



Rialtas na hÉireann
Government of Ireland

Post-Enactment Scrutiny Report

Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 (No. 23 of 2023)

October 2024

Prepared by the Department of Environment, Climate and Communications

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1 Background

The Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 implements part of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, specifically the solidarity contribution element of the Regulation. It provides for the payment of the contribution by companies in the fossil fuel sector, provides for the collection of revenues gained via the measure by the Revenue Commissioners and amends the Taxes Consolidation Act 1997 to provide for the necessary calculation of profits for purposes of the temporary solidarity contribution and other certain consequential amendments. The Act forms a part of Ireland and the EU's efforts to address the impacts of the energy crisis by redistributing an element of the energy sector's surplus revenues to households and small and medium-sized enterprises.

2 Purpose of the Act

The main purpose of the Act is to implement the temporary solidarity contribution of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices. This includes the introduction of a temporary solidarity contribution on fossil fuel production and refining.

The Temporary Solidarity Contribution ("the TSC") is a levy designed to capture a portion of windfall profits generated by energy companies in 2022 and 2023. The levy aims to support households and businesses that had been affected by high energy prices.

3 Scope of the Act

The Act sets a mandatory temporary solidarity contribution on the surplus profits of energy companies with activities in the extraction, mining or refining of petroleum, natural gas or coal, or the manufacture of coke products, who generate at least 75% of their turnover in a chargeable period from these relevant activities.

4 Policy Objectives

The Act sought to redistribute windfall profits from energy companies to support consumers and business impacted by high energy costs while setting out a framework that ensured solidarity between companies benefitting from the crisis with those that had been adversely affected through the imposition of a temporary solidarity contribution.

The temporary solidarity contribution is applied to taxable profits generated by applicable energy companies in the fiscal years 2022 and 2023 which are above a 20% baseline of the average yearly taxable profits in the four fiscal years between 2018 and 2021. The TSC is applied at a rate of 75%.

The effective rates of the temporary solidarity contribution based on a 75% rate of additional profits will be:

- if profits increased by 20%, 0% would be collected (as the profits are not more than 20% above the baseline) and so the effective rate would be 0% collected;
- if profits increased by 60%, 40% would be collected and therefore the effective rate would be 30%; and
- if profits increased by 100%, 80% would be collected and therefore the effective rate would be 60%.

The amount of the TSC is defined as follows in section 4(2) of the Act:

“The amount of temporary solidarity contribution to be charged in respect of a chargeable period shall be any positive amount calculated as —

(A - (B x 1.2)) x 0.75

Where —

A is the taxable profits in respect of the chargeable period, and

B is the average taxable profits in respect of the reference years.”

5 Main elements of the Act

The main elements of the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 are as follows:

5.1 Temporary Solidarity Contribution

The primary function of the Act is to provide for a “temporary solidarity contribution” on the taxable profits of an energy company, defined in the Act, as a company that generates at least 75 per cent of its turnover in a chargeable period from relevant activities meaning economic activity in the areas of extraction, mining or refining of natural gas, coal or petroleum products where chargeable period is defined as the 12 month period commencing on 1 January in each of the years 2022 and 2023.

Section 4 of Part 2 provides for the amount of temporary solidarity contribution to be 75% of the taxable profits in 2022 and 2023 that are above 120% of average taxable profits in respect of reference years.

This section also provides for the temporary solidarity contribution to be due and payable to the Revenue Commissioners by a specified date, defined in Section 2 of this Bill as 23 September 2023 in respect of the temporary solidarity contribution due for 2022 and 23 September 2024 in respect of the temporary solidarity contribution due for 2023.

5.2 Returns

Section 8 of the Legislation provides for an energy company to prepare and deliver a return in respect of the temporary solidarity contribution.

5.3 Revenue Assessment

Section 11 of the Legislation outlines how the Revenue Commissioners carry out assessments of the returns and amounts due by Energy companies. It also provides for the administration and collection of a temporary solidarity contribution by the Revenue Commissioners.

5.4 Appeals

Section 14 of the Act provides for an expression of doubt about the application of law or the treatment for any matter contained in a return, to be included with a return by an energy company to the Revenue Commissioners.

The subsequent section, Section 15, outlines how an energy company can appeal the assessment made by Revenue, to the Appeal Commissioners, which are provided for in Section 850 of the Taxes Consolidation Act 1997. This appeal must be made within thirty days after the date of notice of the assessment or amended assessment. Self-assessments cannot be appealed.

5.5 Enforcement

Part three of the Act, containing Sections 17 to 22 outlines how the Act is to be enforced and the relevant penalties. Section 17 of the Act provides for a surcharge to be applied to the amount of the temporary solidarity contribution that would have been payable in the event that an energy company fails to deliver a return on or before the specified date.

Section 18 outlines that interest will be payable by an energy company from the date that a temporary solidarity contribution becomes due and payable.

Section 19 of the Bill provides for a penalty of €3,000 where an energy company fails to deliver a return required under this Bill, whereas Section 20 provides for the penalty for failure to keep records which is also €3,000.

Section 21 of the Act provides for other penalties applicable to the temporary solidarity contribution and Section 22, the final section of Part 3, provides for the offences which are applicable to the temporary solidarity contribution.

5.6 Amendments to other Legislation

5.6.1 Amendments to the Tax Consolidation Act 1997

Section 23 of the Legislation amends the Tax Consolidation Act 1997 by inserting a new Part 24B Council Regulation (EU) 2022/1854 of 6 October 2022/1854 as regards Temporary Solidarity Contribution to provide for definitions for this Part in section 697R, taxable profits for purposes of temporary solidarity contribution in section 697S, average taxable profits for purposes of temporary solidarity contribution in section 697T and deductibility of temporary solidarity contribution for corporation tax in section 697U.

5.6.2 Amendments to the Ministers and Secretaries Act 2011

Section 25 of the Legislation inserts an amendment to Section 101(3) of the Ministers and Secretaries (Amendment) Act 2011 to include the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 in the definition of “relevant enactment”.

5.6.3 Amendments to the Finance (Tax Appeals) Act 2015:

Section 26 of the Legislation inserts an amendment to Section 2 of the Finance (Tax Appeals) Act 2015 to include the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023, in the definition of “Taxation Acts”.

6 Current Status / Operation of the Act

The Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 was signed into law by the President on 17 July 2023. All sections were commenced by Statutory Instrument no 388 of 2023, on 2 August 2023.

Classified as non-tax revenue in the Exchequer Returns, the Temporary Solidarity Charge collected amounted to €167.2m for 2023 and €99.7m for 2024. Proceeds from the Contribution must be used for financial support measures for final energy customers, and in particular vulnerable households, to mitigate the effects of high energy prices, in a targeted manner. These funds were used as part of the financial support measures for final energy customers introduced in Budgets 2024 and 2025.

6.1 Legal Challenges

A legal challenge regarding the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 has been escalated to the Court of Justice of the European Union (CJEU).

7 Conclusion

All sections of the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 were commenced on the 2 August 2023 and sought to address the need for solidarity during the energy crisis. The policy objective of the Legislation was to implement part of Council Regulation 2022/1854, Articles 14 to 17 concerning the introduction of a temporary solidarity contribution payable by companies with activities in the fossil fuel sector on taxable profits in the years 2022 and 2023.

Through amendment to the Taxes Consolidation Act 1997, the Act established a clear framework for assessing and collecting the levy. This was achieved on the 2nd of August, the date that the Act was commenced following presidential assent on the 17 July 2023. The introduction of the TSC ensured that windfall profits made by fossil fuel companies in 2022 and 2023 were distributed to those who bore the brunt of the crisis.

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