EXPLANATORY MEMORANDUM TO

THE DESIGNATION OF SPECIAL TAX SITES (INVERNESS AND CROMARTY FIRTH GREEN FREEPORT) REGULATIONS 2024

2024 No. 380

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 Nigel Huddleston MP, Financial Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Laura Cunningham, Deputy Director for Corporation Tax, Innovation and Growth at HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Karl Donnison at HMRC (telephone: 03000 539308 or email: karl.donnison@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations designate those special tax sites within, or connected to, a freeport in which certain tax reliefs are available (known as special tax sites). A freeport for these purposes is an area identified as such in a document published by or with the consent of HM Treasury where special tax and customs rules will apply. The tax reliefs available in special tax sites in Scotland include a 10% enhanced rate of structures and buildings allowance, a 100% first year allowance for qualifying expenditure on plant and machinery, a zero-rate of secondary Class 1 National Insurance contributions (NICs) for qualifying employments, business rates relief and Land and Buildings Transaction Tax (LBTT) relief on qualifying acquisitions of land. LBTT is administered by Revenue Scotland on behalf of the Scottish Government.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is United Kingdom.

5. Policy Context

What is being done and why?

5.1 On 10 February 2020, the UK Government published a consultation on freeport policy in respect of its plans to introduce freeports across the United Kingdom[1].

5.2 Freeports are geographical areas containing at least one form of port (including air, sea or rail) where special tax and customs rules apply. Freeports are intended to support the policy of levelling up towns, cities and regions of the United Kingdom.

5.3 The UK Government published a consultation response on 7 October 2020, which provided initial detail of the tax reliefs it intended to offer to encourage investment and boost employment in freeport tax sites.

5.4 On 25 March 2022, the UK and Scottish Governments jointly published the Green Freeports in Scotland bidding prospectus[2].

5.5 On 13 January 2023, the UK and Scottish Governments jointly announced that Inverness and Cromarty Firth Green Freeport and Forth Green Freeport were successful in their bids.

5.6 Legislation was included in the Finance Act 2021 for the special tax site reliefs and to provide for the power to designate special tax sites. The power contained within section 113 of the Finance Act 2021 enables special tax sites within, or connected to, freeports or investment zones to be designated and recognised in law as geographical areas where businesses can benefit from the special tax site reliefs.

5.7 This instrument designates the special tax sites in the Inverness and Cromarty Firth Green Freeport.

What was the previous policy, how is this different?

5.8 The areas that are designated as special tax sites by these regulations were not previously able to benefit from the special tax site reliefs. These regulations ensure that those reliefs are available to meet the policy objectives of encouraging development and investment.

6. Legislative and Legal Context

How has the law changed?

6.1 These regulations are made under section 113 of the Finance Act 2021 as amended by section 331 and schedule 23 Finance (No.2) Act 2023.

6.2 Schedule 22 to the Finance Act 2021 introduced new sections 45O to 45R into the Capital Allowances Act 2001 (CAA 2001) which provide for 100% first-year allowances for companies incurring qualifying expenditure on plant or machinery for use primarily in a special tax site.

6.3 Schedule 22 to the Finance Act 2021 also introduced new sections 270BNA to 270BNC into CAA 2001 which provide for an enhanced 10% rate of structures and buildings allowances for persons incurring qualifying expenditure on structures and buildings situated in a special tax site.

[1] Freeports consultation outcome: https://www.gov.uk/government/consultations/freeports-consultation
[2] Green Freeports bidding prospectus: https//www.gov.uk/government/publications/green-freeports-in-scotland-bidding-prospectus

6.4 Schedule 23 to the Finance Act 2021 introduced new section 61A and Schedule 6C into the Finance Act 2003 which provide for relief from Stamp Duty Land Tax in England for qualifying acquisitions of land situated in a special tax site.

6.5 Sections 1 to 4 in the National Insurance Contributions Act 2022 provide for a zero-rate of secondary Class 1 NICs on earnings up to the freeports upper secondary threshold (£25,000), that employers based in a special tax site can apply to qualifying employments from April 2022.

6.6 The Government is not changing the legislation relating to business rates reliefs. Instead, the Government will provide guidance to local authorities outlining eligibility criteria for relief. The Government will then reimburse local authorities that use their discretionary relief powers under section 47 of the Local Government Finance Act 1988 (as amended), to grant relief in line with that guidance.

6.7 The Land and Buildings Transaction Tax (Green Freeports Relief) (Scotland) Order 2023 introduced a new Schedule 16D to the Land and Buildings Transaction Tax (Scotland) 2013 Act to provide for relief from Land and Buildings Transaction Tax for eligible transactions situated in a special tax site.

6.8 These regulations are required to designate those special tax sites in which expenditure may qualify for the reliefs and to state the day on which expenditure can begin to qualify.

Why was this approach taken to change the law?

6.9 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The freeport package including the tax offer was the subject of an extensive consultation process which ran from 10 February 2020 to 13 July 2020. The Government received 364 responses from a mixture of port operators, businesses, local authorities, non-governmental organisations and others.

7.2 On 17 March 2023 the Scottish Government announced a consultation on Land and Buildings Transaction Tax – Green Freeports Relief[3]. The Scottish Government published a consultation response on 16 June 2023[4]. In total, the consultation received 10 responses from various stakeholder groups. The Scottish Government legislated for Land and Buildings Transaction Tax – Green Freeport relief which came into force 1 October 2023.

7.3 These regulations have not been subject to consultation. Consultation was not considered necessary as the special tax sites which are the subject of these regulations were selected on merit following a competitive bidding process based on proposals submitted by green freeport operators in Scotland.

[3] Land and Buildings Transaction Tax consultation: https://consult.gov.scot/taxation-and-fiscal-sustainability/lbtt-proposed-relief-for-green-freeports/

[4] Summary of responses to Land and Buildings Transaction Tax consultation: https://www.gov.scot/publications/land-buildings-transaction-tax-proposed-relief-green-freeports-scottish-governments-response-summary-responses/

8. Applicable Guidance

8.1 No guidance will be published for these regulations. However, guidance has been published for each of the special tax site tax reliefs. This includes guidance for the first-year allowance for plant and machinery[5], guidance for the enhanced rate of structures and buildings allowance[6], guidance for the zero-rate of secondary Class 1 NICs[7] and guidance for Land and Buildings Transaction Tax Green Freeport relief[8].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument was published on 3 March 2021 alongside Spring Budget 2021[9]. It remains an accurate summary of the impacts that apply to this instrument.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is that eligible businesses which operate in special tax sites will begin to be eligible for the special tax site reliefs.

9.3 The legislation does impact small or micro businesses.

9.4 No specific action is proposed to minimise regulatory burdens on small businesses. The basis for the final decision on what action to take to assist small businesses is that relatively few small businesses will be affected by this legislation and those that are will benefit from the special tax site reliefs.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through information collected from tax returns and through communications with the affected taxpayer population. Freeport governance bodies will also need to monitor and evaluate business activity in each freeport. This measure will be monitored and assessed alongside other measures in the Government's freeport package.

10.2 The instrument does not include a statutory review clause because it is exempt under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 (provisions relating to a tax).

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[5] Guidance on enhanced capital allowances relief in Freeport tax sites: https://www.gov.uk/guidance/check-if-you-can-claim-the-enhanced-capital-allowance-relief-in-freeport-tax-sites

[6] Guidance on enhanced structures and buildings allowances relief in Freeport tax sites: https://www.gov.uk/guidance/check-if-you-can-claim-enhanced-structures-and-buildings-allowance-relief-in-freeport-tax-sites

[7] Guidance on enhanced National Insurance relief in Freeport tax sites: https://www.gov.uk/guidance/check-if-you-can-claim-national-insurance-relief-in-freeport-tax-sites

[8] Guidance on Land and Buildings Transaction Tax relief in Green Freeport tax sites: https://revenue.scot/taxes/land-buildings-transaction-tax/lbtt-legislation-guidance/lbtt3001-exemptions-reliefs/lbtt3010-tax-reliefs/lbtt3049-green-freeports

[9] Tax Information and Impact Note on the designation of Freeport tax sites: https://www.gov.uk/government/publications/designation-of-freeport-tax-sites/designation-of-freeport-tax-sites

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").