

A Super Tax for Energy Investors

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The article discusses the UK government's recent introduction of a tax targeting profits derived from arrangements under which a company realizes valuable assets for its own benefit and the benefit of shareholders, and as a result, precipitates or accelerates the collapse of a public interest business. Aimed at the energy sector, the public interest business protection tax (PIBPT) covers persons holding assets for the benefit of an energy supply business or other public interest business where the value of the assets exceeds £100 million. The PIBPT is intended as a temporary measure from January 28, 2022 through January 28, 2023, and will be imposed at a rate of 75 percent on the adjusted value of the respective assets.

Offering an overview of the current state of the energy market, the article explains that rising energy prices "have meant that the groups that entered into futures contracts are now holding a valuable asset, as the opportunity to buy energy at the lower fixed price contract is not currently available." Noting that energy supply companies often utilize another company in the same group to hold assets, the author explains that the latter company is able to realize profits from those assets and distribute such profits to its investors, thus depriving the energy supply company of the benefit of the assets. If an energy supply company then collapses, the government and the general public will assume the greater costs to continue energy supply.

Highlighting the scope of the PIBPT, the article outlines the specific conditions under which the tax applies. The article further discusses relevant practicalities of the tax, including liability provisions and deadlines for self-assessment and payment of the tax.

While the PIBPT has singled out the energy sector, the legislative language leaves open the possibility that the tax could be extended to address similar issues in other industries. The article notes that a public interest business is defined as an energy supply business or a business as described in regulations issued by HM Treasury. Although the PIBPT is directed toward the energy

sector in part because of the corporate structure commonly adopted to protect shareholders, similar behaviour is seen in other sectors and the results are often the same.

"This tax seeks to stop investors making a profit from a failing business, but the government needs to consider whether they are only discouraging this type of behaviour in the energy supply market or whether they disapprove of this behaviour in all contexts," the author wrote. "A wider net could be cast and a similar 75 percent tax could be a useful deterrent in many different situations."

The article also notes that while the PIBPT is intended to introduce stability into the energy market, instability may resurface after the measure ends in January 2023 (absent the government invoking the option to defer the end date until January 28, 2025). An argument could be made that "the energy market could be hit with even greater volatility as investors have been forced to put their winding-up plans on hold for the yearlong hiatus," according to the article.

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