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Advokatfirma

# The power of nature

**Taxation of wind power – 2019**

A country overview

2019/2020

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# Introduction

**Wind power production is a fast-growing business both onshore and offshore. It is expected that production of wind power shall continue growing in the future, and increase its share of the global energy mix, as countries all over the world seek to reduce emissions from fossil energy production.**

As an illustration, the Norwegian energy company Equinor have been rewarded the opportunity to construct the world's largest offshore wind farm at the Doggerbank-area in the North Sea, along the coast of the UK. Estimated project value is roughly EUR 10 000 000 000. When finalized, installed capacity is estimated to 3.6 GW, producing enough clean energy to support 4.5 million households in the UK.

This report intends to present a brief country overview of taxation of both onshore and offshore wind power production. Since this is the first version of the report, we have decided to focus on a few selected countries, which represent key wind power producing countries. In addition, we have included a few countries that have potential to become large future producers of wind power, e.g. through investment in offshore wind.

### **Ordinary taxation – Corporate Income Tax (CIT) rates**

Income arising from wind power production is generally subject to ordinary CIT, varying from 12.5 % (Ireland) to up to 40 % (India). Applicable CIT rates on wind power production in most of the countries presented in this report varies between 20 % – 25 %, please see relevant country sections for details.

### **Country specific tax benefits – accelerated tax depreciations**

Several countries have accelerated tax depreciation rules for wind power assets, leading to increased profitability for wind power producers. The main incentive behind such rules is to increase renewable energy production and to speed up a transition from fossil energy to renewable power production.

### **Local taxes and surtaxes**

Securing support from local municipalities affected by construction and operation of wind farms is commonly obtained through levy of local taxes, such as property tax.

We aim at continuously improving the report, including also to expand the report to include additional countries in future editions. Thus, we welcome any feedback that can contribute to fulfill this goal.

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# ENR Tax incentives and local taxes summary table





## Overview of applicable tax benefits and local taxes

Country	Tax benefits*	Local taxes**
Australia		
Austria		x
Canada	x	
China	x	x
Croatia		
Denmark		
France	x	x
Germany		
India	x	
Ireland		x
Italy	x	x
Japan	x	x
Netherlands	x	x
Norway	x	x
Poland	x	x
Portugal		x
South Africa	x	
Spain		x
UK		
USA	x	x

\* (e.g. accelerated depreciations)

\*\* (e.g. property tax)



# Australia

## Corporate income tax

There are two structures that are most commonly used in Australia to hold wind farm assets – trust structures and company structures:

### Taxation of a trust structure

Once a trust holding the wind farm assets is not regarded as a public trading trust, it should be regarded as a flow through entity for tax purposes. In this regard, unitholders will be taxed on their share of the income of the trust at their marginal tax rate (e.g. 30% for non-residents, 15% for superannuation funds). Whilst the trust itself should not be taxed, it must lodge an Australian income tax return each year.

The character of the income passed through the trusts to unit holders will retain its character from an Australian tax perspective.

### Taxation of a company structure

Renewable energy generation companies in Australia are subject to company income tax. Where turnover exceeds AUD 50 million in a financial year, the company tax rate is currently 30%. Where turnover is less than AUD 50 million in a financial year and other conditions are met, the company tax rate can be reduced to 25%.

The taxable income position of the company will include operating income from the wind farm, less allowable tax deductions such as depreciation of plant & equipment. The taxable income of the project should be unchanged irrespective of whether a trust or company structure is adopted.

### Exit implications

The tax implications on exit will depend on whether the shares/units of the project are held on revenue or capital account, whether any future gain is deemed to have an Australian source and whether the asset is Australian real property.

Where the unit holder/shareholder is non-resident for Australian tax purposes (and is assumed not to have a permanent establishment in Australia), any capital gain / loss arising on disposal should be disregarded where it arises in relation to an asset that is not “taxable Australian property” (“TAP”) (i.e. 50% or more of its value can be attributable to land, leases and associated fixtures in Australia). This exemption should only be available where the investment is considered to be held on capital account.

Where an asset is held on revenue account and is not TAP, it can be possible to look to the relevant double tax agreement such that no Australian tax should arise on disposal.



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To the extent that the asset disposed of is TAP, any gain will be assessable in Australia at 30% regardless of whether it is held on revenue or capital account.

Where the unit holder/shareholder is resident in Australia, it will be subject to tax on any gain arising at 30%.

## Goods and Services Tax

### GST registration

In order to recover input tax credits on GST on costs incurred, the recipient entity must be registered and entitled to be registered for GST.

An entity will not be entitled to be registered for GST where it is not carrying on an enterprise. An entity which passively holds interests in its downstream entities (i.e. does not undertake any management activities of these entities) and/or is not the head of an income tax consolidated group/multiple entry consolidated group, will not be taken to be carrying on an enterprise.

An entity is required to be registered for GST if its GST turnover exceeds or is likely to exceed, \$75,000, in any twelve month period (i.e. current month and future 11 months and current month and past 11 months). All taxable sales and sales connected with Australia will be included in calculating the GST turnover.

The effect of GST registration is that the GST registered entity will be required to remit GST on its taxable supplies in its monthly or quarterly business activity statements ("BAS").

Where an entity is not required to be registered for GST, consideration should be given to whether it is optimal for these entities to be registered, including:

- Whether registration allows them to claim input tax credits; and
- As a GST registered entity will be required to charge GST on its taxable supplies (e.g. trustee fees), whether the recipient of the supply can claim an input tax credit as the supply would have otherwise been out-of-scope for GST purposes if the entity is not required to register.

### Recovery of input tax credits

The Finance Acquisitions Test ("FAT") is exceeded where, in any twelve month period (i.e. current month and future 11 months and current month and past 11 months), the GST incurred on costs related to all financial supplies (excluding borrowings) exceeds either 10% of all GST incurred or \$150,000.

Where an entity exceeds the FAT, it will not be entitled to full input tax credits for GST it incurs on expenses to the extent the expense relates to financial supplies it makes (such as the issue of units). Reduced input tax credits may be available for prescribed costs (at a reduced rate of generally, 75%).

Wind power operations are likely to be fully creditable, with the exception of certain share transactions, the project vehicle should be entitled to claim full GST credits for GST incurred on development, construction and any operation costs relating to these activities.

### Special tax regime

There is no special tax regime for wind power companies in Australia.



# Austria

## Corporate income tax

First, the question of the appropriate legal form to operate a wind power plant have to be analyzed: Corporations like limited liability companies (GmbH) or stock companies (AG) are subject to corporate income tax, currently at a flat rate of 25 %. Private individuals are subject to national income tax at a progressive tax rate up to 55 %. A partnership is treated as a transparent entity for tax purposes, i.e. the partnership-income is attributed to and taxed at a partners' level when incurred. Taxation depends on the partner (private individual or corporation). As regards the computation of the tax-base of a wind power plant-company, there are no differences to any other business entity.

## Depreciation

In Austria, for tax-purposes only the straight-line depreciation method is permitted. As a wind power station is not classified as a building from a tax perspective, there is no explicit duration laid down in Austrian tax legislation, but the acquisition cost are to be spread over the useful life of the wind power plant. Usually, the Austrian tax-authorities follow the opinion of the German financial authorities that have published "depreciation charts" showing the assumed useful lives of a series of assets. According to this "depreciation chart" a useful life of 16 years can be assumed. However, the land itself (including roads to make the land usable) are non-depreciable.

## Provisions

In case the wind power plant is to be dismantled after a specific (contractual) period already fixed, the setting-up of a provision for the removal costs may be required to spread those costs over the contractual period for local Austrian-GAAP as well as for tax purposes. From a tax-perspective, an annual deduction of the proportionate cost relating to that specific year would be possible. Still, long-term provisions (actual cost will only arise after a period of more than 12 months) for tax-purposes are to be discounted for tax-purposes at 3.5%.



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## Specific withholding regulations

In 2019, Austria implemented a new withholding tax for infrastructure projects. Whenever specific infrastructure-providers (companies that supply electricity, gas, oil and district heating) effect payments to be granted the right to use a piece of land to set up transmission lines, 10 % (8.25 % for payments made to corporations) of the gross-amount are to be withheld and transferred to the tax-authorities. The withholding tax is final for the recipient, still an option for standard taxation of that income is possible. If wind power plants are set up, there may be payments to land-owners in order to connect the power plants to the electricity grid that would be covered by those rules. Please note that WHT would also cover payments for the power supply to ice warning lights on the wind turbines, etc. Payments referring to the plant itself, including payments for the right to use the airspace are not covered by WHT.

Payments made to land-owners that are not subject to WHT, are taxable at the level of the recipient as ordinary rental income (no lump-sum taxation applicable even for agricultural and forestry income). The same is true in respect of VAT: the rental activity would be subject to VAT but tax-exempt if no option for tax-effective treatment (20% VAT to be collected and paid to the authorities, input-VAT-deduction at the level of the power plant-operator under the normal rules).

## Electricity levy (“Elektrizitätsabgabe”)

Basically, supplies of electricity are subject to Austrian electricity levy of currently 1.5 cent/kWh. Supplies of electricity to electricity producers using that electricity for their production or transmission of electricity, benefit from an exemption (e.g. if electricity produced by a wind power plant is sold to a public utility). The levy shall only cover any supply where the electricity is consumed. Electricity consumed when transmitting power to transformers, etc. is also exempt.

## Real estate transfer tax and stamp duties

The wind power plant itself is qualified as a facility site and is not subject to real estate transfer tax. In case the land (where the wind power plant is built) is transferred, RETT of 3.5% of the consideration paid to the vendor of the land is triggered. Furthermore, a registration fee of 1.1 % falls due.

Furthermore, local municipalities may levy a property tax at a rate that varies between 0.1 to 0.2% of the taxable fiscal value of the property (land). Each municipality is free to decide whether or not to levy property tax.

In case that property is not acquired but leased, Austrian stamp duty will be triggered for any leasing-contract that is established in writing (“Bestandsvertragsgebühr”). The Duty amounts to 1% of the annual leasing amount multiplied by the leasing period in years (18 years at the maximum). If the leasing period is not defined in the contract, a leasing period of three years is assumed to calculate the basis for the Stamp Duty.





# Canada

## Corporate income tax

The Canadian federal corporate income tax rate is currently 15%. Provincial corporate income tax rates vary between 10% and 16% (with the province of Alberta's rate dropping to 8% by 2022), resulting in a combined federal and provincial corporate income tax rate of between 25% and 31% (with Alberta's combined federal and provincial rate dropping to 22% by 2022). Net operating losses may be carried back three years and carried forward 20 years.

## Capital gains and losses

Proceeds from the disposition of capital property that exceed (are less than) the tax cost of such property are generally taxed as capital gains (losses). The taxable portion of capital gains and the deductible portion of capital losses is 50%. The deductible portion of capital losses in excess of taxable gains is referred to as a "net capital loss." Net capital losses may be carried back three years and carried forward indefinitely, but may be applied only against taxable capital gains.

## Withholding tax rates

Non-resident withholding tax at a base rate of 25% is applied to payments of dividends, interest, royalties, and other items to non-residents. The rate may be reduced under applicable income tax treaties. Among other exceptions, non-resident withholding tax is not imposed on interest paid to non-residents who are dealing at arm's length with the payer.

A corporation's paid-up capital ("PUC") (a concept similar to legal stated capital) can be returned to a shareholder without the application of non-resident withholding tax.

## Gains on the sale of taxable Canadian property ("TCP")

Generally, capital gains of a non-resident person from the disposition of capital property located in Canada is not subject to Canadian income or withholding tax. The main exception to this principle is in respect of capital gains realized on the disposition of TCP, which generally requires a purchaser to withhold and remit 25% of the purchase price unless the property is "excluded property." A process is available that provides for a possible reduction in the amount of Canadian tax to be withheld where the purchaser obtains a certificate from the Canadian tax authorities.



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TCP generally includes, but is not limited to, the following:

- Real or immovable property situated in Canada.
- Capital property used at any time in carrying on a business by the non-resident in Canada.
- A share of a private corporation, an interest in a partnership or an interest in a trust that, within the preceding 60 months, derived its value principally from real or immovable property (including certain resource and timer property) situated in Canada.
- A share of a public corporation, within the preceding 60 months, the non-resident and/or non-arm's length persons owned 25% or more of the shares of the corporation and the share, within the preceding 60 months, derived more than 50% of its value from real or immovable property (including certain resource and timer property) situated in Canada.
- Canadian resource property and timer resource property, or interests in such properties.

Under certain tax treaties, there is a "point in time" test (vs. the 60 months as described above), such that, if at the time of sale the property does not constitute a concept similar to TCP, there should be no withholding tax levied.

For a more detailed description of corporate income tax in Canada:

<https://assets.kpmg/content/dam/kpmg/ca/pdf/2019/06/kpmg-tax-facts-2019-2020.pdf>

## Special tax regime

The primary federal tax incentives available to taxpayers developing renewable energy projects (i.e., wind, solar, etc.) are (i) accelerated capital cost allowance ("CCA") deductions available on Class 43.1 and Class 43.2 property, and (ii) the immediate write-off available in respect of an outlay that qualifies as Canadian Renewable and Conservation Expense ("CRCE").

### Accelerated CCA

Accelerated CCA rates are available for certain types of assets used for clean energy generation and energy conservation that fall into Class 43.1 or Class 43.2.

Class 43.1 assets depreciate at a CCA rate of 30% annually computed on a declining-balance basis and include certain clean energy generation and energy conservation equipment. Class 43.2 assets depreciate at a CCA rate of 50% computed on a declining-balance basis and include certain equipment described in Class 43.1 acquired on or after 23 February 2005 and before 2025 used for clean energy generation, energy conservation, and higher efficiency standards.

Only certain components of wind projects are eligible to be included in Class 43.1/43.2. Further, to be eligible for inclusion in Class 43.1/43.2, the property must be acquired by the taxpayer and used by it, or leased by the taxpayer to a lessee and used by the lessee, for the purposes of gaining or producing income from a business carried on in Canada or from property situated in Canada. Used property does not generally qualify for inclusion in Class 43.1/43.2, with specified exceptions.



# Canada

Examples of the types of costs in respect of wind projects that we see included in Class 43.1/43.2 include:

- Excavation for foundations and underground electrical collector and control wiring.
- Installation of support structures (e.g., concrete foundations, guy wire supports, anchors and concrete platforms).
- Purchase and installation of wind-driven turbine generator(s) with tower and nacelle and ancillary equipment, including the following: blade pitch and yaw control system, lubrication system, cooling system, icing control system, power regulation equipment, transformer to step up voltage to collector voltage levels, controls and instrumentation.
- Purchase and installation of powerhouse (i.e., electrical collector substation) complete with fencing, equipment enclosures, switches, central Supervisory Control and Data Acquisition (SCADA) system and ancillary equipment.
- Purchase and installation of underground collector and control wiring.
- Purchase and installation of power transformer(s) and central power control system for phase synchronization, voltage regulation and frequency control.
- Purchase and installation of battery storage equipment including charging and discharging system and AC/DC conversion equipment.
- Purchase and installation of electrical transmission line including switches and meters

In a situation where a taxpayer acquires property in Class 43.1/43.2 from a vendor, the taxpayer may only be able to record the acquired property in Class 43.1/43.2 (at the previous owner's initial cost of the used property) if certain conditions have been met.

In certain circumstances, the deduction for CCA on Class 43.1/43.2 property may be restricted such that CCA cannot be used to create or increase a loss.

### **Accelerated investment incentive property ("AIIP")**

CCA allowed in the first year that capital property becomes available for use is generally limited to half the amount that would otherwise be available in respect of that property (the "half-year rule"). This rule applies to the net addition to the class for the year (acquisitions less dispositions). The half-year rule is a simplifying provision that assumes capital property is acquired halfway through the taxation year.



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A special accelerated CCA regime was recently enacted for AIIP, providing tax incentives for capital spending in Canada. Under the AIIP regime, capital property acquired after 20 November 2018 may be eligible for first year CCA equal to up to three times the amount that would otherwise apply in the year an asset is available for use.

In general, AIIP means property acquired after 20 November 2018 that becomes available for use before 2028 and is either (i) property that has not been used for any purposes before it was acquired by the taxpayer; or (ii) is not property that was transferred to the taxpayer on a tax deferred basis, or previously owned or acquired by the taxpayer from a person or partnership that was not dealing at arm's length with the tax payer at the time the property was acquired.

Under the AIIP rules, for specified clean energy equipment (i.e., Class 43.1/43.2 assets) that qualify as AIIP, a CCA deduction of 100% may be available in the year the equipment becomes available for use. The enhanced first-year allowance provides taxpayers with an immediate write-off of the full cost of clean energy equipment if the property becomes available for use before 2024. The enhanced first-year allowance begins to be phased out starting 2024 (i.e., approximately 75% deduction in 2024 and 2025 and 55% deduction in 2026 and 2027) and is completely eliminated for property that becomes available for use after 2027.

### **Canadian Renewable and Conservation Expense ("CRCE")**

To promote the development and conservation of sources of renewable energy, many start-up expenditures on

renewable projects can be grouped in an expenditure. Generally, CRCE represents the intangible expenses incurred and payable to an arm's length party in connection with the development of an energy project wherein at least 50% of the capital cost of the depreciable property in the renewable energy project will be property described in Class 43.1 or Class 43.2, under the Canadian system for CCA. CRCE is fully deductible in any year, can be carried forward indefinitely, or can be transferred to investors through the flow-through share rules.

Examples of the types of expenses that are eligible for CRCE include:

- Cost of pre-feasibility and feasibility studies of suitable sites.
- Costs related to determining the extent, location and quality of energy resources.
- Negotiation and site approval costs.
- Cost of constructing a temporary access road to the project site.
- Site preparation costs not directly related to the installation of equipment.

Examples of the types of expenses that are not eligible for CRCE include:

- Amounts that would otherwise be included in the capital cost of depreciable property, including all costs directly associated with the acquisition and installation of the property, except those that are listed above as qualifying as CRCE.
- Financing and interest charges.
- Administration and management expenses.



Canada

## Scientific Research & Experimental Development ("SR&ED") Program

The SR&ED Program is a federal tax incentive program administered by the Canadian tax authorities that encourages Canadian businesses of all sizes, and in all sectors, to conduct R&D in Canada. Companies, including those carrying on business in clean energy generation, may be entitled to claim an investment tax credit if they incur eligible R&D expenditures. The tax credit may be carried forward and claimed in the 20 subsequent taxation years or carried back and applied against federal taxes payable in the three prior years.



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China

## Corporate income tax

Corporate Income Tax (CIT) is one of the main taxes for businesses in China. The standard CIT rate in China is 25%. A 15% rate may be secured for qualifying wind power enterprises operating in the western region of China until 31 December 2020 (and this incentive may potentially be renewed after that). For wind power enterprises which qualify for the “High and New Technology Enterprise” (HNTe) designation, a 15% rate is also applied; this requires numerous conditions to be fulfilled, such as for the China enterprise to own its core product IP rights.

Furthermore, certain wind power projects, approved by relevant government authorities (in particular, the National Development and Reform Commission, hereinafter referred to as NDRC) as “Public Infrastructure Projects,” may benefit from even more generous tax treatment. Taxable income derived from the qualified wind power projects may be exempt from CIT for the first three years and entitled to a 15% rate, reduced further by 50% (i.e., a 7.5% rate), for the fourth to sixth years; this is referred to as “exemption for three years and 50% reduction for another three years. The preferential tax treatment can be applied starting from the tax year in which the first income arises from project operations.

For fixed assets owned by wind power enterprises, and which are subject to rapid obsolescence due to technological development or a high level of wear and tear, the accelerated tax depreciation rules may be applied. Furthermore, a 100% immediate tax deduction (i.e. capital expensing) is available (until December 2020) for purchased equipment or machinery with a unit value less than RMB 5 million (USD 0.73 million).

In addition, for wind power projects falling under the Clean Development Mechanism (CDM) a special tax rule applies. The government obliges companies generating proceeds from the transfer of certified emission reduction (CER) certificates to contribute a portion of such proceeds to the government. In view of this rule, the relevant amounts (i.e., 2% of transfer proceeds) are allowed to be deducted from enterprise taxable income for CIT purposes.



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## Value added tax and customs duties

Supply of electric power is normally subject to output value added tax (VAT) at a rate of 13% (16% prior to 1 April 2019). However, for supplies of wind-generated power, a 'refund-upon-levy' policy is applicable at 50% of the VAT payable amount (i.e. the excess of output VAT over input VAT).

From 1 April 2019, input VAT credits for the purchase of real estate and construction services can be claimed in full upfront. This is of benefit to wind power enterprises (among others) as previously such input VAT credits could only be claimed over a 2 year period. Wind power enterprises may also benefit from a new 'trial basis' VAT refund mechanism, which was introduced from 1 April 2019.

Customs duty and import VAT exemptions are available in certain instances:

- For imports of key parts and raw materials used for producing high power wind turbine generator systems or their components; this applies for machines with rated power exceeding 3MW. The treatment is available to eligible enterprises until the end of 2019, though may be renewed further on an annual basis.
- For imports of equipment used by companies operating wind power plants, where these have been designated as 'encouraged projects', as per lists set out by NDRC and the Ministry of Commerce. Where the company is foreign invested, a transfer of technology to the China subsidiary is required.

## Local surcharges

Wind power enterprises should also pay local surcharges on top of their VAT liability, including city construction tax at the rate of 7%, 5% or 1% depending on the location of the enterprises, education surcharge at the rate of 3%, and local education surcharge at 2%. These cannot be refunded even where VAT is refunded under the above-mentioned 50% refund-upon-levy policy.

## Special tax regime

There is no special tax regime for wind power in China.

## Corporate income tax

Wind power companies in Croatia are subject to the same corporate income tax rules that apply to other companies as well. Croatian corporate income tax statutory rate is 18%. Reduced rate of 12% may be applied for taxpayers with turnover below HRK 3 million (approximately EUR 405 thousand). Tax base is the accounting profit / loss in line with the applicable accounting standards, adjusted for CPT purposes for non-deductible expenses and non-taxable income.

Tax losses can be off-set against taxable profits and carried forward for a period of 5 years.

Some other general rules which may be relevant for wind power companies are briefly explained below.

### Depreciation

Croatian tax legislation sets maximum tax deductible depreciation rates. If for accounting purposes the taxpayer uses lower depreciation rates, these need to be used for tax purposes as well, i.e. tax depreciation cannot be higher than accounting depreciation.

Maximum tax deductible depreciation rates that might apply to wind power companies are as follows:

- Gear, rotor, generator and control equipment – 25%
- Towers, constructions and buildings – 5%
- Transformer and cables for connection to the power supply – 10%

Land is not subject to depreciation.

The above prescribed depreciation rates may be doubled and considered as tax deductible provided the same is used for accounting purposes.

Impairment of assets is generally non-deductible, i.e. it represents temporary difference for corporate income tax purposes.

## Other

### VAT on supply of electricity

Statutory VAT rate is 25%. However, reduced VAT rate of 13% is applied on supply of electricity.

### Taxation of real estate

There is no real estate tax in Croatia. However, acquisition of a real estate (land and buildings) is subject to real estate transfer tax ("RETT") of 3% if such real estate is older or used for more than 2 years. RETT is payable by the acquirer and cannot be recovered. In some cases, it is possible to opt for VAT when acquiring a real estate.

If real estate is not used or older for more than 2 years, VAT of 25% applies.

Exceptionally, construction land is always subject to VAT of 25% rate. In general, VAT represents recoverable tax.

### Excise duties

Supply of electrical energy produced from renewable sources, such as wind, is exempt from excise duties that are otherwise imposed on supply of electrical energy.





# Denmark

## Corporate income tax

Generally, wind power companies in Denmark are subject to corporate income tax, currently 22%. Somewhat simplified the tax base is in principle determined in accordance with the ordinary tax principles that apply for other companies as well.

As such, wind power companies are generally subject to tax on all income and are only allowed deductions on expenses that are related to the operations of the company.

According to Danish tax law, a company incorporated in Denmark is taxed in accordance with the territoriality principle in the sense that income from permanent establishments as well as real estate located abroad are excluded from the Danish tax computation. Non-resident companies are taxed only on profits from income sourced in Denmark.

Although wind power companies are subject to ordinary tax principles that apply for other companies as well, there are some provisions, which may be relevant for wind power companies, particularly with respect to depreciations.

### Depreciations

Fixed assets in wind parks are allocated to the “ordinary” depreciation groups, which means that an allocation of investment costs should generally be made between:

- Operating equipment (up to 25% annual depreciation on a pool basis using the declining-balance method). This may be windmills, including gear, rotor, generator, control equipment, transformer and cables for connection to the power supply.
- Buildings and installations (up to 4% annual depreciation using a straight-line method). This may be towers and buildings.
- Infrastructure facilities, such as facilities used for transporting, storing and distribution of electricity, water, heat, oil, gas and waste water (up to 7% annual depreciation using a declining-balance method).
- Other renewable energy facilities, such as e.g. solar cell systems (up to 15% annual depreciation using the declining-balance method).
- Non-depreciable assets, which may be land and property, road etc.

As mentioned above, the depreciation allowance for windmills are generally up to 25%, however, it should be noted that for windmills acquired after 1 January 2013 with a capacity of >1MW the depreciation allowance is up to only 15% on a yearly basis using the



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declining-balance method. Such windmills are depreciated on a pool basis together with other renewable energy facilities, cf. above.

For Danish tax purposes, the company is allowed to commence depreciating on e.g. windmills once the windmills are in such condition that they may be part of the operations of the company.

## Offshore wind

Denmark has a number of operative offshore wind farms, including a number of offshore wind farms currently under construction. The established offshore wind farms are listed below, including the year of establishment, number of windmills as well as MW per wind farm:

- Tunø Knob (1995) 10 windmills, 5 MW
- Middelgrunden (2000) 20 windmills, 40 MW
- Horns Rev I (2002) 80 windmills, 160 MW
- Rønland (2003) 8 windmills, 17,2 MW
- Nysted (2003) 72 windmills, 165,6 MW
- Samsø (2003) 10 windmills, 23 MW
- Frederikshavn (2003) 3 windmills, 7,6 MW
- Horns Rev II (2009) 91 windmills, 209,3 MW
- Avedøre Holme (2009/10) 3 windmills, 10,8 MW
- Sprogø (2009) 7 windmills, 21 MW
- Rødsand II (2010) 90 windmills, 207 MW
- Anholt (2013) 111 windmills, 399,6 MW
- Horns Rev 3 (2019) 49 windmills; 400 MW

Generally, ordinary Danish corporate taxation also applies with respect to income etc. from offshore wind farms. For foreign companies with activities and a taxable presence in Denmark, it should be noted that Denmark as a main rule only levies corporate tax on activities carried out on land or within the

Danish 12mz. Income attributed to activities outside the 12mz would generally not be subject to Danish corporate tax.

For companies subject to the Tonnage Tax Act, the Danish Parliament adopted a bill in December 2015 to amend the Tonnage Tax Act to cover activities from various special purpose vessels to be included under the tonnage tax regime. The new activities under the expansion of the regime include, inter alia, the following:

- Building, repair and dismantling of offshore wind farms, oil installations (the latter: only outside DK) or other offshore installations
- Housing of employees, spare parts, or workshop facilities in connection to offshore operations (should not cover a rig as it is not considered a vessel)
- Activities related to guard service (e.g. in connection with cable laying and other non-fixed installations)

The amendments were subject to approval from the European Commission due to state aid rules and such approval was provided 12 October 2018. However, although finally approved by the European Commission, the amendments have not yet entered into force, as final execution still awaits confirmation from the Danish Ministry of Taxation. At this stage, it is not clear when the amendments will come into effect.

## Real estate taxes

Danish registration duty of DKK 1,660 plus 0.6% of the value applies to registration of transfers of land and real estate. For Danish tax purposes, a windmill would not as such be considered real estate, however, according to Danish tax practice, a windmill transferred as part of e.g. piece of land would be subject to variable 0.6% registration duty.



# France

## Corporate income tax

The SPVs that operate onshore wind turbines are subject to Corporate Income Tax (CIT) under the standard tax regime.

### CIT rates

The CIT rates applicable to the French companies are the following:

Year	2019	2020	2021	2022
CIT rate applicable	28% up to €500,000 of tax result and to 31% for the tax result exceeding this threshold	28%	26,5%	25%

When the tax result of the company is higher than €2,283,000, an addition social contribution of 3.3% applied on the fraction of the CIT exceeding €763,000, so that all above CIT rates have to be increased as follows:

- 31% => 32.02%
- 28% => 28.92%
- 26.5% => 27.37%
- 25% => 25.83%

In practice, only the portion of the CIT exceeding €763,000 will be subject to the 3.3% additional social contribution.

Specific CIT rates will apply for 2019 and 2020 for companies realizing an annual turnover exceeding €250 M (i.e., likely respectively 33.1/% and 31 % for the portion of tax profit exceeding €500K).

### Tax losses

As a general principle, tax losses can be carried forward without any time limit provided that events which would be characterized as a substantial change of activity or as a discontinuance or cessation of activities do not occur at the level of the company that incurred said tax losses.



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The tax loss carried forwards can be carried forward without any time limit, however they can only be offset (i) with no limitation up to 1m€ and (ii) for up to 50% of profits exceeding this threshold (i.e., a minimum taxation of 50% of profits exceeding 1m€ ).

### **CIT deductible expenses**

According to Article 39 of the French Tax Code and the related Tax Guidelines, any costs incurred by a company, are tax deductible if the following cumulative criteria are fulfilled:

- the concerned expenses are incurred in relation with the business interest of the company or derive from the normal management of the company;
- they are evidenced and effectively incurred by the company;
- they are comprised in the accounts of the Financial Year during which they were incurred by the company;
- the tax deductibility of costs is not expressly denied by law.

Deductible expenses include all expenses connected with the day-to-day operations of the company such as in principle:

- Lease payments;
- All the expenses which cannot be considered as an accessory of the fixed assets;
- Salary expenses and related social security, insurance and pension contributions,
- Taxes (such as local taxes, being noted that the CIT is not tax deductible)
- Financial expenses (it being noted that several tax rules limit the tax deductibility of said financial expenses)

- Amortization and depreciation
- O&M expenses

The costs of windmill and all the costs connected to the building of the windmill are considered as fixed assets that can be amortized under the condition described below.

Specific provisions for dismantling costs have to be recorded by the companies that operate wind turbines assets. Said provisions are recorded in the balance sheet. The tax deductibility is realized through the depreciation of the asset recorded in counterpart of the specific reserve booked as liabilities.

As a general principle, the acquisition of the wind turbines assets is basically financed between 75%-80% through loan bearing interest. However, the tax deductibility of financial expenses is limited by several tax rules (i.e., arm's length character of the interest rate applied in the framework of financing granted by affiliated companies, minimum taxation of the lender and thin-capitalization rules that incorporate broadly the limitations provided by ATAD 1) and the level of indebtedness have to be fine-tuned accordingly.

### **Special tax regime**

Article 39 A.1 of the French Tax Code provides that, in certain cases and for limited fixed assets, entities can apply a declining method ("amortissement dégressif"). This means that, at the beginning of the depreciation period, they can deduct, from a tax standpoint, a tax depreciation higher than the accounting depreciation assessed on the straight line method.



# France

Declining-balance depreciation is allowed for certain new and renovated assets whose useful life is in excess of three years.

As equipments which produce energy, wind turbines (including the equipments needed for the production, transportation and distribution of electricity) can be depreciated under the declining balance method as provided for by Article 39.A.1 of the FTC.

The depreciation rate applied in the case of the declining balance corresponds to the straight line depreciation rate multiplied by a specific ratio. For equipments acquired or built as from January 1, 2010, the applicable ratios are:

- 1.25 for equipments depreciated over a 3 or 4 years period;
- 1.75 for equipments depreciated over a 5 or 6 years period;
- 2.25 for equipments depreciated over a period exceeding 6 years.

Moreover, French companies that run wind turbines are subject to several local taxes (e.g.; property tax and “Cotisation foncière des Entreprises”) as all the French companies. Nevertheless, only the items of the wind turbines which have a real estate nature (e.g., foundations of the wind turbines, technical building used for the transformation of the electricity) fall within the scope of these local taxes.

The companies that operate onshore turbines are also liable to a flat tax (“Imposition Forfaitaire sur les Entreprises de Réseau”) which is based on the installed power (e.g., €7.57 per KW installed in 2019).

Specific taxes are applicable to companies that operate offshore wind turbines. For example, in 2018, the yearly tariff of the specific tax on the maritime wind turbine amounted to €16,301 per MW installed. In counterpart, they are exempted from certain local taxes, it being noted that for the time being no offshore wind turbines are currently operate in France.



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## Corporate income tax

The profits / income of a corporation owning and / or operating renewable energy assets (located in Germany) are subject both to trade tax ('Gewerbesteuer', which is a local tax imposed by the communities) and corporate income tax ('Körperschaftsteuer', which is a federal tax) plus solidarity surcharge.

The local trade tax rate varies between approx. 7% and approx. 19%. The average trade tax rate in Germany can be estimated to be approx. 15%. The trade tax payments need to be allocated to the different communities in which the business of the corporation is carried out. There is a special rule for entities owning renewable energy assets which – in simple terms – shall ensure that a big part of the trade tax payments needs to be made to the community in which the wind farm / solar farm of the corporation is located.

The standard corporate income tax rate is 15% and it is increased by the solidarity surcharge of 5.5% which effectively results in a rate of 15.83% (i.e. 15% corporate income tax rate plus 5.5% solidarity surcharge thereon).

Therefore, in total, the German tax rate on profits / income of the corporation (including trade tax, corporate income tax and solidarity surcharge) may be approx. 30%.

Payments from the corporation to its shareholders (dividends etc.) may be subject to German withholding tax at a rate of up to 26.375% (standard WHT rate of 25% plus 5.5% solidarity surcharge thereon) but tax reductions or exemptions may apply, e.g. based on applicable double tax treaties or the EU-Parent-Subsidiary-Directive.

## Special tax regime

The support of the renewable energy industry in Germany is actually not "income tax driven" but achieved by other mechanisms. For example, Germany have been the first country in the world to introduce guaranteed feed-in tariffs for renewable energy and there are certain exemptions and incentives for the industry in the area of indirect taxation (energy tax etc.).

In the field of corporate income tax and trade tax, Germany currently does not in particular offer any favorable tax regimes (i.e. no reduced tax rates) or tax incentives (i.e. no special tax depreciations for "green assets" etc.) for corporations owning and / or operating renewable energy assets.



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India

## Corporate income tax

### Tax Residency of Companies

The residential status of a company is to be determined on the basis of its incorporation or registration. A company is resident in India if:

- a) it is an Indian company, or
- b) Place of effective management 'POEM', during that year is in India.

POEM means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

A company shall be 'non-resident' if it is not resident in India during the relevant accounting year. It means a company whose POEM during that year is outside India will be non-resident company.

### Tax Rates

Corporations resident in India are taxed on their worldwide income arising from all sources.

Non-resident corporations are taxed on the income earned through a business connection in India or any source in India or transfer of a capital asset situated in India.

Domestic and foreign corporations are subject to tax at a specified basic tax rate. The basic rate is further increased with a surcharge based on the total income. There is an additional levy of health and education cess at the rate of 4% of the tax payable.

### Tax rates

Particulars	Rate of tax
<b>Domestic company:</b>	
1) Where total turnover or gross receipts in tax year 2017-18 <= INR 4000 mn	25 per cent ++
2) Where total turnover or gross receipts is > INR 4000 mn	30 per cent ++
<b>Company other than domestic company</b>	40 per cent ++

++ Rates to be increased by applicable Surcharge and Cess (Refer rates below)

### Surcharge rates

Status	Income from INR 10 mn to INR 100 mn	Above INR 100 mn
Domestic company	7%	12%
Foreign company	2%	5%



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## Withholding tax Rates

Withholding tax rates	Paid to domestic company	Paid to foreign company
Interest	10% (If PAN not available – 20%)	5% to 20% ++
Royalty from patents, know-how etc	10% (If PAN not available – 20%)	10% ++ (If PAN not available – 20%)
Fee for Technical Services (FTS)	10% (If PAN not available – 20%)	10% ++ (If PAN not available – 20%)

## Dividend Distribution Tax

Indian company declaring the dividend is liable to pay Dividend distribution tax ('DDT') at the rate of 20.56% on the dividends paid / declared / distributed.

Specific exemption has been provided from DDT for Indian companies distributing dividend where such Indian company receives dividend during the year from its subsidiary on fulfillment of certain conditions.

## Depreciation

Depreciation of capital assets is allowed on the basis of the reducing balance method using varying rates, depending on the nature of assets. With regard to wind energy, following assets have been defined:

- Wind mills and any specially designed devices which run on wind mills [installed on or after the 1st day of April, 2014] – Depreciation at the rate of 40%
- Any special devices including electric generators and pumps running on wind energy [installed on or after the 1st day of April, 2014] – Depreciation at the rate of 40%

In addition to above, additional depreciation at the rate of 20% of actual cost shall be allowed to corporations engaged in the business of generation or generation and distribution of power where the depreciation is provided on reducing balance method. Where the asset is used for less than 180 days than 50% depreciation i.e., 1/2 of 20% (i.e. 10%) is available (Balance 50% of Additional Depreciation can be claimed in next year).

Corporations engaged in generation of power may adopt Straight line method instead of reducing balance method where depreciation is allowed at specified rates of the actual cost of asset. However, no additional depreciation shall be allowed in this case.

It may be noted that the method once adopted is not allowed to be altered.



India

## Restrictions on interest deductions

### Thin capitalization provisions:

In accordance with the OECD's BEPS project, India have introduced thin capitalization provisions. These provisions apply where expenditure pertaining to interest or similar payments exceeding INR 10 mn is incurred by an Indian company or a permanent establishment of a foreign company in India in respect of debt issued by a non-resident associated enterprise. It also applies in case of borrowings from the third party lender, where the associated enterprise provides an explicit or implicit guarantee to such lender or deposits the corresponding or matching amount of funds with the lender.

The deduction of interest payment to overseas related parties is capped at 30% of EBITDA or the amount of interest paid or payable to the Associated Enterprise, whichever is lower.

Excess interest disallowed in a year will be eligible for carry forward up to eight consecutive years.

### Disallowance of interest expense incurred for non-business purposes:

The Indian tax law provides for deduction of the amount of interest paid in respect of capital borrowed for the purposes of business. The deduction is provided, once it is established that the borrowing is for the purposes of business and that the interest is paid on such borrowings.

## Carbon Credits

Income from transfer of carbon credit shall be taxable at the rate of 10% (plus applicable surcharge and cess) on the gross amount of such income. No expenditure or allowance in respect of such income shall be allowed under the Act.

## Carry forward of losses and unabsorbed depreciation

Business losses are permitted to be set off against income from any other source (except income from employment, i.e., salary income) in the same year. Business losses, which could not be so set off, are permitted to be carried forward for setting off against business profits arising in the eight subsequent years. Unabsorbed depreciation is permitted to be carried forward for an unlimited period.



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### **Minimum Alternate Tax (MAT)**

Indian tax law requires Minimum alternate tax (MAT) to be paid by corporations on the basis of profits disclosed in their financial statements where the tax payable according to normal tax provisions is less than 18.5% of their book profits. For the purpose of income tax, these book profits have been defined to mean net profits as per financial statements subject to certain adjustments provided in the relevant section.

The tax paid under MAT is allowed to be carried forward for 15 years and set off against income tax payable under the normal provisions of the tax laws to the extent of the difference between tax according to normal provisions and tax according to MAT.

### **Double Taxation Avoidance Agreement (DTAA) and foreign tax relief**

India have entered into DTAA with various countries. Generally, the provisions of DTAA prevail over the domestic tax provisions. However, the domestic tax provisions may apply to the extent they are more beneficial to the taxpayer.

Foreign tax paid may be credited against Indian tax on the same profits, but the credit is limited to the amount of Indian tax payable on foreign income. Specific rules exist regarding the mechanism for granting a foreign tax credit.

### **General Anti-Avoidance Rule (GAAR)**

Indian tax law contains anti-avoidance provisions in the form of GAAR, which provides extensive powers to the Tax Authority to declare an "arrangement"

entered by a taxpayer to be an Impermissible Avoidance Arrangement (IAA). The consequences include denial of the tax benefit either under the provisions of the Indian tax laws or the applicable DTAA. The provisions can be invoked for any step in or part of an arrangement entered, and the arrangement or step may be declared an IAA. However, these provisions only apply if the main purpose of the arrangement or step is to obtain a tax benefit.

The provisions of GAAR will not apply where the tax benefit from an arrangement in a relevant tax year does not exceed INR 30 million.

The central government vide a notification have made it clear that GAAR will apply to all tax benefits obtained on or after 1 April 2017 irrespective of the date of arrangement.

### **Transfer pricing regulations**

India have a comprehensive transfer pricing regulations wherein Indian taxpayers who enter into related party transactions with associated enterprises our India are required to follow the arm's length principle while undertaking such transactions. In certain specific situations, such transfer pricing regulations may also become applicable on a transaction between two resident related parties.

The taxpayer is required to undertake necessary compliances where transfer pricing provisions become applicable, such as, maintaining the appropriate documentation in India, filing of transfer pricing certificate, etc.



India

## Indirect Taxation

### Goods and Service Tax

Goods and Service Tax ('GST') is a destination based comprehensive value-added taxation system, which have been effective in India from July 01, 2017. As per the 'Statement of Objects & Reasons' in the Constitution (One Hundred and First Amendment) Act, 2016, through which GST was implemented, one of the primary objectives behind the introduction of GST was to enable seamless flow of input tax credit from one state to another, which would foster a common and seamless Indian market and contribute significantly to the growth of the economy.

Keeping in mind the federal structure of India, there are three components of GST-Central GST ('CGST'), State GST ('SGST')/ Union Territory GST ('UTGST') and Integrated GST ('IGST'). As per the provisions of GST, CGST and SGST are levied on intra-state supply of goods and/or services and IGST is levied on inter-state supply of goods and/or services. IGST is essentially a sum of CGST and SGST.

In terms of GST Law, GST is applicable on all taxable supplies made within the territory of India. However, the GST Law also provides the taxpayer exemption from remitting GST to the Government on certain supply of goods/services. The Government have accordingly notified such exempt supplies through various notifications.

Further, as per the provisions of GST, every taxpayer is eligible to claim Input tax credit charged on any supply of goods and/or services which are used/intended to be used in furtherance of business. However, if the outward supply of a taxpayer is exempt from the levy of GST, the tax-payer would not be eligible to claim credit of input goods and services.

### Applicability of GST on Wind Power Projects

In terms of GST Law, the sale of electricity/power is exempt from GST. Therefore, there is no requirement to discharge GST on the sale of electricity/power to the Government. However, wind power generation companies are required to discharge the applicable GST on procurement of goods and/or services.



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Further, since the sale of electricity is exempt from GST, as per the provisions relating to availment of input tax credit, wind power generation companies are not eligible to avail input tax credit of GST paid on procurement of goods and/or services which are required to set up the wind power generation project. Thus, the taxes paid on procurement of goods/services becomes a cost for the Company.

Further, there is an increase in tax rate on procurement of services (O&M services, module cleaning, consultancy contracts etc.) from 15 per cent to 18 per cent under GST, thereby leading to an additional tax burden on the wind power generation companies. Additionally, the concessional rate of 2 per cent on procurement (against Form C) was discontinued under GST regime, leading to additional burden of tax on the companies.

In terms of the GST tariff, GST at the rate of 5 per cent rate is being charged for renewable energy devices & parts required for the manufacture of solar power generating system ('SGPS'), Ocean Waves/tidal waves energy devices/plants, etc. which fall under Chapter 84, 85 or 94 of the Tariff. Further, for other goods and/or services used in manufacture of these power plants, the requisite GST as mentioned in the GST Tariff, would be applicable.

Following industry representations on diverging tax practices with respect to taxability of setting up of solar power generating plant and other renewable energy plants, the Government on January 01, 2019, notified that in such cases, 70 per cent of the gross value of the Engineering, Procurement and Construction contract

('EPC Contract') for setting up of power generating systems, shall be deemed as the value of supply of goods which would attract 5 per cent GST and the remaining portion (30 per cent) of the aggregate value of such EPC Contract shall be deemed as the value of supply of taxable service which would attract the standard GST rate of 18 per cent. However, the said ratio has been challenged by Solar Power Developers Association stating that the actual value of materials involved should be in the range of 80 per cent to 90 per cent. The Wind Power sector being equally affected by 70:30 ratio, may also seek to file a writ challenging the same.

Further, renewable energy certificates ('RECs'), which are issued to eligible entities for generation of electricity by renewable energy, are taxable at the rate of 12 per cent under the GST Law. Aggrieved by the taxability of the RECs, renewable power companies have filed a case before the Delhi High Court seeking exemption from levy of GST on RECs.

Additionally, the imposition of GST on imports pertaining to equipment/machinery used for setting up of wind power projects amounts to 'change in law' in terms of the Power Purchase Agreements executed between the company and the Government. Thus, since the imposition of GST has led to increase in non-recurring expenditure for the wind power project, the wind power generation companies are eligible to compensation on account of increased expenditure from the Government.



# Ireland

## Corporate income tax

An Irish tax resident company is liable to tax on its worldwide income with non-resident companies only liable to tax in Ireland in relation to certain asset disposals or where they carry on a trade in the State through a branch or agency.

The standard rate of corporation tax for trading profits is 12.5%. A 25% tax rate applies to profits derived from “excepted trades” (includes most dealings in land and certain petroleum activities) and non-trading income such as deposit interest, foreign income, interest on securities and rental income.

The measure of taxable income of a company generally follows the accounting recognition of that income under Irish GAAP/IFRS with some adjustments for non-deductible items, tax depreciation and some tax incentives.

### Tax Deductions

Expenditure must be incurred “wholly and exclusively” for the purposes of the trade in order to be deductible in calculating trading profits/losses for an accounting period. Certain items of expenditure are regarded as being specifically non-deductible. Expenditure must be of a revenue (income) rather than capital nature. Expenditure will be regarded as capital in nature if (broadly) it relates to the acquisition, enhancement or disposal of a fixed asset, or any other enduring benefit analogous to a fixed asset.

Depreciation and amortization are treated as capital, however tax depreciation (capital allowances) should be available in lieu (see below). Land related costs, including planning permission, associated legal fees and Irish stamp duty are generally regarded as capital in nature and not deductible for Irish corporation tax purposes.

Interest is generally deductible, whether as a trading expense or as a charge on income (there are a number of conditions to be met in this regard). Anti-avoidance legislation applies to limit relief for interest accrued but not paid on loans between connected companies, and for interest on loans to acquire an interest in another company where capital is recovered by a company connected to the investing company. Anti-avoidance rules also apply, in certain circumstances, to deny relief for interest on intra-group loans taken out to finance the acquisition of fixed assets from a group company.



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## Tax Depreciation (Capital Allowances)

Depreciation is a non-deductible expense for Irish corporation tax purposes. Instead, tax depreciation (capital allowances) is granted on capital expenditure within the following types of categories:

- Plant, equipment and machinery – Capital allowances of 12.5% may be claimed for a period of 8 years commencing in the year expenditure is incurred.
- Industrial buildings, including factories, mills and dock undertakings – Capital allowances in respect of industrial buildings are available at 4% over 25 years.
- Certain designated energy efficient equipment – 100% capital allowances may be claimed in the year of acquisition for expenditure incurred up to 31 December 2020.
- Qualifying intellectual property, scientific research and costs of acquiring patent rights ("IP") – capital allowances for IP can either be based on the amortization or impairment charge to the profit and loss account, or can be at an annual rate of 7% for 14 years and 2% in the 15th year. Capital allowances on certain intellectual assets are capped at 80% of the income derived from those assets in a particular year with any excess allowances carried forward into the following year(s).

Irish Revenue's stated view is that grid connection costs do not qualify as plant and machinery for capital allowances in Ireland. There is currently a case before the Tax Appeals Commissioners in Ireland contesting this view.

In addition, costs related to the acquisition of land (i.e. land options, professional fees etc) do not qualify for capital allowances.

## Chargeable Gains

Capital gains accruing to an Irish tax resident company on the disposal of assets are subject to corporation tax, at a rate of 33%. Any tax liability on a chargeable gain will be included as part of a company's corporation tax payment in the particular period.

In certain cases, an exemption applies to chargeable gains where an Irish tax resident holding company disposes of a shareholding in a company located in Ireland, another EU Member State or a tax treaty state.

This is subject to a number of conditions:

- The holding company must have a minimum shareholding of 5%,
- The company being disposed of must be a trading company or the business of the holding company, its 5% subsidiaries and the company concerned taken as a whole must consist wholly or mainly of trading activities,
- The minimum shareholding must have been held for a continuous period of 12 months in the 24 months prior to disposal, and
- The shareholding must not derive its value from Irish real estate.

On the event of a disposal of Irish immoveable property, minerals or rights in minerals located in Ireland, certain rights to exploration and exploitation on the Irish continental shelf and unquoted shares that derive the greater part of their value from such assets, where the consideration is in



# Ireland

excess of €500,000, the seller will need to provide the purchaser with a clearance certificate issued from the Irish Revenue Commissioners in order to receive the sales proceeds without the operation of withholding tax of 15%.

## Local Authority Rates

Local authority rates are payable in Ireland by wind farm operators to localised branches of government. The rates payable are set by the Local Authority in each county.

The method of calculating local authority rates is undergoing a review process in Ireland at present. The old calculation method which have been used to date is as follows:

- Rateable Valuation (see below) x Annual Rate on Valuation (ARV)

The ARV is determined by the Local Authority in each individual county and can vary.

The Rateable Valuation for a windfarm have been calculated as follows:

- Rateable Value = MWs x Value Multiplier x 1/200

The Rateable valuation formula is being changed as part of the review process. Instead of applying the formula above, each Local Authority is coming up with a Net Annual Value ("NAV") as set out in the Certificate of Valuation which is issued by the Valuation Office. This is calculated as the Annual Rental Value of the windfarm and also takes into account the overall profitability of the windfarm. Based on the reviews carried out to date, there have been a significant increase in the local authority rates payable by windfarms as a result of changes to the "rateable value" for windfarms. As a result there are various initiatives underway in an attempt to address this issue. This is ongoing at present.

## Electricity tax

Electricity tax is an excise duty charged on supplies of electricity for commercial use in Ireland. The tax is charged on the final supply to the consumer and the liability arises at the time of the supply.

All electricity suppliers must register with the Irish Revenue Commissioners and are responsible for payment of tax and all returns.

A rate of €0.50 per megawatt hour applies to electricity supplied for business use. A rate of €1 per megawatt hour applies for electricity supplied for non-business use, excluding domestic use.



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## Withholding taxes

### Dividends

Generally dividends paid by Irish tax resident companies to non-resident companies or individuals are subject to withholding tax at 20%. However there are a number of exemptions available for payments to non residents. A tax treaty may also apply a lower rate.

### Interest

Interest paid by Irish tax resident companies is generally subject to withholding tax at 20%. There are a number of domestic withholding tax exemptions relating to interest, specifically where the recipient company is resident in an EU Member State or Tax Treaty jurisdiction. A tax treaty may also apply a lower rate.

### Relevant Contracts Tax ("RCT")

RCT is a withholding tax system operated in the construction, meat processing and forestry sectors. The construction and ongoing operation of windfarm assets in Ireland will give rise to RCT obligations. The obligation is on the "principal" to withhold the tax from payments made to subcontractors. Absent tax clearance from the Irish Revenue Commissioners ("Revenue"), tax must be withheld from payments at 20% or 35% as advised by the Revenue. Where the subcontractor receives tax clearance from the Revenue, it effectively means tax is withheld at 0%. The subcontractor generally gets a credit or a refund for the tax withheld depending on the circumstances.

### Start-up relief

There is a corporation tax exemption for start-up companies in their first three years of trading. The relief is granted by reducing

the corporation tax payable on the profits of the new trade and gains on the disposal of any assets used for the purposes of the new trade. This exemption was recently extended until 2021.

### Research and Development (R&D) Tax Credit regime

A 25% corporation tax credit is available on qualifying R&D expenditure i.e. staff salaries and related costs, materials and consumables, capital expenditure and other direct R&D costs. This credit is granted in addition to the standard 12.5% corporation tax deduction available for such R&D expenditure.

The tax credit is available to trading companies, within the charge to Irish tax, that are engaged in qualifying R&D activity undertaken within Ireland or the EEA. If a company is not carrying on a trade, it may still be in a position to claim the relief if it is part of a trading group. Similarly, a dedicated R&D company of a trading group may qualify for the relief.

The credit can serve to reduce the corporation tax liability for the period in which the expenditure was incurred with any unused balance becoming available for carry-back against the corporation tax liability of the preceding accounting period.

Any remaining unused balance is available for carry-forward indefinitely against future corporation tax liabilities of the company or alternatively it is refundable over a 3 year period. Such repayments are capped by reference to the company's payroll tax liability for the relevant period or the corporation tax liabilities for the 10 preceding accounting periods for the company.



# Ireland

An R&D tax credit claim must be made within 12 months of the end of the accounting period in which the qualifying expenditure was incurred. In the case of pre-trading expenditure, the claim must be made within 12 months of the end of the first accounting period in which the company traded.

In general, it would be difficult for Wind and Solar developers to get these type of credits as they are typically not engaged in qualifying R&D activity.

## Special tax regime for Wind Power

There are no specific tax reliefs or incentives for companies involved in the construction or operation of wind power assets in Ireland.



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## Corporate income tax

Italian-resident wind power companies are subject to corporate income tax (imposta sul reddito delle società, IRES) and to the regional tax on productive activities (imposta regionale sulle attività produttive, IRAP) as all the other companies in Italy. The current IRES rate is 24% and the standard IRAP rate is 3.9% but Italian regions may increase the standard rate by up to 0.92%.

There are not relevant specific rules linked to wind power companies and the tax basis is in principle determined in accordance with the ordinary tax principles that apply to other companies as well.

Wind parks are composed of depreciable assets (i.e. tangible fixed assets used in the business of the company). These assets' tax basis is their cost adjusted by depreciation. The cost is the purchase or production cost increased by any ancillary expense directly attributable and related to the assets and decreased by an amount equal to the grants received for purchasing or manufacturing the relevant asset.

Fixed assets in wind parks should be allocated to the following depreciation groups:

- Plants and machinery (9 % annual depreciation);
- Towers, constructions and buildings (4% annual depreciation);
- Land and property (non-depreciable assets).

The Budget Law for 2016 introduced a “super” depreciation regime applicable to certain specific tangible assets. The benefit consists in a 40% or 30% increase in the cost, relevant for tax purposes only, of investments in new tangible assets, whose tax depreciation rate is higher than 6.5 percent, purchased between 15 October 2015 and 31 December 2019 (the deadline is extended to 30 June 2020 if at least 20% of the cost is paid in advance by the end of 2019). The total cap on the eligible investments is EUR 2.5 million. Real estate and certain other assets (e.g. pipelines, rolling stock, airplanes, and vehicles) are excluded from the benefit. Wind power companies can benefit from the enhanced depreciation regime only for the plants and machinery that meet the requirements provided by law.



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Renewable energy companies often benefit from incentives given by public and private authorities. Grants received under a contract and grants received under the law to cover operating expenses are taxed on an accrual basis. Grants that are not treated as gross receipts may be included in taxable income in the year of receipt or in equal instalments in the year of receipt and the following 4 years. Grants received to purchase depreciable assets are not included in the grantee's taxable income. However, the cost of the asset must be netted of the amount of such grant for the purposes of determining the asset's tax basis.

## Municipal real estate tax

Italian resident companies are subject to a municipal tax (*imposta municipale propria*, IMU) which is levied on the possession of real estate assets located in Italy. In the case of buildings, the taxable base is computed as follows: (i) 105% of the imputed income, as indicated in the real estate registry on 1 January of the relevant year times (ii) a coefficient ranging from 55 to 160, depending on the cadastral classification of the property. The general tax rate is 0.76%, but the municipality in which the real estate asset is located may increase or decrease the rate by a coefficient of up to 0.3%. Moreover, municipalities may decrease the tax rate to 0.4% in the case of real estate assets held by companies or other persons liable to IRES. 50% of the IMU paid can be deducted from the IRES base (60% in fiscal years 2020 and 2021, 70% in the following fiscal years). Conversely, IMU is not deductible for IRAP purposes.

Until 2015 all the plants and machinery linked to wind parks were considered relevant for the determination of the value of the imputed income which is the basis of the municipal tax. In 2016 the Revenue Income Authority have established that: (i) buildings and plants that increase the quality and utility of the property are subject to IMU, (ii) machinery, equipment and other plants related to a specific production process are exempt from IMU.

## Offshore wind

Italy does not have operative offshore wind farms, but there is a project of construction of a 30mw nearshore array off the Southern Italian town of Taranto. It will be the first Mediterranean offshore wind site and it will be installed in water depths ranging between 3-18 meters near the port of Taranto.

For now ordinary corporate taxation rules are expected to apply.



## Corporate income tax

### General

Japanese energy companies should, in principle, be subject to corporate income tax on net taxable income pertaining to electricity sales at an effective rate of approximately 28%.

Capital gains arising from a future sale of the wind farm assets should similarly be subject to Japanese corporate income tax in the same way as ongoing income assuming the facility have reached commercial operations.

### Business Tax

As an exception to the general principle, business tax for an electricity supplier is not assessed on net taxable income but gross revenue from electric power sales.

For reference, the business tax rate for power generation companies operating in Tokyo which have annual revenue of more than JPY 200M (in aggregate across projects) should be 1.3650%. If revenue is JPY200M or less, a rate of 1.30% should apply.

### Fixed Asset / City Planning Tax

In case a power generation company holds land, fixed asset tax is levied at 1.4% of the government assessed value of the underlying land.

Assessed values are derived through detailed calculations and are generally not a reflection of the true fair market value of the property or the acquisition price. Assessed values are re-assessed by the local authorities every three years.

City planning tax of 0.3% is also levied on the assessed value for land and buildings which are located in certain municipalities and held as at January 1 of each year.

### Depreciable Asset Tax

Any depreciable assets (excluding buildings) should broadly be subject to annual depreciable assets tax at 1.4% of their net book value.



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## Consumption tax

Project acquisition costs, development costs, O&M and EPC fees as well as purchases related to construction in Japan will typically be consumption taxable transactions. The relevant consumption tax rate will be 10% from 1 October 2019 onwards (raised from 8%).

Broadly, the creditability of such tax is in principle a function of whether the relevant entity becomes a consumption taxpayer for domestic tax purposes and the extent of consumption taxable sales which such taxpayer makes relative to its total sales.

In the case of power generation companies, it should be possible to credit substantially all consumption tax paid in connection with the development of the facilities provided the relevant entity is considered a taxpayer, as materially all sales should be power revenues, which are consumption taxable sales. Creditable tax in excess of payable consumption tax on taxable sales for a fiscal year should be refundable.

## Special tax regime

### **Tax incentive for the promotion of investment in renewable energy (accelerated depreciation)**

Accelerated depreciation is available for certain investors for auxiliary equipment related to grid-connected wind farms with output of at least 10 MW. The accelerated depreciation is up to 20% of the eligible auxiliary equipment's acquisition cost.

The accelerated depreciation may be available for the following equipment (excerpt):

- Machinery dedicated to wind power generation (units for controlling

frequency fluctuations, power generation output and remote output (the latter only in the case of existing wind power generation facilities), as well as sensors for anomaly detection)

- Stationary power storage equipment
- Power lines (self-operated)

These incentives should be available for assets acquired or completed by 31 March 2020.

### **Special measures related to the taxation of renewable energy facilities (depreciable asset tax)**

A reduction in depreciable asset tax is available for eligible wind power generation facilities which are authorized to participate in the feed-in tariff regime. For facilities with an output of at least 20 kW, the taxable basis related to wind power generation facilities / equipment (excluding buildings) subject to depreciable asset tax is reduced in principle to 2/3 for three years from the year in which depreciable asset tax is imposed (broadly, this should be from the first calendar year to commence following the commercial operations date).

Please note that each local government may independently set a new rate of reduction within  $\pm 1/6$  of the above 2/3 ratio (i.e. 1/2 — 5/6).

These incentives should be available for assets acquired or completed by 31 March 2020.



# Netherlands



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## Corporate income tax

### General

Companies that exploit a windfarm in the Netherlands will generally be subject to Dutch corporate income tax for the profit realized with the windfarm. This applies to Dutch resident companies (Dutch tax payers) and to non-Dutch resident companies (foreign tax payers).

For Dutch corporate income tax purposes, the windfarm is considered to be in the Netherlands, if the windfarm is located onshore or offshore within the Dutch exclusive economic zone (within 200 nautical miles of the Dutch shore).

### Corporate tax rate

The Dutch corporate income tax rate amounts to 25%. This rate will gradually be reduced to 22.55% in 2020 and 20.5% in 2021. A reduced 19% tax rate applies to the first EUR 200,000 of taxable profits. This rate will gradually be reduced to 16.5% in 2020 and 15% in 2021.

### Taxable profit

The taxable profit realized with the windfarm is calculated with the ordinary Dutch corporate income tax rules.

These ordinary rules include depreciation regulations. In general, business assets with a limited useful life must be capitalized on the tax balance sheet and be depreciated over their expected useful life. The most common system is the straight-line system.<sup>1</sup> The general rule is that depreciation covers the useful life of the asset. In practice, we generally see that windmills may be depreciated over a 15 – 20 years period, based on the duration of the applicable grant or the permit. A residual value of 10% is generally used to reflect the fact that the permit may be extended (e.g. economic useful life exceeds 20 year). In theory, it can be argued that a windmill consists of different parts, such as the gear, the rotor, control equipment etc., and that each of these assets should be depreciated separately, based on their expected useful lives.

For buildings, a specific minimum value applies for depreciation purposes. This minimum value is based on the value of the property as determined by the local municipality (the 'WOZ' value). In our experience, windmills – especially windmills on the seabed – are currently not considered as buildings for depreciation purposes and, therefore, this minimum value should not apply.

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1. Based on our experience, the Dutch tax authorities do not accept the declining balance system for windmills.

A tax deductible decommissioning provision may be set up to cover future decommissioning costs of the windmills.

## Grants and allowances

### **Grant for sustainable energy (SDE+, Subsidieregeling Duurzame Energie)**

The SDE+ grant offers financial aid for electricity, heat or biogas that is produced sustainably, for example from solar energy, biomass, wind or geothermal energy.

Projects ranging from relatively small scale windparks on land to large scale windmills at sea may be eligible for funding. The amount of funding depends on various factors, including the exact technical nature and scale of the project and the energy produced. Based on the facts and circumstances at hand, the SDE+ grant may be available.

### **Allowances**

Specific allowances are included in the Dutch tax law. These allowances are in fact an additional deduction that can be applied in calculating the taxable profit. Such allowances may be available for certain energy saving or environmental friendly assets. The qualifying assets are published by the Dutch government, this list is updated annually. Windmills are currently not included on the list. However, certain parts of the windmill (gear, rotor, transformer etc.) may be included on the list.

Specific conditions and requirements apply. Review based on the facts at hand and applicable yearly list is required. If applicable, the additional deductions in the range of 13.5%-45% of the asset may apply. In certain scenarios, free depreciation of 75% of the asset value may be applied as well in addition to the allowance.

## Municipal real estate tax

Real estate taxes (onroerendezaak-belastingen) are levied by municipalities. Part of the tax is payable by the owner of the property and part by the user. The tax is based on the value of the property as established by the local municipality, known as the "WOZ" value. The rate varies according to the municipality in which the real estate is located.

Depending on the location of the windmill, windmills are subject to real estate tax. If windmills on sea are located outside the 12 mile zone of the Netherlands, the property is not subject to real estate tax.

## Value Added Tax

### **Taxable Person**

According to Dutch VAT Law, a taxable person for VAT purposes is any person who independently carries out an economic activity, regardless of the purpose or the result of that activity. Generally speaking, a company developing, owning and/or exploiting a windfarm should qualify as a taxable person for VAT purposes.

### **VAT treatment of the activities**

The economic activities resulting from owning and/or operating a windfarm vary dependent on the exact business model (e.g. leasing the wind farm to third parties, supplying energy to re-sellers or supplying energy to end users), however such activities are typically VAT taxed at the standard VAT rate of currently 21%. In case an off shore windfarm is located entirely outside of the 12-mile zone, the supplies may in some cases be deemed out of scope of Dutch VAT.



# Netherlands



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## Entitlement to recover input VAT

A taxable person for VAT purposes is entitled to recover the input VAT incurred on costs insofar as the acquired goods and/or services are used for VAT taxed activities. This includes input VAT on costs incurred during the development phase of a windfarm, insofar as the taxable person can substantiate that it has the intention to carry out VAT taxed activities in the future. Given the nature of the typical activities of a wind farm company it is as a starting point expected that they should be able to recover the input VAT incurred on costs related to the windfarm.

Shareholding and/or financing activities may influence the right to recover input VAT. It is recommended to seek out additional advice prior to engaging in such activities.

## Offshore

There are various additional points of attention in relation to VAT in relation to off shore windfarms.

Offshore windfarms may be (partially) located outside of the 12 nautical miles zone. For Dutch VAT purposes, locations outside of the 12 nautical miles zone are not considered to be within the Netherlands or the EU. As such, it is relevant to determine whether a supply (for both in-and output) should be deemed to take place within the Netherlands or the EU. If a supply is deemed to take place outside of the Netherlands it is not subject to Dutch VAT.

- The place of supply of a general business-to-business service is deemed to be the place where the recipient of the service is established. However, various exceptions may apply to services rendered in respect of windfarms, such as the exception for services relating to real estate.
- The supplies of goods to and from offshore windfarms may constitute an import or export of goods (to the extent that the windfarm is located outside of the 12 nautical mile zone).
- A specific exception applies for supplies whereby the goods are installed in relation to the supply, e.g. supply and install of a windmill. Such supplies are taxable for VAT purposes at the place where the goods are installed.

We note that the setup of the VAT compliance for a windfarm that is (partially) outside of the 12 nautical miles zone is generally viewed as complex.

## Development

In the Netherlands a reverse-charge mechanism have been implemented to combat abuse and fraud in the construction sector ('recipients liability'). Under these rules, services of a tangible nature rendered by subcontractors to contractors are subject to the reverse-charge mechanism. Under the reverse charge mechanism, the recipient of the service is liable to remit the VAT due in relation to the services to the Dutch tax authorities.

The term contractor within the meaning of these measures is broader than merely construction companies in the general sense of the word. The term contractor may therefore also include taxable persons that are developing and building a windfarm. Whether a specific company in fact qualifies as a contractor and thus whether the reverse-charge mechanism in fact applies is highly factual and subject to interpretation. Case-law and Dutch Policy Decrees provide guidance, but are not conclusive. As such, this could be a topic of discussion with the Dutch tax authorities.

## Other

### Wage tax

Aforementioned recipients' liability also extends to wage taxes.

### Energy tax

The supply of electricity within the Netherlands may lead to being a taxable person for energy taxes, in particular if the electricity is supplied to end users.

### Customs duties

In case an offshore windfarm is located outside of the 12 nautical miles zone the transfer from and to the windfarm may lead to the levy of customs duties.



## Corporate income tax

Wind power companies in Norway are subject to corporate income tax, currently 22%. Somewhat simplified the tax base is in principle determined in accordance with the ordinary tax principles that apply for other companies as well. However, some special provisions apply.

### Depreciations

Initially, fixed assets in wind parks are allocated to the “ordinary” depreciation groups, which means that an allocation of investment costs should be made between:

- Gear, rotor, generator and control equipment – depreciation group d (20% annual depreciation)
- Towers, constructions and buildings – depreciation group h (4% annual depreciation)
- Transformer and cables for connection to the power supply – depreciation group g (5% annual depreciation)
- Non-depreciable assets; land and property, road etc.

However, a special provision in the Tax Act section 14-51 states that fixed assets in wind power plants are depreciated on a straight-line basis with the same amount over a five year period. These favorable depreciation rules apply to fixed assets acquired from 19 June 2015 up to and including the income year 2021, provided the work on the project have not commenced before 19 June 2015. The favorable depreciation rules will be phased out after the end of 2021, when the approval scheme for the Norwegian electricity certificate systems expires. Wind power investments made post 2021 will again be subject to the ordinary depreciation rules.

Roads are, as a main rule, not depreciable. However, according to tax practice, temporary construction roads in connection with a time-limited concession license subject to reversion (Norwegian: hjemfall) may be depreciable. In the tax office decision of 2013-097KV published in Utv. 2018 p. 850, the Central Tax Office for Large Enterprises (Norwegian: SFS) reached the conclusion that road investment was not depreciable in a specific case where there was a time-limited concession without reversion. The decision has been appealed.



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Subsidies in connection with development of wind power facilities are generally taxable, and public grants, for example from Enova, are taxed through reduction of cost price/basis for depreciations.

For a more detailed description of corporate income tax in Norway:

<https://assets.kpmg/content/dam/kpmg/no/pdf/2019/kpmg-tax-facts-2019.PDF>

## Municipal real estate tax

Local municipal authorities may levy a property tax at a rate that varies between 0.2 to 0.7% of the taxable fiscal value of the property. Each municipality is free to decide whether or not to levy property tax.

The property tax base should equal fair market value of the wind farm with all installations. Estimation of the fair market value is carried out by an independent appraiser. When carrying out the assessment, the owners own dispositions should not be taken into account. It is the property's objective value that constitutes the property tax base. This is thoroughly laid out in a ruling from the Supreme Court (Rt. 2011 page 51 – Sydvaranger) where the court states that fair market value is not reflected by an actual consideration, even when such consideration are paid. The objective value should be based on a calculation of the assets technical values using relevant templates. From 1. January 2019 it is clearly stated in the Property Tax Act that the property tax base for wind power facilities should be based on technical values.

There is a lot of case law related to disputes regarding property tax on industrial facilities. Currently we are aware there

are ongoing disputes regarding relevant costs when establishing historic cost (for example interests, and applicable FX-rates), and there are also disputes related to calculation of the various reduction factors. Especially for wind farms, where the technological development are implemented at a very high speed, it could be argued that the deduction for decrease in relevance (Norwegian: utidsmessighet) should be considerable, as old turbines might be considered outdated, which obviously will influence the fair market value. The current disputes are subject to administrative appeals/complaints, and we expect to see some of the cases in court.

The property tax base is subject to re-evaluation carried out by appointed appraisers every ten years. However, for a wind farm under construction where the property undergoes major changes within a few years, the municipality will often carry out a re-evaluation annually until the plant is finished and the ten-year period begins. The property tax base can be appealed within six weeks of the assessment. The taxpayer may appeal the property tax base at any time during the 10-year period to which this applies, but only to the extent that the basis has not been appealed earlier in the period. The deadline for litigation is six months.

## Offshore Wind

Norway do not have operative offshore wind farms, nor offshore wind farms currently under construction. However, the Norwegian directorate of Energy (NVE) have identified 2 offshore areas as especially suitable for facilitating wind farms, namely Utsira nord and either Sørlige Nordsjø I or Sørlige Nordsjø II.



Ordinary corporate taxation rules are expected to apply. However, to prepare for future establishment of offshore wind farms in Norway, an amendment has been made to the Norwegian Tonnage tax scheme.

As of 2017, the tonnage tax scheme has been extended to include wind turbine vessels that operate in the form of construction, repair, maintenance and dismantling of offshore wind turbines at sea, cf. the Income Tax Act section 8-11.

## **Future taxation – resource rent-and/or natural resource taxation?**

### **Resource Rent Tax**

Various parties have advocated resource rent taxation in the wind power sector, including the environmental organizations. We expect the question of resource rent taxation of wind power generation will eventually be thoroughly investigated, and in fact an appointed expert committee reviewing hydro power taxation have in a report published 1. October 2019 recommends an evaluation of whether resource rent tax (and a natural resource tax) should be introduced for wind power. In our opinion, it is too early to introduce resource rent taxation in this sector, seeing as it at the present moment is no extraordinary income in the industry.

### **Natural Resource Tax**

Further, the municipalities' interest organizations have advocated the introduction of a natural resource tax for wind power manufacturers. Today, natural resource tax is reserved for hydropower producers. The tax is in principle not an additional financial burden to the companies, as it can be deducted from the corporate income tax and, in event of a difference, carried forward with an interest. Our experience indicates that natural resource tax still may have a negative liquidity effect in those cases where the power producer operates with a deficit, or does not have sufficient taxable profits for the natural resource tax to be set off against ordinary income tax.



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# Poland

## Corporate income tax

Wind power companies in Poland which are established and operating as limited liability companies or joint-stock companies are subject to corporate income tax, currently at the rate of 19%. The tax base comprises of revenue minus tax deductible costs. As a rule, in the case of fixed assets with a value exceeding 10,000.00 PLN it is not possible to include them in tax deductible costs immediately on the day of acquisition. The value of fixed assets is included in the tax deductible costs as part of the depreciation write-offs.

Depreciation rates for individual parts of wind power plants are presented in the table below.

Part of the wind power plant		Depreciation rate
Foundation and tower of the wind power plant	4,5 %	
Wind turbine	7%	An increased depreciation rate may be applied, multiplied by a factor of not more than 2. In the first year a depreciation write-off is calculated upon the initial value of an asset. In the subsequent years depreciation write-offs are calculated upon the initial value of an asset decreased by the prior depreciation write-offs. If a value of depreciation write-off calculated according to the aforesaid manner does not exceed a value of a potential depreciation write-off calculated pursuant to linear method of depreciation, then a taxpayer is obliged to apply the linear method of calculation of the depreciation write-offs from this year on.
Cable lines	10%	



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Dividend payments to shareholders are subject to a withholding tax at the rate of 19%. If certain conditions are met, it is possible to apply a reduced rate from the double taxation treaty or exemption from the EU-Parent-Subsidiary-Directive. However, since 2019 new provisions have been introduced which lay down additional conditions which have to be fulfilled to apply the aforesaid tax exemptions and reduced tax rates.

## Municipal real estate tax

The real estate tax is levied on the construction elements of wind power plants, i.e. the foundation and the tower. The value of technical part of a wind power plant i.e. wind turbine generator is not subject to the municipal real estate taxation.

The tax base is equal to the value which is basis for calculating depreciation for the above-mentioned construction elements.

The rate of tax is set by the local municipal authorities relevant for the location of a wind power plant, but the tax rate cannot exceed the level of 2%.

## Special regulations

We would like to draw your attention to the fact that Polish regulations specify the distance from specific residential buildings that a wind power plant may be built in. According to the above regulations, a wind power plant may be located at a minimum distance equal to ten times the height of the wind power plant from residential buildings.

It is worth mentioning that in Poland there is an auction system for the support of renewable energy sources. Auctions are organized by the President of the Energy Regulatory Office. Within the auction system, the state declares a specific amount of renewable energy that it intends to purchase. The electricity generators declare the price at which they are able to produce the ordered renewable energy. The auctions are won by the generator offering the lowest price. Then the energy is purchased from this electricity generator at a fixed price for 15 years, adjusted for the annual inflation rate.

In the nearest future the Ministry of Energy plans to enact legislation regulating the issues of offshore wind power plants.



# Portugal

## Brief legal and tax framework

Wind power producers operating in Portugal are subject to the same general taxation regime that is also applicable to the remaining Portuguese tax resident companies. The Portuguese tax law does not foresee any significant tax benefits nor incentives for companies operating in the wind power sector.

In Portugal, the production of electricity from wind power plants registered until 7 November 2012, was mainly promoted through feed-in-tariff ("FiT") schemes, whereby a guaranteed remuneration was attributed to the producer.

Since that date, new wind power plants operators are subject to the market conditions.

Nonetheless, producers that were already benefiting from the previous FiT regime were given the choice to extend the remuneration period for 5 or 7 years against the payment of an annual compensation.

Further to the above, in June of 2014, the Portuguese Government published a legal framework that allowed the overpowering (installation of new equipment) of the existing wind farms up to a limit of 20 percent of their installed capacity, with the overpowering electricity produced being remunerated also through a FiT scheme.

The abovementioned overpowering regime was recently reviewed in 2019 offering the possibility of keeping the feed-in-tariff scheme for an extended period of time (15 years) but with a reduced price per MWh.

## Corporate income tax

### Rates

According to the Portuguese tax law, companies are subject to Corporate Income Tax ("CIT") at a rate of 21 percent over the taxable basis.

In addition, a state surcharge applies to the part of the taxable profit exceeding EUR 1,500,000 as follows: (i) 3 percent on profits between EUR 1,500,000 and EUR 7,500,000, (ii) 5 percent on profits between EUR 7,500,000 and EUR 35,000,000 (on the part exceeding EUR 7,500,000), and (iii) 9 percent on profits exceeding EUR 35,000,000.



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This taxation may be increased by a municipal surcharge of up to 1.5 percent over the taxable profit (depending on each municipality). As a general rule, the municipal surcharge is due where the company's head office or place of effective management is located. In case the company have permanent establishment or local representation in more than one municipality (and a taxable basis higher than EUR 50,000) there is an allotment of the taxable profit based on the payroll expenses attributable to each municipality.

Notwithstanding the above, in case more than 50 percent of a company's turnover derive from the exploitation of natural resources (or from waste processing) in more than one municipality, the municipal surcharge rate applicable may be computed based on different criteria (namely gross profit margin correspondent to the referred activities attributable to each municipality) upon governmental authorization.

Based on the above, the combined CIT rate can arise to a maximum of 31.5 percent.

### **Tax losses**

Tax losses may be offset against taxable profits assessed for 5 subsequent years (different carry forward period were available in the past).

The deduction of tax losses is limited to 70 percent of the taxable profit of the year.

The deductibility of tax losses is restricted where there is a change of ownership of more than 50 percent of the share capital of a company or of most of its voting rights, although several exceptions may apply.

In this case, the utilization of tax losses carried forward requires pre-authorization from the Portuguese tax authorities in response to a request filed by the company

in advance, explaining its economic reasons. Such authorization is not automatically granted, being each requested are analysed on a case-by-case basis.

Please note that in of tax losses no surcharges would be due. Moreover, the deduction of losses only affects the taxable basis for the CIT rate, meaning all surcharges will be due on the taxable profit before deducting any tax loss that may be available.

### **General costs deductibility**

As a general rule, costs are deductible for tax purposes provided they are incurred in order to obtain taxable income.

In addition, for costs to be tax deductible they must be duly documented, registered in the company's book accounts in compliance with the "cut-off" principle and comply with the arm's length principle when charged by related parties.

For illustrative purpose, please consider the following deductible expenses:

- lease payments;
- salary expenses and related social security, insurance and pension contributions;
- taxes (such as local taxes);
- financial expenses (it being noted that several tax rules limit the tax deductibility of said financial expenses, as addressed below);
- amortization and depreciation; and,
- O&M expenses.

However, there are some costs that are expressly foreseen as non-deductible for CIT purposes (e.g. CIT, Extraordinary Contribution of the Energy Sector ("ESEC"), penalties, unduly documented expenses, unjustified payments to tax havens, etc.).

## Provision for dismantling costs

In case a dismantling provision is booked, we would like to draw your attention to the following tax aspects.

The decommissioning costs are usually considered, equally, as an asset (incremental to the fixed assets) and a liability (provision). The calculation of this provision is based on an estimate of the present value of the costs the company is expecting to incur upon the end of the operation to restore the land on which the fixed assets were installed.

The depreciation of the incremental cost added to the fixed assets is not tax deductible since it is an estimate (not effective yet). However, since the reduction of the underlying provision will be tax deductible in the year in which the dismantling expense will be incurred (in which the cash-out occurs), a deferred tax asset may eventually be booked.

## Asset Depreciation Deductibility

The depreciation of fixed assets is deductible for tax purposes provided that the asset suffers devaluation as a result of its use or of the passing of time (tangible assets, intangible assets, non-consumable biological assets and investment properties registered at acquisition cost are deemed to fulfil these requirements).

The depreciation must be computed over the asset's acquisition cost, at a rate that cannot exceed the one foreseen in Regulatory Decree nr. 25/2009, of 14 September.

Please note the Regulatory Decree sets forth industry specific rates. In case those are not applicable, generic rates were also established for each type of asset. Some of those rates, potentially applicable to wind power generation assets, are depicted below (other may apply).

Code	Description	Rate (%)
<b>Specific table</b>		
1255	Measurement and control equipment	12.5
1240	Transformer stations and electric substations	5
1245	High voltage power lines	5
1250	Low voltage power lines	7.14
<b>Generic table</b>		
2250	Wind power and photovoltaic equipment	8

There are two main methods for calculating depreciation.

- on the **straight-line method**, the minimum useful life period of each asset is determined based on the maximum depreciation rates referred in the Regulatory Decree and the maximum useful life period is determined based on half of those rates.
- the **declining balance method** can only be applied to newly acquired tangible fixed assets or assets that are produced by the company, excluding buildings and light passenger or mixed use vehicles. It allows acceleration of depreciation with the amount of depreciation that is charged to an asset declining over time. In other words, more depreciation is deducted at the beginning of the life of the asset and less at the end.

Additionally, the tax authorities may allow depreciation at rates or methods other than the ones set out in Regulatory Decree nr. 25/2009 (as for instance the production units method), but upon request of the taxpayer.

Intangible assets (such as licenses) must be depreciated during the period corresponding to their exclusive use by the company.

The following depreciation costs (among others) are not deductible for tax purposes:

- depreciation of assets not subject to devaluation;

- land depreciation;
- depreciation above the limits foreseen in Regulatory Decree nr. 25/2009;
- depreciation performed beyond the assets' useful life;
- depreciation over the part of the acquisition cost related to the initial estimate of the cost of decommissioning or removal of the asset (we further address this issue below).

### **Deductibility of financing expenses**

Under the Portuguese earnings stripping rules, interest and other net financing expenses are only deductible up to the higher of the following limits: (i) EUR 1M or (ii) 30 percent of earnings before depreciations, amortizations, net financing expenses and taxes ("EBITDA").

Nevertheless, the Portuguese CIT Code foresees that any amounts of net interest and other financing expenses that exceed the referred limits, and consequently are not deducted, as well as any unused EBITDA limit (whenever expenses do not exceed 30% of the EBITDA) may be carried forward for five tax years.

Regarding this matter, please bear in mind that the transposition of ATAD 1 to the Portuguese tax law took place in May of 2019, promoting some changes to the earning stripping rules, namely to the concept of EBITDA as well as the concept of "net financing expenses".

## Withholding Tax

### Dividends & Interest

Dividends and interest paid to a non-resident company without a permanent establishment in Portugal are subject to a final withholding tax at a rate of 25 percent. However, provided some requirements are met, a reduced withholding tax rate may apply under the relevant DTT, or an exemption may be granted under the EU Directives as implemented under the Portuguese tax law.

In both scenarios an aggravated withholding tax rate of 35 percent is applicable if the entity obtaining the dividends or interest is resident in a tax haven.

### EPC contracts and O&M agreement

Services contracted in respect to the EPC & O&M agreement, if paid to a non-resident entity (with no permanent establishment in Portugal), are subject to withholding tax in Portugal at a rate of 25 percent.

However, this withholding tax rate may, in principle, be reduced or eliminated in case a DTT have been signed between Portugal and the State where the non-resident entity have its tax residency.

Please note that the definition of permanent establishment under the Portuguese tax law generically follows the OECD convention model with some exceptions, namely, it provides expressly that a building site or construction or installation project (where EPC may be included) constitutes a permanent establishment if it lasts more than six months.

## Stamp Duty on Funding

Under the Portuguese tax law, Stamp Duty is levied on all acts, contracts, documents, securities, books, papers and other events listed in the Stamp Duty General Chart (which includes the use of credit and guarantees).

The above mentioned facts are also subject to Stamp Duty if, although they occur outside the Portuguese territory, they are presented for legal purposes in Portugal.

Loans and guarantees granted to or by a Portuguese resident entity are subject to Stamp Duty levied on the value of the credit used or on the guarantee's value at rates that vary between 0.04 percent (per month) and 0.6 percent (one-off) according to the maturity of the loan/guarantee.



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Please note, some exemptions may apply in respect to intra-group relationships or depending on the type of financing instrument being granted.

## Real Estate Transfer Tax

In accordance with the Portuguese Real Estate Transfer Tax ("RETT") Code, all onerous transfers of ownership rights or parts thereof on real estate located in the Portuguese territory, regardless of how such transfers are carried out, are subject to RETT.

RETT is due by any individual or legal person to whom the real estate is transferred and is levied on the amount shown in the respective deed or agreement, or on the property tax value, depending on which is higher.

In addition, RETT is also levied on certain economic "transfer of ownership" transactions, such as:

- sale agreements of immovable property (on delivery);
- leases or sub-leases for a period that exceeds 30 years;
- surface rights; or
- the acquisition of, at least, 75 percent of the share capital of a limited liability company ("Lda.") holding immovable property.

RETT is due by the purchaser upon the acquisition of a property at a flat rate of:

- 6.5 percent on the acquisition of urban properties;
- 5 percent for rural property;

- 10 percent for any urban or rural property if the purchaser is a company resident in a listed tax haven.

In a pure property transaction (asset deal), Stamp Duty applies in addition to RETT, at a rate of 0.8 percent.

## Municipal real estate tax

Municipal real estate tax is levied annually on the properties located in the Portuguese territory, including movable improvements remaining fixed in the same place for more than 1 year.

This tax is payable by the person registered as the owner of the immovable property on 31 December, unless when the immovable property is subject to an use right or surface right, in which the tax should be payable by the person registered as the holder of the use right or the surface right after the beginning of the construction.

The municipal real estate tax is levied on the tax registration value of buildings, flats, plots of land and rural land.

The tax is due every year following.. The tax rates are the following:

- 0.3 percent to 0.45 percent for urban buildings registered and/or owned since 1 December 2003 (the rates are increased to the triple if the property have been vacant for more than one year);
- 0.8 percent for rural property;
- 7.5 percent for real estate property held by a resident in a tax haven.



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Urban immovable property exclusively allocated to the production of energy from renewable sources may benefit, under certain conditions, from a reduction of 50 percent of the tax, subject to request to the Portuguese Tax Authorities.

If approved, this benefit is applied during a period of 5 years, as from the property's allocation to the production of energy.

Each windmill has been considered by the Portuguese Tax Authorities as urban buildings. Nevertheless, the Portuguese Administrative Supreme Court have issued decisions with regard to wind farms and considered that each windmill that is located in the wind farms could not be considered as an urban building for tax purposes and therefore is not subject to this municipal real estate tax.

Following the above mentioned case-law, the Portuguese Tax Authorities have changed their course of action, cancelling the already issued cadastral records of windmills and abstaining from registering any other as urban property. Additionally, it has also proceeded to the refund of undue payments.

## Value Added Tax

### General framework

Value Added Tax ("VAT") is due on any supply of goods or services made in Portugal, where it is a taxable supply made by a taxable person in the course or furtherance of a business carried on by said person.

VAT is also due on importations and acquisitions of goods from other EU Member States.

The supply of goods shall mean the transfer of the right to dispose of tangible property as owner.

It is considered as supply of services, any transaction which does not constitute a supply of goods.

For VAT purposes, the electricity shall be treated as tangible property, and, therefore, the sale of electricity is considered as supply of goods.

Considering that the development and the exploration of wind farms is an economic activity, the entities that carry out such activity will be considered as a VATable person.



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## VAT due date

According to the general rules, VAT is due and becomes demandable:

- on supplies of goods, at the moment when the goods are made available;
- on supplies of services, at the moment when they take place.

On transfers of goods and supplies of on-going services, usually applied on the supplies of electricity, resulting from contracts that lead to successive payments, it is considered that the goods are made available and the supplies of services are carried out at the end of the period that relates to each payment (with the limit of 12 months).

## Place of supply rules

The general rule establishes that the supply of goods is considered located in Portugal if the goods are located in this territory at the moment when their transport or expedition to the acquirer begins, or at the moment they are put at the acquirer's disposal.

However, for VAT purposes, the supply of electricity (e.g. sale) is taxable in Portugal under the following special place of supply rules:

- when the acquirer is an electricity' reseller, and its seat, fixed establishment for which the goods are supplied or, in the absence of such seat or fixed establishment, domicile, is located in Portuguese territory;
- when the acquirer have a seat, fixed establishment for which the goods are supplied or, in the absence of

such seat or fixed establishment, domicile in Portuguese territory, and if the acquisition of electricity is not for final use or consumption by this acquirer;

- when the final use or consumption of the electricity by the acquirer, is carried out in national territory, and, such acquirer is not an electricity reseller with seat, fixed establishment for which the goods are supplied or, in the absence of such seat or fixed establishment, domicile outside the Portuguese territory.

In the other hand, the supply of electricity will not be taxable in Portugal in the following situations:

- when the acquirer is an electricity' reseller, and its seat, fixed establishment for which the goods are supplied or, in the absence of such seat or fixed establishment, domicile, is located outside the Portuguese territory;
- when the final use or consumption of the electricity by the acquirer, is carried out outside the Portuguese territory, and, such acquirer is not an electricity reseller with seat, fixed establishment for which the goods are supplied or, in the absence of such seat or fixed establishment, domicile located in the Portuguese territory.

Regarding the supply of services, the Portuguese VAT law foresees the following two general place of supply rules:





# Portugal

- business-to-business (B2B) rule: the services supplied to VATable persons, are located at the place of the head-office, establishment or domicile of the acquirer;
- business-to-consumer (B2C) rule: the services supplied to non-VATable persons (final consumers), are located at the place of the head-office, establishment or domicile of the supplier.

In this context, when a non-resident entity provides services to a Portuguese company (e.g. maintenance services of the wind farms, or consultancy services), the Portuguese company must self-assess VAT (reverse-charge mechanism) and deduct this VAT if linked with taxable output operations.

Nevertheless, are also foreseen special place of supply of services rules. For instance the services related to immovable properties (such as the construction of wind farms) located in national territory are taxable in Portugal.

### **Reverse-charge on domestic supplies of goods and services**

The Portuguese VAT law foresees a reverse-charge mechanism (self-assessment of the VAT by the acquirer) on some operations, such as the supply of construction services, among others.

Generally, the EPC contract for a construction of the wind farm is subject to the reverse-charge mechanism, which means that the acquirer should self-assess and deduct the VAT with no cash-flow impact.

### **VAT rates**

The reduced VAT rates are 6 percent in the mainland, 5 percent in the Autonomous Region of Madeira and 4 percent in the Autonomous Region of Azores (applicable to accommodation, among other services / supplies).

The intermediate rate is 13 percent in the mainland, 12 percent in the Autonomous Region of Madeira and 9 percent in the Autonomous Region of Azores (e.g. oil, diesel and heating fuel).

The standard VAT rate is 23 percent in the mainland, 22 percent in the Autonomous Region of Madeira and 18 percent in the Autonomous Region of Azores.

The sale of electricity is subject to the standard VAT rate.

Recently, it has been approved the reduced VAT rate to the fixed component of grid access charges for electricity supplies,



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corresponding to a contracted power not exceeding 3,45kVA. Hence, this reduced VAT rate is only applicable on the supplies of energy by the energy' suppliers to end users and not to the supplies of energy by the energy's producers to energy' suppliers.

## **Deduction**

Companies are entitled to deduct the VAT incurred to perform operations subject to and not exempt from VAT or in VAT exempt operations that give right for deduction – e.g. exports, operations carried out abroad that would be taxable if performed in national territory, among others.

The deduction of the input VAT depends also on the fulfillment of several conditions, namely, the invoices underlying the operations should be issued in the name and with the VAT number of the taxable entity.

The acquirer of operations subject to the reverse-charge mechanism (e.g. construction services) may only deduct the correspondent VAT if it carries out the respective self-assessment.

VAT incurred with the following expenses, among others, may not, in principle, be deducted:

- acquisitions, rentals, maintenance and other expenses related to touristic vehicles (except the expenses regarding electric or plug-in vehicles, which the acquisition cost do not exceed the amount fixed in the Ministerial Order nr. 467/2010, of 7th July), leisure-boats, helicopters, aircrafts and motorcycles;
- fuel (except diesel, LPG and natural gas, deductible in 50 percent);
- travel, accommodation and meals.

## **Refund**

Taxable entities in a VAT credit position may request a VAT refund to the authorities, provided that the correspondent legal conditions are met.

The PTA should refund the VAT within a period of three months.

The request of a VAT refund may give raise to a VAT audit.

## **VAT returns**

Most registered businesses are required to submit VAT returns on a monthly basis. However, if the estimated annual turnover is less than EUR 650,000, the taxable person may opt to submit quarterly VAT returns.

The electronic data processing systems used by entities to register their operations, namely for invoicing and accounting purposes, must fulfill the SAFT PT (Standard Audit File for Tax purposes) requirements.

## **Other duties**

### **Extraordinary Contribution of the Energy Sector (ESEC)**

The ESEC's regime has been approved and introduced in the Portuguese tax system in 2014, having been extended, every year, until 2019.

This regime has been introduced with the purpose of financing mechanisms that promote the sustainability of the energy sector, through the setting up of a fund, which aims to decrease the tariff deficit and finance social and environmental policies of the energy sector.

Among others, ESEC is levied on taxpayers which have a fiscal address, head office, effective management or permanent



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establishment in the Portuguese territory, and that, fall under one of the following situations:

- holders of operation licenses for power plants (except those located in the Autonomous Regions of the Azores or Madeira);
- holders of production licenses that have been considered to be in a condition to be authorized to start operation (except those located in the Autonomous Regions of the Azores and Madeira);
- Wholesalers of electricity.

This contribution is levied, generally, at a rate of 0.85 percent, on the net value of the following assets, as presented on the financial statements of the taxpayer at the 1st of January of the relevant year:

- tangible assets;
- intangible assets, with the exception of intellectual property; and,
- financial assets arising from concession arrangements or licensed activities foreseen on article 2 of the ESEC's regime.

Generally, ESEC assessment and payment is made until 31 October of each year. Please note that, as previously mentioned, ESEC's payment shall not be considered a deductible expense for tax purposes.

Please note that until 2018 companies operating in the renewables energy sector were exempt of ESEC.

However, the State Budget Law for 2019 introduced significant changes on ESEC, namely reducing the scope of the exemptions to certain companies operating in the renewables energy sector. The aim of the change was to include operators that were benefiting from the FiT schemes.

In this sense, the following renewable energy producers continued to be exempt from the ESEC regime:

- operators who hold licenses or rights granted to them in the context of a public tender (as long as the respective producers are complying with their contractual rights);
- operators of small scale generation units or self-consumption generation units; and
- producers of electricity and heat through micro-cogeneration plants.



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## **Municipality “rent” due by wind power operators**

The Portuguese base legislation that regulates the remuneration schemes applicable to wind power plants imposes a “rent” to be paid by each wind power producer to the Municipality where the wind farm is located.

Such “rent” was introduced with the purpose of distributing the global benefits to which the wind farms are entitled to at both the national and local level.

This rent is computed based on a 2.5 percent rate over the mensal payment received from the entity that purchases the wind power based electricity produced in each plant.

In case the plants are located in more than one municipality, the due amount must be allocated in proportion to the installed power in each municipality.

Notwithstanding the above, please note such rent may not be due in case some other more advantageous compensation arrangement was celebrated between the wind power producer and the relevant Municipality.

### **Clawback**

Portugal and Spain are integrated in the Iberian energy market – MIBEL – which implies that both Portuguese and Spanish producers bid their energy at the same level. Therefore, whenever there is a measure implemented in one country, it necessarily leads to impacts at MIBEL level.

In 2012, the Spanish Government introduced a severe tax reform in the energy sector, mainly aimed to the electricity production. Such a tax reform brought up a negative outcome to Spanish producers’ competitiveness when compared with their Portuguese counterparts.

As a response, in 2013, through Decree-Law nr. 74/2013, of 6th June, Portugal implemented a mechanism – the clawback – with the main goal of restoring the competitive equilibrium in MIBEL, leveling Portuguese and Spanish producers.

At its beginning, the clawback mechanism foresaw a payment of EUR 2 / 3 per MWh generated by power plants held by ordinary producers. As renewable energy producers were under a special regime, and were not considered for Portuguese energy law purposes as ordinary producers, they were excluded from the clawback mechanism.

Nowadays, since August 2019, following the amendment of this mechanism (through Decree-Law nr. 104/2019, of 9th August) all energy producers that bid their electricity at market conditions, i.e. without a guaranteed remuneration scheme are included. Therefore, the clawback mechanism may now also apply to renewable energy producers acting under market conditions and this payment corresponds to EUR 4,18 per MWh.



# South Africa

## Corporate income tax

Large-scale independent power producers (IPPs) in South Africa operate under the Department of Energy's Renewable Energy Independent Power Producer Programme (REIPPP). A Power Purchase Agreement is signed between the IPP and South Africa's national public utility, Eskom.

For the most part, taxation of IPPs is governed by the same principles applicable to other taxpayers. Corporate income tax applies at a rate of 28%, dividends tax is charged at 20% (although dividends declared between South African companies are exempt from dividends tax), and a withholding tax of 15% applies to interest paid to non-resident companies. Where a Double Tax Agreement is in place between South Africa and the jurisdiction in which the shareholder or creditor is tax resident, the withholding tax rate may be reduced, subject to certain required written declarations and undertakings which confirm the applicability of treaty relief, being in place.

Tax complexities that are common to IPPs include cross-currency and interest rate swaps, possible limitation of deductibility of interest paid to foreign shareholders, deferral of deductibility of most pre-trade expenditure although pre-trade income remains fully taxable, potential non-deductibility of certain financing charges in respect of instruments that may be regarded as "hybrid debt instruments," and the timing of inclusion and deduction of foreign exchange gains and losses.

## Special tax regime

### Capital allowances

Accelerated capital allowances are available to companies using assets in their trade as IPPs to generate electricity from renewable energy sources, including wind power, photovoltaic solar energy, concentrated solar energy, hydropower, and biomass. In the case of wind power, in terms of section 12B of the Income Tax Act, 50% of the cost to acquire the asset may be deducted in the year in which the asset is brought into use, and 30% and 20% may be deducted in each of the two succeeding years, respectively. For costs incurred to acquire or make capital improvements to roads and fences in their renewable energy trade, a section 12U deduction of 100% of such costs is available to IPPs in the year in which such costs are incurred.

Capital allowances are calculated with reference to the cost to the taxpayer of acquiring such renewable energy assets or of making capital improvements thereto. An assessment of which costs will qualify for capital allowances must be done on an asset-by-asset basis. It is therefore imperative that IPPs componentize their tax



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asset register. In doing to, it is important to ensure that the contractor erecting the plant on behalf of the IPP, provides as much granular detail as possible to the IPP regarding its costs invoiced. Further, costs such as financing costs, certain consulting fees, and certain costs relating to permanent works or land preparation cannot be included in the cost of the assets for purposes of claiming capital allowances. Since certain of these costs are also not otherwise deductible for tax purposes, IPPs often overestimate the quantum of the available capital allowances when preparing their financial models during the bidding phase of the REIPPPP.

In the South African renewable energy industry, it is typical that IPPs construct their plants on land that they either lease or over which they have access via a servitude, in other words land that is not owned by the IPP. In such cases, capital allowances in respect of certain buildings and permanent works are often not available, due to South Africa's legal principle of accession (immovable works acceded to the land on which they are built and becomes the property of the landowner). Whilst section 12N contemplated this and attempted to deem the IPP to be the owner of the land when claiming capital allowances, due to ambiguous wording it does not have the intended result. Further, costs incurred in respect of electrical grid connection works and transmission lines will often not qualify for capital allowances, as these assets may be contractually agreed to be legally owned by Eskom and not by the IPP.

### **Carbon tax**

South Africa have very recently introduced a carbon tax (effective from 1 June 2019). The carbon tax aims to reduce greenhouse gas (GHG) emissions in an environmentally sustainable but affordable way, in line with

commitments made by South Africa under the Paris Agreement.

The Carbon Tax Act adopts a 'polluter pays' principle. It aims to crystallise financial implications of pollution, to encourage South Africans to take this into account in their future production, consumption and investment decisions. The tax will be administered as part of South Africa's customs and excise system, and will be implemented in three phases: The first phase will be from 1 June 2019 to 31 December 2022, the second phase from 2023 to 2030, and the third phase thereafter. Phase 1 will include numerous sector exemptions and allowances.

The design of the carbon tax follows international carbon pricing systems (such as the European Union Emissions Trading Scheme, as well as schemes in California and Alberta) that provide for the use of carbon offsets by companies to reduce their carbon tax liability.

Carbon offsets take the form of investments in specific projects that reduce, avoid or sequester emissions. Companies will be able to reduce their carbon tax liability by using offset credits up to a maximum of 5% or 10% of their process or fuel combustion GHG emissions, respectively.

IPPs with REIPPPP project bids signed after 9 May 2013, and which have a generation capacity of less than 50 megawatts, will qualify in terms of the carbon offset scheme. It is thus hoped that carbon offset projects will encourage investments in energy efficiency and renewable energy, rural development projects, and initiatives aimed at restoring landscapes, reducing land degradation and biodiversity protection.



# Spain

## Corporate income tax

Wind power entities in Spain are generally subject to Corporate Income Tax ("CIT") on the worldwide income and expenses obtained. CIT general tax rate is 25%.

CIT returns have to be filed within 25 days following the 6 month period after the close of the financial year. Thus, in case a Spanish entity closes its financial year on 31st December, the deadline to file the relevant tax returns is 25th July, which have to be filed electronically through the Spanish tax authorities' webpage.

Additionally, there are three instalment payments to be made within the first twenty calendar days of April, October and December, on account of the final CIT liability.

As a general rule, taxable income shall be determined by making the corresponding adjustments to the net accounting income.

### Main adjustments to the taxable base

On the basis of our experience, the most relevant CIT adjustments applicable to wind power entities would be the following:

#### Depreciation

According to the Spanish CIT Law, the accounting depreciation expenses would be deductible for CIT purposes provided that said expenses represent the effective depreciation of such assets, deriving from their normal use.

In this regard, Spanish CIT Law sets forth that the accounting depreciation expense would be deemed as representing the effective depreciation of the assets provided that the depreciation rate used is within the depreciation rates established in the official tax depreciation schedules.

The table below includes the most common wind power assets and their depreciation rates:

Concept	Maximum straight-line rate	Maximum period of years
Renewable plants	7%	30
Other plants	5%	40
Substations.	5%	40
Transport-networks and energy grids		
Other facilities	10%	20
Equipment	12%	18



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## Impairment of assets

Accounting expenses corresponding to the impairment of fixed tangible and intangible assets shall not be deemed deductible for CIT purposes.

Tax deduction of impairment losses on fixed tangible and intangible assets is deferred to the tax year in which the asset is transferred to third parties or due to the winding up of the company.

## Earning stripping rules

Spanish CIT Law provides for a general restriction on the deductibility of the net financial expenses incurred by an entity, commonly referred to as the “Earning-Stripping Rules”. Under such limitation, the net financial expenses exceeding 30% of the adjusted operating profits of a given tax year are not treated as deductible for CIT purposes. Nevertheless, a minimum net financing expense of Eur 1 M per year is deductible in any case.

It is worth mentioning that the “earning stripping rule” provides for a specific mechanism allowing taxpayers to utilize in future tax periods their interest deductibility capacity against the financial expenses deemed as non-deductible in previous years.

Additionally, the excess of tax deductibility capacity generated in a relevant year can be added up to the 30% limit of the adjusted operating profit of the following 5 years until such excess of capacity is fully absorbed.

## Transfer Pricing Rules

According to Article 18 of the Spanish CIT Law, transactions carried out between related entities should be valued according to the arm’s length principle, that is, as if they have been agreed between unrelated parties under normal market conditions.

In this sense, the STA would be entitled to adjust the value applied to transactions carried out between related entities if such transactions have not been valued according to the arm’s length principle, on the basis of both the information available to the STA and the information provided to the STA by the taxpayers.

Having said the above, it should be noted that taxpayers are obliged also to prepare and maintain specific transfer pricing documentation, subject to certain thresholds, in order to support that transactions carried out with related parties are performed on an arm’s length basis. In this sense, the STA could request this supporting documentation from the taxpayer upon the due date for filing the CIT return of each period.

## Tax losses carry-forward

In accordance with the applicable tax legislation, tax losses can be carried forward against future tax profits without any time constraint. However, the following limitations apply concerning the right to offset the tax losses generated in previous tax periods:

- As per 2017 onwards, the maximum general percentage to be offset would be increased up to the 70% of the positive taxable income of the period, with a minimum amount of Eur 1 million that could be offset each year.
- Additionally, further restrictions apply to companies with turnover exceeding Eur 20 million in the 12 months prior to the beginning of the relevant fiscal year:



# Spain

- Companies with turnover ranging from Eur 20 million to Eur 60 million: 50% of the taxable base.
- Companies with turnover exceeding Eur 60 million: 25% of the taxable base.

## Value Added Tax

The sale of electricity generated by wind power entities is considered as a provision of goods for Spanish VAT purposes, subject to Spanish VAT at 21%.

## Tax on the Sale of Electric Power

Tax on the Sale of Electric Power is annually levied on the production of electricity, being the tax rate 7%. This tax is calculated on the total income earned by the sale of energy by the taxpayer from each generating facility.

Spanish Government, through Royal Decree 15/2018, adopted urgent measures to suspend the Tax on the Sale of Electric Power during the last quarter of 2018 and the first quarter of 2019. However, once the period of suspension expired, this tax has been applied.

On the other hand, after several dismissed appeals submitted by power producers claiming the refund of this tax payments on the basis that it is contrary to the Spanish Constitution and EU Law, in February 2019 the High Court of Valencia submitted some preliminary questions to the European Court of Justice on the appropriateness of this tax. Such preliminary questions are currently pending resolution by the European Court of Justice.

Therefore, please note that the existence of this tax in the future is uncertain.



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## Local taxes

### Business Activity Tax

Business Activity Tax is levied annually on any business activity conducted within the territory of the municipality (e.g. renewable power activity).

It should be noted that there is a full exemption on the tax due for the first two periods for all business activities.

### Real Estate Tax

Real Estate Tax ("RET") is a local tax levied annually (on January 1st of each calendar year), for the ownership or the rights over certain real estate assets (e.g. real estate assets within wind parks).

The amount of RET due depends on the municipality in which the real estate is located and is calculated on the basis of the official value assigned to the property (the so-called 'cadastral value'), including the value of the land and buildings.

The RET rates applicable to the cadastral value in order to calculate the tax due range between 0.4% and 1.3%.





## Corporate income tax

UK corporation tax applies to the total taxable worldwide profits of UK tax resident companies, including income and chargeable gains (subject to certain exemptions) for each accounting period, whether or not the profits are distributed. UK corporation tax also applies to the profits of UK permanent establishments of non UK resident companies.

Under UK domestic tax law a company will be UK tax resident if it is incorporated in the UK; or it is centrally managed and controlled in the UK.

The main UK corporation tax rate is currently 19%. This will reduce to 17% from 1 April 2020.

Taxable profits for UK corporation tax are calculated in accordance with generally accepted accounting principles ('GAAP'), but with certain statutory adjustments.

Expenses are generally deductible in computing trading profits, provided they are of a revenue (i.e. not capital) nature and that they are incurred wholly and exclusively for the purposes of the trade, subject to certain statutory modifications, including:

- Pre-trading expenses – to the extent that the company incurs pre-trading revenue expenditure in the 7 years before the commencement of trading, a deduction should be available for these expenses on the commencement of the trade.
- Interest – interest is treated as trading expenditure where it is paid in respect of a loan taken out for trading purposes. Deductions against UK taxable trading profits should be available for the financing expenses in connection with this debt. However, this will be subject to various anti-avoidance provisions including the corporate interest restriction (CIR) and transfer pricing rules.

Capital expenditure – No corporation tax relief is available in respect of the accounting depreciation, depletion or amortisation charges recognised in the Income Statement, instead relief is via capital allowances. Most expenditure for wind farm businesses will attract relief through plant and machinery (P&M) allowances computed on a reducing balance basis.



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2. Prior to 1 April 2019 the SRP rate was 8%.
3. £1,000,000 per annum between 1/1/2019 and 31/12/2020. Thereafter the annual allowance is expected to revert to the prior £200,000 per annum level.

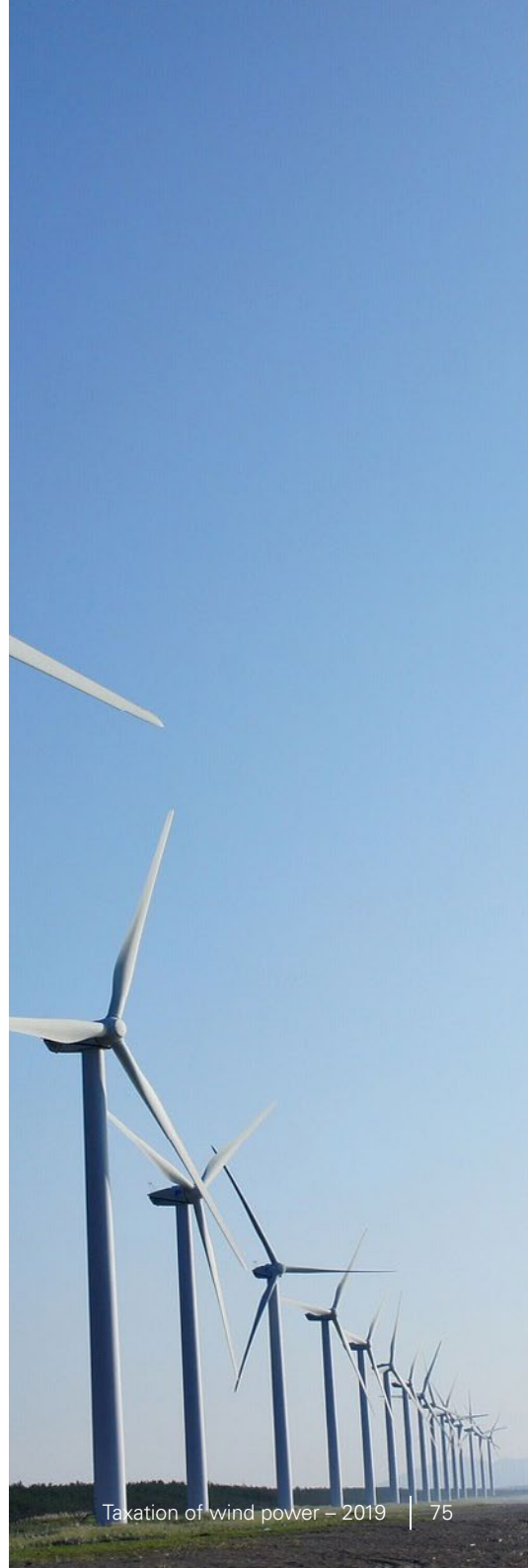
- Main pool – P&M assets with an expected useful economic life of < 25 years – Rate of 18% per annum.
- Special rate pool (SRP) – P&M assets with a useful economic life of > 25 years and assets that qualify as fixtures where the person incurring the expenditure does not necessarily own or operate the asset under the capital allowances code e.g. payments made to a third party (i.e. network provider, National Grid). Rate of 6%<sup>2</sup> per annum.
- First year allowances – 100% first year allowances are available for certain types of qualifying expenditure. This currently includes capital expenditure on qualifying research and development ('R&D'), and the first £1 million<sup>3</sup> of expenditure on P&M assets (Annual Investment Allowance).

Dividends – distributions are not deductible for UK corporation tax purposes. A distribution is typically a dividend, whether out of revenue or capital profits, but could also include the transfer of assets.

Incentives exist for revenue expenditure incurred on qualifying research and development. SME sized entities can claim an enhanced deduction in their computation of taxable trade profits, and where they are loss making a cashable credit is available instead. Large companies can claim an above the line credit on qualifying revenue expenditure.

## Special tax regime

No special tax regime exists for wind farm developments.



## Corporate income tax

Companies that produce and sell electricity from wind energy are subject to tax in accordance with whether they are organized as corporations or partnerships for federal income tax purposes.

U.S. corporations are generally subject to a 21 % federal corporate income tax rate. Most states also impose income/franchise taxes on U.S. corporations which typically range from 4-10%. State income/franchise taxes and property taxes are deductible against federal income taxes.

U.S. partnerships are generally flow-through entities for federal income tax purposes. In the case of companies that are organized as partnerships for federal income taxes, the partnership must submit an annual federal income tax return to the government providing information about the partnership's income, gains, deductions, losses and credits for the tax year, however, the ultimate owners of the partnership include their share of those items on their own federal income tax return and pay tax at whatever federal income tax rate applies to them. Individual income tax rates vary. The top federal income tax rate for individuals is currently 39.6%. State income tax rates vary and typically range from 5-13%. Also, in the case of individuals, there is currently a limit (\$10,000) on the amount of state income/franchise and property taxes that can be deducted against federal income taxes.

Wind energy projects are often held in partnerships in the United States in order to more efficiently monetize federal income tax benefits, including federal income tax credits (described below) and accelerated tax depreciation. Under U.S. tax rules, subject to certain conditions and limitations, in a partnership, net cash flow can be shared between the partners in a different ratio than items of taxable income, gains, deductions, losses, and credits.

The tax base for wind energy projects is generally calculated under the same tax principles that apply to other types of businesses. Wind energy projects are eligible for a 5-year recovery period for tax depreciation purposes. Under U.S. rules, property with a 5-year recovery period is recovered under a double declining balance method, switching to straight line depreciation when straight line provides a larger deduction. Property placed in service in a given year is generally subject to a half-year convention for first year depreciation, but with certain exceptions for companies that have back loaded their capital expenditures and for so-called "short years."



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For a limited period, corporations and partnerships that place property in service with a recovery period of 20-years or less are eligible, at their option, to claim 100% expensing in lieu of regular depreciation. The expensing regime phases down over a period of years until it is completely phased out in tax years after 2026 (2029 for certain long lived property with a long production period).

Specifically, the expensing phase out is as follows:

- 100% for qualified property placed in service prior to 2023;
- 80% for qualified property placed in service prior to 2024;
- 60% for qualified property placed in service prior to 2025;
- 40% for qualified property placed in service prior to 2026; and
- 20% for qualified property placed in service prior to 2027.

In the case of property with a recovery period of 10 years or more and a production period exceeding one year, there is a one year extension of the phasedown schedule.

In the United States, wind energy projects are not typically owned and operated by regulated utilities. In the typical scenario, an independent power producer sells its output to a utility. However, this is starting to change. For wind energy projects that are built, owned, and operated by regulated utilities, some special rules apply. Under the so-called “normalization method” of accounting required of utilities, the utility must pass the tax benefits of depreciation and investment tax credits back to customers over the book life of the underlying property. This can put

pressure on the utility to have pricing which is competitive with third party independent power producers.

Finally, recent changes to the interest expense regime in the United States affects wind energy projects, as these projects tend to be highly leveraged. Specially, under new rules that are effective for taxable years beginning after 2017, in general, a corporation or partnership cannot deduct net interest expense in any given year that exceeds 30% of earnings before income tax – specially defined as taxable income less depreciation, amortization, depletion, NOLs, and certain other items. For tax years after 2021, depreciation, amortization and depletion are no longer backed out of the computation.

## Special tax regime

Since 1993, the United States tax law have provided a special federal income tax credit regime for wind energy projects. As outlined below, this regime is scheduled to phase-out starting in 2020 and to be completely removed by the end of 2023. Although the regime has been extended by the legislative in the past, the wind industry is not seeking an extension and, as of this writing, an extension appears unlikely.

Wind energy projects are eligible for a production tax credit (PTC) for the production and sale of electricity to unrelated parties. The credit rate is adjusted annually for inflation and was 2.4 cents per kilowatt hour in 2018. The credit is available for a 10 year period beginning with the date that the project is placed in service.

The taxpayer that owns the wind energy project can make an election to claim a 30% investment tax credit (ITC) in lieu of the PTC. In practice, the ITC election is rarely made



for onshore wind projects as high capacity projects typically generate more PTCs on a present value basis than the 30% ITC.

In a partnership, the PTC is generally allocated in accordance with how the partners share tax items. In a so-called partnership flip arrangement, in exchange for a large upfront capital contribution which might exceed 50% of the construction cost of the project, a tax equity investor might be allocated up to 99% of the PTC's and other tax items (including tax losses) for a period of years or until a specific internal rate of return is reached.

In a partnership flip arrangement, net cash flow is often shared differently between the parties and is a negotiated item. A tax equity investor might be allocated only 5-25% of the net cash flow.

As outlined above, the PTC/ITC regime is scheduled to phase down according to a schedule:

- For projects that began construction in 2016 and are in service by the end of 2020, the full PTC rate is available for the 10-year credit period.
- For projects that began construction in 2017 and are in service by the end of 2021, a 80% PTC rate is available for the 10-year credit period.
- For projects that began construction in 2018 and are in service by the end of 2022, a 60% PTC rate is available for the 10-year credit period.
- For projects that begin construction in 2019 and are in service by the end of 2023, a 40% PTC rate is available for the 10-year credit period.

There is no PTC available for projects that begin construction after 2019.

There is a similar phasedown schedule for taxpayers that elect the ITC in lieu of the PTC – i.e., a 26% ITC rate, then 22% ITC rate, then 18% ITC rate.

Some states provide state income credits to incentive the production of wind energy in their states. However, many of these programs are temporary and subject to periodic review by state legislatures. States that have been active in this regard include Hawaii, and Oklahoma.

The status of any particular incentive should be checked before making an investment that depends on these incentives.



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