to make sure it does its best to invest in the natural resource we need at this time.[93]

Kevin Hollinrake asked about the Chancellor's estimate that the Levy would raise £5 billion, and which companies Mr Tholen anticipated paying the tax:

> **Mike Tholen:** […] Is the £5 billion number about right? It is ballpark, and I will explain why it is ballpark. It is because it depends a huge amount on how much is produced, oil and gas prices, which are moving around like yo-yos at the minute, and the exchange rate, which is the big thing compared with when oil prices were last this year. In 2011 we saw oil prices similarly high, but $120 is now equivalent to what would have been $160 then, simply because of the poor exchange rate we now face in the UK […]
>
> **Kevin Hollinrake:** Who is going to pay it? Is it Harbour Energy and people like that?
>
> **Mike Tholen**: It will be pretty much on production, so there is Harbour Energy. Total certainly will pay, and Equinor, right the way down to many smaller companies. A classic one might be something like Seneca, which is a UK-centric company doing a massive amount to really maximise gas production. It has had the stock value of its business really put under pressure by this. It is visibly active and investing, but it is typical of those paying the bill as well. […] [The largest companies, such as Shell and BP] will be paying, as every other company does, based on their revenues in the UK and their costs in the UK from those. You have to remember, the UKCS is a very small part of the global whole. We produce under 500 million barrels a year of oil and gas, which is nothing compared with global production these days.
>
> **Kevin Hollinrake**: Is that why the BP chief exec [Bernard Looney] said that a UK windfall tax would not affect investment, because it would not really hit them?
>
> **Mike Tholen**: People have to understand also that it is not that investments are simply turned on and off on one day's announcement from one thing. I am not sure I would want to invest in a company that was so short term in its focus and, certainly as far as I heard from what Mr Looney said, those investments he chose he will want to proceed with, but he does not say more about the next round of investments.[94]

Finally Alison Thewliss asked about the position of electricity generators, noting the uncertainty as to the amount that these companies were making extraordinary profits:

> **Mike Tholen**: In one sense, the dilemma recognises the nature of the energy markets we are in […] In terms of the broader energy mix, it is a whole diverse range of companies and energy is not just simply point of sale. It is traded. There are the commercial constructs with Government. There is no one single

93 as above Qs 280-1

94 as above Qs 287-291

> person to go to, and that is why I would be concerned that it is simply trying to pursue windfalls across the energy sector generally, because you are more likely to damage the drive to invest than you are to secure extra revenue for the Government.[95]

Ms Thelwiss went on to ask "is there a wider impact on the energy security strategy of measures like these being brought in all of a sudden?":

> **Mike Tholen**: It is not very helpful. As I say, even within my own immediate focus on oil and gas, for months the Chancellor has been, "No windfall tax. We are really focused on investment in energy", and then all of a sudden about two weeks removed he is 180 degrees on that. We live in very straitened times and there is no way our own sector is not going to respond to the energy challenge. It would be utterly wrong to do otherwise, but we need to find a way to build a conversation that is long term at the minute, which reaches beyond politics and really ensures we can hit the energy transition and try to help address energy poverty in the UK.[96]

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95 as above Q293

96 as above Q299

3 The Bill

3.1 Introduction of the Bill

On 5 July 2022 the House of Commons agreed a Ways and Means Resolution, to enable the Government to bring forward legislation to introduce the Energy Profits Levy.[97] Treasury Minister Lucy Frazer set out the scope of the Levy and how the investment allowance would apply:

> [The Levy is] a new 25% surcharge on the extraordinary profits that the oil and gas sector is making. At the same time, the new 80% investment allowance will mean that businesses will, overall, get a 91p tax saving for every £1 they invest […]
>
> I want to make clear what the investment allowance will apply to.
>
> First, the allowance will be calculated in the same way as the investment allowance for the existing supplementary charge. Therefore, if capital or operating expenditure qualifies for the supplementary charge allowance, it will qualify for the energy profits levy allowance, but unlike the supplementary charge, it will be available to companies at the point of investment. This makes it both more immediate and more generous.
>
> As the levy is targeted at the extraordinary profits from oil and gas upstream activities, it makes sense that any relief for investment must also be related to oil and gas upstream activities. Such spending can be used to decarbonise oil and gas production—for example, through electrification—so any capital expenditure on electrification, as long as it relates to specific oil activities within the ringfence, will qualify for the allowance. Examples of activity that may be carried out for specific oil activities include expenditure on plant and machinery such as generators, which includes wind turbines, transformers and wiring.[98]

The Minister went on to highlight a change that the Government would make to the Bill following responses to the short consultation exercise on the draft version:

> We published draft legislation for the Bill on 21 June to seek technical feedback. Two weeks ago, the former Chancellor met industry stakeholders in Aberdeen to discuss the levy […]
>
> I can confirm that the Government are making a change to the legislation. I confirm that tax repayments that oil and gas companies received for petroleum revenue tax related to losses generated by decommissioning

[97] House of Commons, Votes and Proceedings No.29, 5 July 2022

[98] HC Deb 5 July 2022 cc834-5

> expenditure will not be taxed under the levy. Since wider decommissioning expenditure is also left out of account for the levy, that change is consistent and fair.[99]

The Shadow Financial Secretary, James Murray, said the Opposition supported the introduction of a windfall tax, but was critical of the investment allowance, arguing that it would “subsidise projects that would almost certainly have happened anyway, and it will see 20 times more being given in taxpayer incentives to oil and gas producers than to firms investing in the renewable energy of the future.”[100]

Speaking for the SNP Alison Thewliss observed that her party had “been consistent in calling for a windfall tax on excess profits since June 2020”, but said it was “disappointing that this UK Government, and indeed the official Opposition, have looked only narrowly and in a limited fashion at oil and gas and ignored all the other areas where super-extraordinary profits have been soaring during this pandemic.”[101] Ms Thewliss also noted concerns raised by the oil and gas industry as to “the lack of predictability and consistency in the taxation regime.”[102]

Speaking for the Liberal Democrats Christine Jardine was critical of the timing of the Government’s announcement of the Levy, arguing that much more could have been raised if had been introduced before now, and suggested the Government could change its design “to help it raise more money.”[103]

Finally, speaking for the Green Party, Caroline Lucas, argued the rate of the Levy should be set at least at 30% to “bring the UK in line with the global average.” Ms Lucas strongly criticised the proposal to make the Levy a temporary charge, and the provision of the investment allowance, as it would reduce Levy receipts, encourage new fossil fuel projects, and “not help to address domestic energy security.”[104]

The House approved the Ways and Means Resolution without a vote, and the Energy (Oil and Gas) Profits Levy Bill was introduced forthwith.

On 11 July HMRC published a tax information and impact note on the Bill. This gives a summary of the Bill’s provisions:

> The Energy (Oil and Gas) Profits Levy Bill establishes the new levy in legislation.

99 as above c835
100 as above c837
101 as above c839
102 as above c839
103 as above c841
104 as above cc842-3

> The clauses set out that the levy will apply to a company's 'ring fence profits', computed with a number of adjustments, and will be charged as if it were an amount of corporation tax. The main adjustments are:
>
> - finance costs are left out of account
> - decommissioning costs are left out of account
> - loss relief will be available within the new levy, but there will be no cross over to any other ring fence taxes
> - ring fence Corporation Tax losses cannot be used to reduce profits subject to the new levy — no historic losses will be allowed to be carried forward into the levy regime
> - the 80% investment allowance which is generated on investment expenditure (capital expenditure and some operating and leasing expenditure) can be immediately used to reduce profits subject to the levy.[105]

HMRC's note confirms the Levy is "expected to raise around £5bn in its first 12 months at current market prices. The final costing will be subject to scrutiny by the Office for Budget Responsibility and will be set out at the next fiscal event." It states that the Levy "will have an impact on up to around 200 companies operating in the UK or on the UK Continental Shelf. Impacted companies may pay more tax but may also receive tax relief through the new allowance."[106]

3.2 The Bill's provisions

The Energy (Oil and Gas) Profits Levy Bill [Bill 135 of 2022-23] consists of 19 clauses and two Schedules. The Bill extends and applies to the United Kingdom as a whole. No legislative consent motion is required. A short overview is provided below. Further details are given in the Bill's explanatory notes (Bill 135-EN).

The charge to tax: Clause 1

Clause 1 would provide for the charge to the Levy, setting the rate at 25% (subsection 1), on profits made by a company on a ring fence trade. The Levy would apply to profits that accrue between 26 May 2022 to 31 December 2025 (subsection 3).

The Levy applies to a company's 'ring fence profits', computed with a number of adjustments.[107] Clause 1(5) specifies these adjustments.

105 HMRC, Energy (Oil and Gas) Profits Levy, 11 July 2022

106 as above

107 HM Treasury, Energy Profits Levy: Technical Note, 26 May 2022

Expenditure that qualifies for the investment allowance – as set out in clause 2 – may be offset against tax, under Clause 1(5)(a)-(b). A series of items would be left out of account:

- financing and decommissioning costs, under Clause 1(5)(c)
- repayments of petroleum revenue tax arising from decommissioning, under Clause 1(5)(d)
- loss relief, group relief and group relief for carried forward loss, under Clause 1(5)(e).[108]

The provision relating to repayments of petroleum revenue tax – Clause 1(5)(d), along with Clause 1(6) – is one of two amendments the Government made to the Bill following the consultation exercise on its draft version.[109]

Relief for investment expenditure: Clauses 2-7

Clause 2 would provide for the investment allowance, specifying what is determined as 'investment expenditure' for the purposes of Clause 1(5)(a)-(b). Clause 2(3) would provide for 80% of this expenditure to be offset against profits subject to the Levy.

Clause 2(2) provides that 'investment expenditure' covers "capital expenditure, operating expenditure or leasing expenditure" that is "incurred for the purposes of oil-related activities." **Clauses 3 and 4** specify the conditions for expenditure being classified as "operating expenditure" or "leasing expenditure" for these purposes.

'Operating 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.[110] 'Leasing 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.[111]

In addition **Clause 6** would provide that only expenditure on new assets qualifies as 'investment expenditure' – so that spending on assets that have been recycled in order to generate relief would be excluded.[112]

108 Bill 135-EN, July 2022 para 34
109 as above para 24
110 as above para 46
111 as above para 51
112 as above para 63

Clause 2(2) also provides expenditure incurred for "disqualifying purposes" or "financing costs or decommissioning costs". These terms are defined by Clauses 5, 8 and 9 respectively.

Clause 5 defines "disqualifying purposes". This is a tax anti-avoidance measure. Expenditure that "arises directly or indirectly" in connection with "any avoidance arrangements" would not qualify for the investment allowance. "Avoidance arrangements" are those that meet two tests:

- That their main purpose, or one of their main purposes, is to "secure a relevant levy advantage", under Clause 5(2)(a)
- That it is "reasonable to conclude" that these arrangements are, or include steps that are "contrived, abnormal or lacking a genuine commercial purpose", under Clause 5(2)(b).

The wording of Clause 5(2)(b) is the second of the two amendments the Government made to the draft version of the Bill. The draft version did not include this reference to arrangements that have a "genuine commercial purpose" as being excluded from this test.[113]

Finally, **Clause 7** would provide that 'investment expenditure' must be incurred between 26 May 2022 and 31 December 2025 to qualify for relief.

Financing and decommissioning costs: Clauses 8-9

Clause 8 defines 'financing costs'. It is modelled on an existing provision in the statutory provisions for ring fence corporation tax.[114] **Clause 9** defines 'decommissioning costs'. Clause 9(2) provides that this is expenditure that is 'decommissioning expenditure' or 'site restoration expenditure' that qualifies for a capital allowance. Clause 9(3)-(5) and Clause 9(6)-(7) define these terms.

Qualifying levy losses: Clause 10 and Schedule 1

Clause 10 and **Schedule 1** would provide for certain losses to be offset against liabilities to the Levy.

Management and administration etc: Clauses 11-13

Clause 11 would apply general corporation tax principles to the Levy, and provide for the Levy to be treated for administrative purposes as an amount of corporation tax. **Clause 12** would place a requirement on companies paying the Levy to provide information about those payments to HMRC.

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113 as above para 24

114 as above para 70. Specifically section 331 of Corporation Tax Act 2010

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

Final provisions: Clauses 14-19 and Schedule 2

Clause 14 and **Schedule 2** would provide for a series of consequential amendments to the current law. **Clauses 15 and 16** set out arrangements for companies accounting for the Levy when their accounting period straddles the commencement date of 26 May 2022, or the closing date of 31 December 2025. **Clause 17** sets out how a company's Levy profits or losses should be apportioned, in the circumstances where Clause 15 or Clause 16 apply. **Clause 18** sets out the relevant statutory provisions which define a series of terms used in the Bill. **Clause 19** confirms the short title of this legislation will be the Energy (Oil and Gas) Profits Levy Act 2022.

3.3 Fast track procedure

When the then Chancellor, Rishi Sunak, announced the Government's plans to introduce the Energy Profits Levy, the Treasury confirmed that the tax would take effect from that day – 26 May 2022 – and that it would be legislated for via a standalone Bill "to be introduced shortly".[115] Normally Chancellors reserve the announcement of new tax measures to the Budget, and statutory provision to put them into effect is made in the annual Finance Bill introduced after the Budget.[116]

In his Business Statement on 30 June 2022, prior to the introduction of the Energy (Oil and Gas) Profits Levy Bill 2022-23, the Leader of the House, Mark Spencer, announced that all of the stages of the Bill would be taken by the House of Commons on Monday 11 July.[117] This is known as the 'fast track' procedure.[118]

A recent example of expedited legislation in the field of tax law was the Health and Social Care Levy Act 2022. The Government announced this new tax to substantially increase funding for health and social care on 7 September 2022. All stages of the Bill to introduce the Levy were taken in the House of Commons on 14 September 2022.[119]

115 HM Treasury, Energy Profits Levy Factsheet, 26 May 2022
116 For further details see, Commons Library briefing CBP813, The Budget and the annual Finance Bill.
117 HC Deb 30 June 2022 c452
118 For further details see, Commons Library briefing CBP5256, Fast-track legislation. Commons Library briefing CBP4974, Expedited legislation: Public bills receiving their Second and Third Readings on the same day in the House of Commons, briefing provides a list of examples of the procedure being used.
119 Commons Library briefing CBP9310, Health and Social Care Levy Bill 2021-22, provides further details.

In 2009, the House of Lords Constitution Committee published a report on this type of legislation – that is, Bills which the Government of the day "represents to Parliament must be enacted swiftly … and then uses its power of legislative initiative and control of Parliamentary time to secure their passage."[120] The Committee recommended that the Government should explain the reasons for fast-tracking legislation; what consultation had taken place with interested parties; the steps taken to maximise parliamentary scrutiny; and mechanisms in place for post-legislative scrutiny. It also recommended that there should be a presumption in favour of sunset clauses in fast-track legislation.[121]

The Cabinet Office's Guide to Making Legislation states that when a Bill is fast-tracked, the Government uses the Explanatory Notes for the legislation to address these questions.[122]

The Government's decision to 'fast-track' the Energy (Oil and Gas) Profits Levy Bill is addressed in the Bill's explanatory notes:

> 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. […] 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.[123]

3.4 The Bill's passage

The Bill completed all of its stages in the House of Commons on Monday 11 July.[124] The Chief Secretary to the Treasury, Simon Clarke, set out the purpose of the Bill at the start of its second reading, observing that the sector had seen "unexpected, extraordinary profits—above and beyond what forecasters could have expected", and that "because of these extraordinary profits, and to help fund more cost of living support for UK families, the Government are introducing an energy profits levy." The Minister noted the Levy would be phased out "when oil and gas prices return to historically more normal levels", adding that the Government would not set a specific price level, but "will obviously look towards a return to more normative market conditions … such as the pre-crisis situation in 2019 and some of the much healthier pattern of last year."[125]

120 Select Committee on the Constitution, Fast-track Legislation: Constitutional Implications and Safeguards, HL Paper 116-I, 7 July 2009 para 27
121 as above pp37-48
122 Cabinet Office, Guide to Making Legislation, July 2017, para 11.54
123 Bill 135-EN, 5 July 2022 para 21-2
124 HC Deb 11 July 2022 cc27-78; Votes and Proceedings No.32, 11 July 2022
125 HC Deb 11 July 2022 c27

The Minister set out details of the types of expenditure the new investment allowance would cover:

> First, if capital or operating expenditure qualifies for supplementary charge allowance, it will qualify for the energy profits levy allowance. As the levy is targeted at the extraordinary profits from oil and gas upstream activities […] it makes sense that any relief for investment must also be related to oil and gas upstream activities.
>
> Secondly, such spending can be used to decarbonise the oil and gas production, for example through electrification. Therefore, any capital expenditure on electrification, as long as it relates to specific oil-related activities within the ringfence, will qualify for the allowance […] Examples of electrical expenditure on plant and machinery will be things such as generators, which include wind turbines, transformers and wiring.
>
> I also remind the House that there are other tax and non-tax levers to support non-oil and gas investments, such as in renewables. Those levers include the super-deduction and our competitive research and development tax credit regime. Importantly, the returns on these investments are taxed at 19% rather than at 65% as for UK oil and gas profits.[126]

He also gave details of the changes made to the legislation following the Government's consultation exercise:

> The Government have changed the legislation, which is reflected in the Bill before us today. Tax repayments that oil and gas companies receive for petroleum revenue tax related to losses generated by decommissioning expenditure will not be taxed under the levy. These are repayments that are typically taxed under the permanent tax regime. However, as wider decommissioning expenditure is also left out of the account for the levy, this change is both consistent and fair. I wish to […] reassure the House that, with this change, the Government still expect the levy to raise around £5 billion over the next year.[127]

Speaking for the Opposition James Murray argued that the Bill was "long overdue", but was critical of the decision to fast track the legislation, and the scale of the investment allowance, "a subsidy that not even oil executives think is necessary."[128] Mr Murray also asked what plans the Government had to address the extraordinary profits being made by electricity generators. Speaking for the SNP Stephen Flynn said his part supported the decision to raise funds for supporting households, but raised concerns that the Government had not set out its trigger price for phasing out the Levy, and that it had not made provision within the Bill to boost tax incentives "on renewable technologies directly linked to the offshore industry."[129] Speaking for the Liberal Democrats Wera Hobhouse was also critical that there was "nothing in the Bill to incentivise investment in renewables", and argued that

126 as above cc28-29
127 as above c29
128 as above c30, c33
129 as above c37

the new Levy should be backdated several months, when the sector's profits first started rising significantly.[130]

Following the Bill's second reading, the House proceeded to the Bill's Committee stage. The House discussed a number of new clauses and amendments tabled by opposition parties, and voted on two of these:

- a new clause tabled by the Labour Party to require the Government to publish an assessment of how much more the Levy would have raised if it had been in place five months earlier, from 9 January;
- an amendment tabled by the SNP to clarify that expenditure on electrification would qualify for the investment allowance.

Treasury Minister Lucy Frazer opposed both of these: in the first case, on the grounds that it would not be "usual to bring forward public assessments of measures that we are not introducing"; in the second case, on the grounds that the Government had made it clear that this type of expenditure could qualify for relief, adding that HMRC would clarify the scope of relief in these circumstances "in written guidance."[131] In the event both the new clause and amendment were negatived. The Bill was agreed unamended, and received a third reading without a vote.

The Bill completed all of its stages in the House of Lords on 13 July 2022.[132] Speaking for the Government Baroness Penn underlined the fact that despite recent political events and the announcement by the Prime Minister Boris Johnson on 7 July that he would resign, the Government would implement the levy, and it would "come into effect … retrospectively from 26 May."[133] Baroness Penn also confirmed the Government's plans for reviewing the profits being made by the electricity generation sector:

> The Government continue our work to explore whether certain parts of the energy generation sector are receiving extraordinary profits, partly due to record gas prices. We are consulting with that sector both to drive forward the energy market reforms and to evaluate the scale of any potential extraordinary profits, and we are considering the appropriate steps to take. That work is proceeding separately and more slowly, but this levy—once noble Lords have agreed to it this evening—will absolutely go ahead.[134]

The Energy (Oil and Gas) Profits Levy Act 2022 received Royal Assent on 14 July 2022.[135]

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130 as above c40
131 as above c66
132 HL Deb 13 July 2022 cc1548-1570
133 as above c1570
134 as above
135 House of Commons, Votes and Proceedings No.35, 14 July 2022