



The power of nature

Taxation of wind power – 2020

A country overview

KPMG IMPACT

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Advokatfirma

Introduction

We are proud to present the second edition of the wind power country overview. In this edition, we have included 9 more countries, bringing the total numbers of countries covered to 29, 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.

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.

This report intends to present a brief country overview of taxation of both onshore and offshore wind power production.



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In most countries wind power production is subject to ordinary CIT varying from 12.5 % (Ireland) to up to 40 % (India).

Most countries levy CIT on wind power production in the area of 20 % - 25 %. Please note that applicable tax rates may vary due to local regulations, please see relevant country sections for details.

Several countries has 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 green power production

Compensation by way of local taxes is a mean to secure support from local municipalities affected by construction and operation of wind farms. This is commonly obtained through levy of property tax.

We would like to thank all reporting countries, and the Global ENR-team for input and for providing market insight.

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The wind of change

Both mature and emerging markets will continue to adapt and innovate in order to thrive in a transitional world

The global wind market

Over the past two decades the global renewables landscape has gone through a profound transformation. What were previously considered untested and unpredictable assets have now become proven technologies. Governments around the world are taking steps – some faster than others – to build a more sustainable energy mix; to help tackle climate change, to cut energy costs, and to reduce dependency on conventional energy sources. Wind powered energy is an integral component of this paradigm shift, as it has transitioned from a niche market to an established asset class.

Global onshore wind operating capacity increased by 20% in 2019 (vs 2018), mainly driven by Europe and China¹. Although capacity increases will not reach the same level in 2020 (owing to Covid-19), this was mainly due to project delays rather than cancellations, as lockdown measures slowed construction activity. We expect this to be short lived. The build-out of wind projects in 2021 and beyond is forecast to achieve strong year-on-year growth rates, as construction activity continues to gain pace once again².

Offshore wind is a smaller but rapidly growing asset class

Offshore wind has a completely different dynamic to onshore wind in terms of investment scale, barriers to entry, and technology. Development of the market has been led by Europe over the past decade, predominantly Germany and the UK, which were responsible for 62% of global offshore wind capacity in 2019³.

Europe will remain a key driver of the industry; but going forward Asia and North America have the most growth potential, with ample natural resources available to establish a strong offshore wind industry. Taiwan, Japan, China, South Korea and the USA all have ambitious targets to rapidly build out offshore wind capacity over the next 5-10 years. European developers and institutional investors are moving rapidly into these emerging markets, and they can apply the lessons learnt from working in a more mature market to help drive efficiencies and reduce costs.

¹<https://www.iea.org/reports/onshore-wind>

²<https://www.iea.org/fuels-and-technologies/wind>

³GWEC Global Offshore Wind Report 2020; RCG Offshore wind global market update



After a decade of development, technical developments and innovations continue to transform the sector, with 20MW turbine models expected to be delivered by 2030⁴. The global weighted average capacity factor for offshore wind has increased by 8 percentage points since 2010, to 43%, and upcoming projects are anticipated to have capacity factors well in excess of 50%⁵. Project size also continues to increase rapidly. Hornsea One is the largest operating offshore wind farm in the world with an installed capacity of over 1GW, with several further >1GW projects in Europe currently under construction or late stage development. Projects such as Atlantic Shores in the US are expected to be over double the size of Hornsea One by the end of the decade⁶.

2019 saw Europe's first floating offshore wind farm reach commercial operations (WindFloat Atlantic in Portugal)⁷. The floating market is gathering pace with almost all major participants now moving beyond their pilot projects, toward driving commercial scale assets, with external finance markets beginning to open up.

With fast-growing markets, ambitious government targets and technical innovations, offshore wind global capacity is expected to increase from 29 GW in 2020 to well over 150GW by 2030⁸.

The implications of ending subsidies

Investment in wind is fast approaching a key milestone: reliance on subsidy-free power generation. Subsidy free bids for offshore wind were first seen in Germany's 2017/2018 capacity auctions, and other jurisdictions have since followed, demonstrating the cost competitiveness of offshore wind to thermal power generation assets.

A subsidy-free world presents both obstacles and opportunities to market participants. Competitive advantage is likely to be achieved by those that:

1. Understand and manage merchant risk exposure
2. Navigate through the global regulatory and policy landscape
3. Harness technology to manage frequency response and deliver firm power as far as possible

As the subsidy-free era draws nearer, especially in Europe, being able to deal with the challenges of merchant risk will become increasingly important. While the availability of project finance will likely remain strong, there is little doubt that debt terms, at least in the short term, will become more conservative, with cash sweeps and tenor reduction becoming more common features. Business models will need to adapt accordingly.

Moreover, the focus is quickly turning to what alternative long term, guaranteed revenue streams will be available to projects. A more mature understanding of the role of PPAs and new trends in the market, for example Corporate PPAs, is becoming increasingly important.

Indeed, corporates, under increasing internal and external stakeholder pressure to decarbonise, will be looking to rapidly adopt green energy solutions (acquisition of projects, power offtake etc.) over the coming years, which will intensify competition in this space further.

⁴Future of Wind – A Global Energy Transformation Paper

⁵Future of Wind – A Global Energy Transformation Paper

⁶4C Offshore

⁷4C Offshore

⁸Offshore Wind Technologies Market Report (Office of Energy Efficiency and Renewable Energy); GWEC Global Offshore Wind Report 2020

With an optimised LCOE and the flexibility to play in competitive markets, wind is delivering as a critical component of the energy mix. Global capacity will expand significantly over the medium term, as several auctions take place in the next five years, which is likely to bring subsidies down further.

Tax remains a key part of delivering competitive projects

Like other energy sources, wind depends on a positive regulatory and taxation environment. Traditionally, tax measures have been an important factor in determining the overall economics of wind power projects (along with other Government measures such as subsidies and feed in tariffs). For example, tax incentives (e.g. accelerated tax depreciation rules) in countries such as France and the Netherlands, have led to increased profitability for wind projects. Most importantly, the availability of a capital gains tax exemption on disposals of shares in wind farm companies in most European countries has been an important driver of investment activity.

In the USA, wind projects currently qualify for significant federal income tax incentives. However, these are slated to expire or be dramatically reduced in the next few years, which is likely to reduce investment appetite. It is interesting to observe just how important tax incentives are for the wind industry in the US – in those years in which tax incentives (specifically the production tax credit) have not been available, new project construction has dwindled to a complete halt.

Notwithstanding the above, given the rapid development of the sector, and as the LCOE of wind projects in the US continues to decline, the role that sector specific tax incentives are required to play in encouraging investment into wind projects will likely diminish.

KPMG is currently focussing on the role of tax policy as part of the wider climate change question. In particular, we are developing thought leadership around the role of tax incentivisation particularly to assist mobilisation of capital into developing countries for renewable and other climate transition projects. One of the key messages from KPMG is that in addition to tax incentivisation, removal of unnecessary tax barriers (particularly withholding taxes) is of paramount importance to encouraging further investment into these markets. These tax barriers do not achieve the desired effect of raising more tax revenue – instead they act as a deterrent to investment in that country as tax is a material consideration when investors are making these types of investment decisions. In recent months KPMG has held a number of roundtables with both public and private investors to discuss these issues. Summaries of these roundtables can be found at <https://responsibletax.kpmg.com/home>.



In conclusion

While Covid-19 has likely not said its last word, the observed political willingness, and the commitment of developers, corporates and investors during the ongoing crisis suggests that the global wind market remains strong. Simply put, projects continue to be developed, constructed and operated in spite of the macroeconomic backdrop: indicative of the sector's long-term resilience.

We expect that wind (along with other renewables sources), in combination with new technologies such as storage, will continue to replace the reliance on existing and new build thermal power.

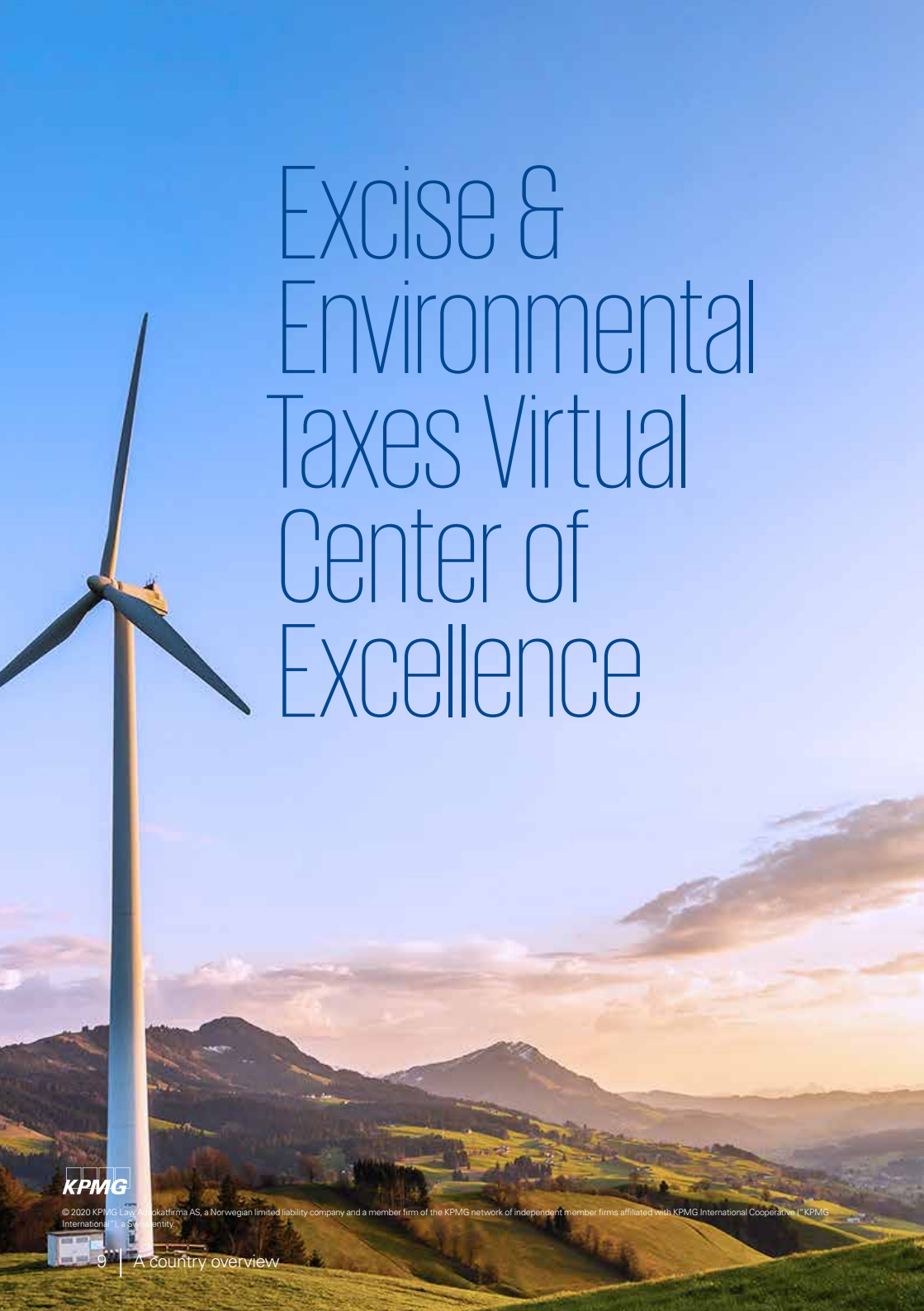
KPMG is proud to be a trusted advisor to many of the global leaders in onshore and offshore wind, delivering high quality, scale and complex structures. KPMG continues to be at the heart of innovative capital solutions and products; and has mobilised capital into many 'first of a kind' assets.

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Excise & Environmental Taxes Virtual Center of Excellence



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KPMG launched a new *Excise & Environmental Taxes Virtual Center of Excellence (VCOE)* in February 2020.

Excise and environmental taxes have a lot in common – they are typically forms of consumption-based indirect taxes, often imposed on a narrow range of businesses with the intent of changing consumer behaviours. They are expected to grow significantly over the coming years.

The formation of the VCOE has brought together a community of KPMG experts from around the world to support clients with their excise needs in areas like ‘sin’ taxes, such as those commonly applicable to alcohol, tobacco (and substitutes), gasoline and other fuels. The group also has a strong mandate to support clients in environmental taxes.

These typically comprise taxes and levies on pollution emissions and carbon-based taxes, transportation-based taxes, road congestion and user levies, and many other so-called ‘green taxes’.

The formation of the VCOE provides KPMG with a strong voice in an increasingly important area of policy focus over the coming years. The Group will be supporting clients with policy, advisory, implementation and compliance services in relation to these new and traditional forms of taxes. The group is positioning KPMG as thought leaders in this area, and its work is consistent with the firm’s Responsible Tax agenda.

The VCOE is led by Warwick Ryan, of KPMG Australia. Warwick has had a 20+ year career with KPMG. He has supported a range of well-known corporate clients in areas covering excise and environmental taxes.



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ENR Tax incentives and local taxes summary table



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Overview of applicable tax benefits and local taxes

Country	Tax benefits (e.g. accelerated depreciations)	Local taxes (e.g. property tax)
Australia		
Austria		x
Belgium	x	x
Brazil		
Canada	x	
China	x	x
Croatia		
Denmark		
Estonia		x
Finland		x
France	x	x
Germany		
India	x	
Ireland		x
Italy	x	x
Japan	x	x
Korea		x
Netherlands	x	x
Norway	x	x
Poland	x	x
Portugal		x
Russia	x	x
South Africa	x	
Spain		x
Sweden		x
Taiwan	x	
UK		
USA	x	
Vietnam	x	

*(e.g. accelerated depreciations)

** (e.g. property tax)



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-resident corporate entities, 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% (for the 2021-22 income year onwards).

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 broadly be worked out in the same manner 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). Assessing whether (or not) an asset is TAP will be a question of fact having regard to the physical and technical characteristics of the asset and nature of the interests in land held, etc.



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The exemption from taxation for non-TAP gains 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.

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. However, Australian residents may be eligible to access capital gain concessions where certain criteria are met (i.e. the units/shares are held for greater than 12 months) provided that the underlying units/shares are held on capital account.

Instant asset write-off

From 7.30pm (AEDT) on 6 October 2020 until 30 June 2022, businesses with turnover up to \$5 billion will be able to immediately deduct the full cost of eligible depreciable assets in the year they are first used or installed ready for use, subject to the satisfaction of certain qualifying requirements. The cost of improvements made during this period to existing eligible depreciable assets can also be fully deducted.

Loss carry-back

Corporate tax entities with aggregated turnover of less than \$5 billion may be allowed to carry back a tax loss for the 2019-20, 2020-21 or 2021-22 income year to apply it against tax paid in a previous income year as far back as the 2018-19 income year subject to the satisfaction of certain loss integrity measures.

This effectively allows tax previously paid to be refunded. A corporate tax entity broadly includes a company, corporate limited partnership or a public trading trust.

The application of the loss carry-back rules is optional, and companies can continue to carry forward tax losses under the existing tax loss provisions.

Capital losses cannot be carried back because the capital gains tax regime operates on a realisation basis.

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, AUD 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 AUD 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.

State taxes

State taxes can also be relevant to acquiring or disposing of wind farms, principally duty and land tax.

Land tax

Land tax is imposed annually on the owner of land (including a lessee from the Crown), calculated as a fixed percentage (e.g. 2%) of the unimproved value of the land. The rates vary between the states and territories. Land tax is imposed on the owner but is often passed on to the tenant under commercial leases.

Land tax surcharges (e.g. an additional 2%) can also apply where the owner of land is treated as 'foreign', which looks to the upstream ownership. These surcharges are generally limited to residential land but apply to all land in Queensland and Victoria.

Duty

Duty is relevant to either the acquisition of sites when a wind farm is being constructed or on the acquisition of an existing project, either as an asset acquisition or an acquisition of shares or units.



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For the acquisition of sites, duty would generally not be charged on the grant of leases for periodic rent. However, duty is charged on leases granted for a premium or where the land is acquired rather than leased. The rate of duty varies between the states and territories, up to approximately 5.95% of the greater of the purchase price (or lease premium) or value.

For the acquisition of projects, duty can be charged on the acquisition of the land (including leases), including any fixtures (or leasehold improvements) and goods and also intangible assets in some states. Where a project is acquired by an acquisition of shares or units, in some cases the duty is same as acquiring the project and in some cases is less and can also be nil where a minority interest is acquired. The rules vary by state and territory and should be considered for each project acquired.

Duty is generally paid by the purchaser but would be relevant to pricing on exit and so is indirectly relevant to the vendor. Like land tax, there are also surcharges for purchasers who are considered to be 'foreign' but these surcharges are limited to residential land.

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 has 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 is 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) is 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%.

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 is to be withheld and transferred to the tax-authorities.



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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 applies 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, stamp duties and property tax

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.



Corporate income tax

General

Companies that exploit a windfarm in Belgium are subject to the normal Belgian corporate income tax regime.

The taxable result of the company will include the operating income from the windfarm, less allowable tax deductions such as tax depreciation.

For Belgian tax purposes, offshore windfarms located outside of the 12 nautical miles zone are considered to be located within Belgian territory, insofar as these locations are within the exclusive economic zone. This implies that both development works and other works performed on windfarms located in the exclusive economic zone, though outside the 12 nautical miles, are subject to Belgian VAT and corporate tax.

Corporate tax rate

For financial years starting as from 1 January 2020 (assessment year 2021) the general corporate income tax rate in Belgium is 25%. For “small” companies, the first EUR100,000 of profits are taxed at a reduced rate of 20%.

Minimum taxation

Following recent changes in Belgian legislation, only a maximum of 70% of the taxable basis exceeding EUR1 million can be offset by certain deductions grouped in a “basket” and the remaining taxable base is subject to tax. This means that even in case of availability of losses carried forward, 30% of profits exceeding EUR1 million are effectively taxed at the standard tax rate.

This “basket” includes carried forward tax losses, but also carried forward Investment Deduction (a tax incentive typically applicable for the renewable energy sector – see below).

Tax consolidation

Belgium has introduced only a limited form of tax consolidation (“group contribution regime”). Under this regime, a Belgian company can make a “contribution” of its taxable profits to another Belgian company which has incurred a tax loss via a special agreement. Among other conditions, this regime requires a 90% direct participation between the companies for at least five years.



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Initial losses

In principle, tax losses in Belgium can be carried forward without limitation in time, within certain annual thresholds (see “minimum taxation” above) and subject to change in control rules.

Tax incentives

To support the production of renewable energy, certain incentive schemes are available in Belgium. From a corporate tax point of view, the most commonly applied tax incentive by energy companies in Belgium is the “investment deduction”.

Investment deduction

The “increased investment deduction” is an additional deduction on top of the regular depreciation which can be claimed in the tax return. This is calculated as a percentage of the acquisition or investment value of certain assets, including energy-saving investments.

The additional deduction can be applied either as a “one-off” deduction, in which case the percentage is 13.5% of the acquisition or investment value. (NB: percentages applicable per the current assessment year, i.e. 2021).

In case of insufficient profits (e.g. in the first years of the investment), the increased investment deduction can be carried forward without time limitations (within certain annual thresholds), subject to change in control rules.

Change in control

A change in control (e.g. resulting from the sale of shares) in a Belgian company results in the loss of the ability to use carried forward tax attributes, including tax losses and the investment deduction. However, this rule does not apply if the Belgian company demonstrates “legitimate financial or economic needs” for the change in control.

A change in control is generally considered to meet “legitimate financial or economic needs” when the activities and employment in the Belgian company are maintained (even partially) or the ultimate consolidating entity in the group remains the same.

Depreciation rules

In Belgium, tax depreciation generally follows accounting depreciation (unless specific exceptions).

While no specific rules are provided with regard to depreciation periods for wind turbines, an estimated useful life of minimum 15 years (straight line) for such assets is typically not challenged by the Belgian tax authorities.

In practice, we often see wind turbines depreciated over a 15 – 20 years period (straight line), to also cover the term of the applicable building rights.

Depreciation in the first year of acquisition or investment is calculated on a pro-rata temporis basis.

Exit

A sale of shares in a Belgian company owning a windfarm (often referred to as “project company”) by a non-resident is not subject to capital gain tax in Belgium.

In case of a sale of the shares by a Belgian resident company (e.g. a Belgian acquisition vehicle), the capital gain will be exempt if the shares (minimum 10% or a minimum acquisition value of EUR2.5 million) have been held for minimum one year.

Value added tax

General

In general, a company specialized in the development and exploitation of windfarms qualifies as a taxable person for VAT purposes.

Transactions carried out by companies, often SPV's, developing, owning and operating windfarms (e.g. the supply of energy to re-sellers via PPA's, sale of green electricity certificates) are subject to the standard VAT rate of 21 % when the transactions are deemed to take place in Belgium for VAT purposes.

Entitlement to recover input VAT

Input VAT on goods and services used for a VAT taxable activity can in principle be recovered.

Generally, a company should be able to recover input VAT on costs in connection with the operation of windfarms (e.g. building cost, cost for grid connection, maintenance costs, management).

This also applies to input VAT on costs incurred during the development of a windfarm (e.g. legal and technical advice such as wind studies, grid connection studies, fees for obtaining the required permits), insofar as the company can substantiate its intention to start an economic activity giving rise to VAT taxable transactions in the future.

Input VAT linked to exempt or non-business activities can in principle not be recovered. This includes among others shareholding transactions, transactions with respect to immovable goods and financial transactions. Given the potential impact on the right to recover input VAT, it is recommended to seek advice prior to engaging in this type of transactions.

Development

In Belgium, work in relation to immovable property (e.g. construction, maintenance) is subject to the VAT reverse charge mechanism under certain conditions.

In view of their size and weight, and the fact that they are permanently incorporated into the soil, wind turbines are qualified as immovable property by nature for VAT purposes. This immovable character is also attributed to the cables and network connections connecting the windfarm to the grid, and extends to the fittings and equipment necessary for the use of the windfarm.

It follows that the construction of a windfarm concerns work in relation to immovable property, so that the contracts providing for the development of windfarms, including the delivery with installation of parts of the windfarm, are generally subject to the reverse charge mechanism.



This also applies to the operation and maintenance works on the windfarm.

Although wind turbines qualify as immovable property by nature for VAT purposes, the passive immovable rent of windmills qualifies as a VAT taxable transaction giving rise to a right to deduct the input VAT.

GEC

In order to encourage the production of environmentally friendly electricity, the government has introduced a system of green electricity certificates (hereinafter 'GEC'). Under this system, a green electricity producer is entitled to a GEC per 1.000 kWh produced by offshore wind. The GEC minimum price is different for each existing offshore concession. While for the first concessions, the price was fixed, the recent concessions operate under a CfD mechanism, where the GEC price is variable depending on the electricity price.

Local taxes & surtaxes

Wind turbines are considered as "equipment" for real estate tax purposes in Belgium, in principle subject to land tax (so called 'immoveable withholding tax') as well as local surcharges due annually by the owner, leaseholder, or building lessee of the asset. Offshore windfarms however, are exempt from land tax.

Additional exemptions are available in case the investment in a wind turbine qualifies as a "new" investment.

Other taxes

In principle, the supply of electricity in Belgium attracts excise duties, in particular when the electricity is supplied to end users, although exemptions can apply depending on the use of the electricity. An exemption for excise duties applies for the use of electricity produced for own use via windmills.

The supply of electricity to end users located in Belgium is also subject to federal levies (federal contribution) and regional levies (e.g. energy contribution, "redevance de raccordement").

In order to cover the sale and purchase costs of offshore green certificates (i.e. a financial support scheme for the development of offshore wind energy in the North Sea), an offshore surcharge applies on transmission grid fees.



Corporate Income Tax

Actual profit method (Lucro Real): standard taxation method, with corporate income tax (Imposto de Renda Sobre Pessoa Jurídica) and social contribution (Contribuição Social Sobre o Lucro Líquido)

calculations based on actual profits before taxes and allows companies to deduct certain costs and expenses. The corporate income tax is based on 15% to 25% of taxable profits and the social contribution on 9% of taxable profits (average rate of 34%).

Deemed profit (Lucro Presumido): companies with gross income below BRL 78,000,000.00 can elect to use the deemed profit method, with taxable basis calculated using a pre-determined profit margin corresponding to the company's commercial activity. On this method, corporate income tax (Imposto de Renda Sobre

Pessoa Jurídica) from 15% to 25% and social contribution (Contribuição Social Sobre o Lucro Líquido) of 9% are applied over the deemed profit (currently 8% of the gross income as energy is not specified in the activities table presented by the Law 9.249,1995, art. 15).

Simplified taxation for smaller entities (Simples Nacional): mini enterprises or small entities can elect to use the simplified taxation system where a single tax collection bill (Documento Único de Arrecadação) replaces all taxes. According to the government's definition, mini enterprises (Microempresas or ME) are business with gross income equal or lower to BRL 360,000.00 and small companies (Empresas de Pequeno Porte or EPP) are business that earn a gross income over BRL 360,000.00, but equal or lower than BRL 4,800,000.00.


Other taxes and incentives

The Brazilian government has created incentives to promote the development of wind farms, most related to the exoneration of equipment's, services and supplies used in the wind power generation.

IPI (Imposto sobre Produtos Industrializados): is generally applied to the output of national goods from the factory, to customs clearance when the product comes from abroad and to public sales. The IPI rate has been reduced to zero for equipments and components used on windmills (NCM codes 85.02.31.00 and 85.03.00.90).



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Import taxes: windmills with power equal or below 3.300 kVA (or 2.640 kW) have import taxes of 14% while windmills with power above 3.300 kVA are exempted of import taxes (Resolução Camex 125/16).

PIS and COFINS: foreign windmill parts and components acquired had the PIS and COFINS rates reduced to zero by the MP 656/14 (Lei 13.097/2015). Some companies can apply for PIS and COFINS exemptions to import and internally purchase machines and equipments used to develop infrastructure, through the REIDI (Regime Especial para o Desenvolvimento de Infraestrutura).



Corporate income tax

The Canadian federal corporate income tax rate is currently 15%. Provincial corporate income tax rates vary between 8% and 16%, resulting in a combined federal and provincial corporate income tax rate of between 23% and 31%. 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. 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 timber property) situated in Canada.



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- 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://home.kpmg/ca/en/home/insights/2018/05/tax-facts.html>

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.



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.

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).



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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:

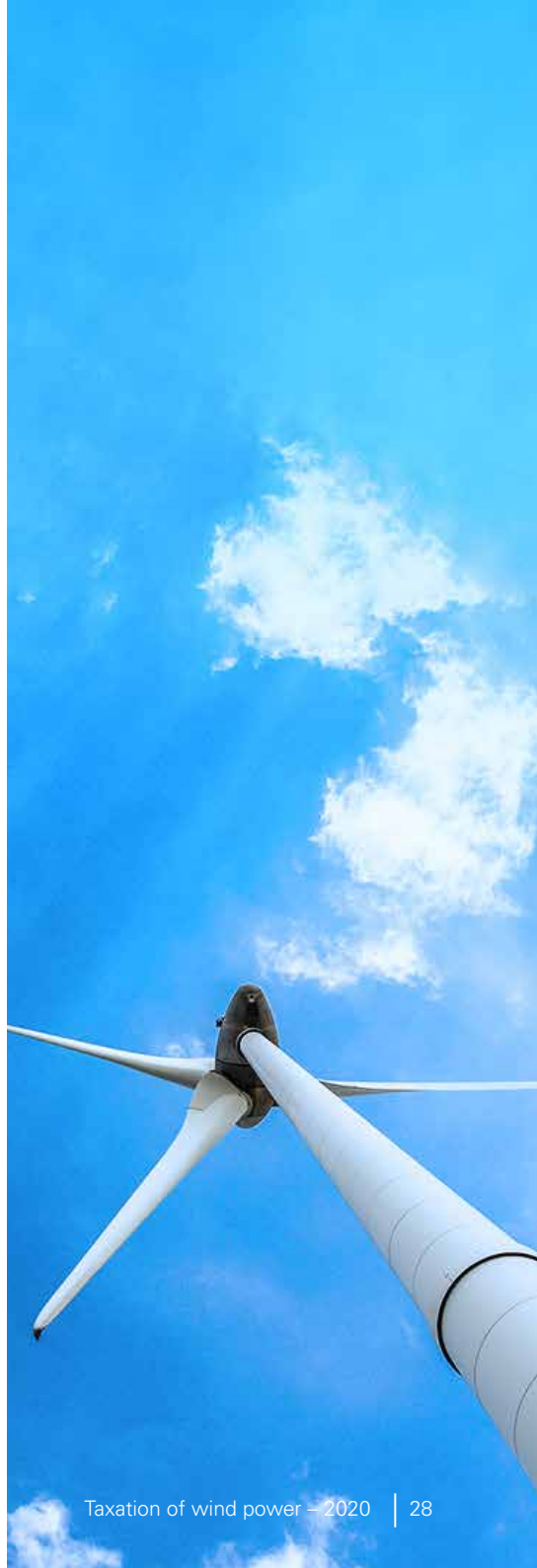
- For imports of key parts and raw materials used for producing high power wind turbine generator systems or their components; this applies for machines with rated power exceeding 3MW. The treatment is available to eligible enterprises until the end of 2022, though may be renewed further on an annual 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 7.5 million (approximately EUR 1 million). 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, those 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

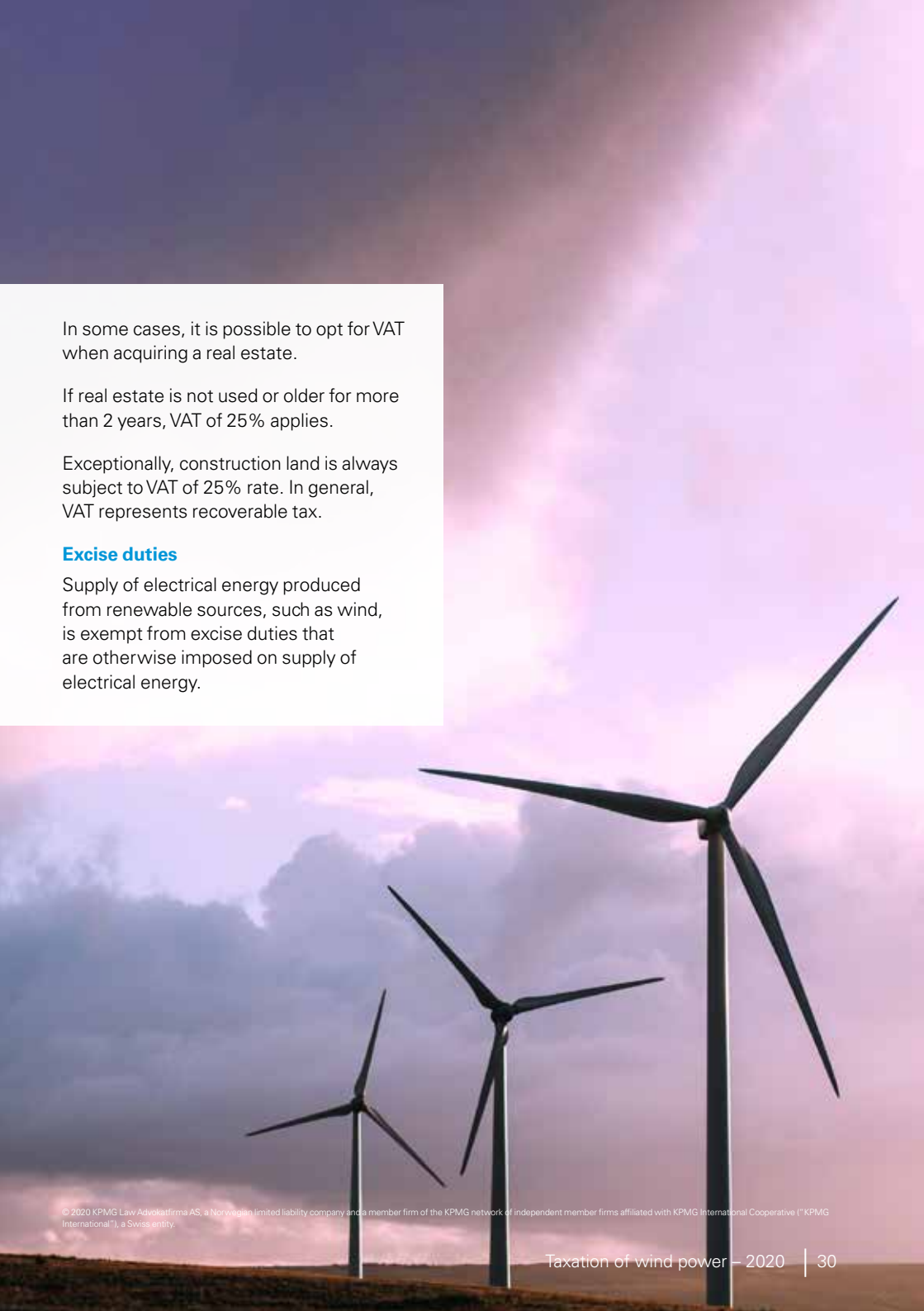
Statutory VAT rate is 25%. However, reduced VAT rate of 13% is applied on supply of electricity.

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.



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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).
- Large windmills (capacity over 1 MW) with depreciations basis chosen at 115% (Up to 15% annual depreciation using the declining-balance method)
- Non-depreciable assets, which may be land and property, road etc.



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As mentioned above, the depreciation allowance for windmills is 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 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

- Nissum Bredning forsøgsmøller (2018) 4 windmills, 28 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 1.750 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 as 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.



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Corporate income tax

In Estonia, corporate income tax is not levied when profit is earned but when it is distributed. In 2020, the tax rate for regularly paid dividends is 14% (calculated as 14/86 of the net distribution) and the standard rate is 20% (calculated as 20/80 of the net distribution).

Under the regulation in force from 1 January 2018, a profit distribution that is smaller than, or equal to, the past three years' average profit distribution which has been taxed in Estonia will be subject to income tax of 14% (calculated as 14/86 of the net distribution). The Income Tax Act includes certain transitional provisions:

- In 2020, the amount of profit distributions smaller than, or equal to, 1/3 of the total amount of profits distributed in 2018 and 2019 is subject to CIT calculated as 14/86 of the net distribution while the tax payable on the remaining amount is calculated as 20/80 of the net distribution.

Wind power companies in Estonia are subject to the same corporate income tax rules that apply to all other companies. 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.

CIT deductible expenses

All certified expenses incurred by a taxpayer in relation to business during a period of taxation may be deducted from the taxpayer's business income.

Expenses are related to business if they have been incurred for the purposes of deriving income from taxable business or are necessary or appropriate for maintaining or developing such business and the relationship of the expenses with business is clearly justified, or if the expenses arise from the Occupational Health and Safety Act.

Withholding tax on payments to non-residents

In Estonia, withholding tax is imposed on the following payments made to non-residents:

- interest 0%, 20% *
- royalties 0%, 10% **
- fees for services provided in Estonia 10%
- rental payments 20%
- dividends (if subject to CIT calculated as 14/86 of the net dividend) 7% ***

* 20% rate applies to interest exceeding the market interest rate.

** In certain cases, outbound royalty payments are exempt from withholding tax provided that the recipient is an associated company of the paying company and is a resident in another EU



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Member State or Switzerland, or such a company's permanent establishment situated in another Member State or Switzerland.

*** Withholding obligation applies when dividends are paid to natural persons.

Transfer pricing

If the value of a transaction conducted between associated persons (including transactions carried out between the head office and its permanent establishment) differs from market conditions, the difference is subject to income tax. Qualifying companies must document their transactions with associated parties to prove that the prices applied are at arm's length.

Special tax regime

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

VAT on supply of electricity

The sale of electricity generated by wind power entities is considered as a provision of goods for Estonian VAT purposes and subject to standard VAT rate of 20%.

Entitlement to recover input VAT

A VAT liable person is entitled to recover input VAT incurred on costs insofar as the acquired goods and/or services are used for VAT taxable 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.

Taxation of real estate (land tax)

There is no real estate tax in Estonia.

Land tax is imposed on all land, except certain areas, like land under public roads and public water bodies. The tax rate of land is 0.1 to 2.5% of the taxable value of land and must be paid annually. Land tax is a tax based on the taxable value of land calculated by the Estonian Tax Authority on the basis of information received from the corresponding local government and it is fully paid into the local government budget.

Reverse auction and state support

Based on the Electricity Market Act, support up to 0,0537 euro for each kilowatt-hour is paid for up to 12 years starting from commencement of generation to the winners of reverse auctions, for electricity produced by generating installations that use a renewable energy source.



Corporate income tax

The corporate income tax rate is 20%.

Therefore, a Finnish tax resident corporation involved in wind production is taxed as any other corporation: the corporate income tax is 20% of the taxable income. For tax depreciation purposes, the wind power plant is divided into components on basis of the different tax depreciation categories: the tower itself (the frame body and the engine room) is treated as a construction whose maximum annual depreciation is 20% and the rotor, gear box and generator are treated as movable fixed assets whose maximum annual depreciation is 25%.

Special tax regime

Real estate tax

The real estate tax is payable on all kind of land and land related rights, buildings, constructions and other fixtures on land (=real estate). Wind power plants are regarded as constructions for real estate tax purposes but the chattels/non-fixed parts of the wind power plant, eg the engine, gear, generator etc, are not subject to real estate tax. The tax base for real estate tax is calculated on basis of the value of the real estate (wind power plant + land). The values are schematic and derived mainly from databases upheld by different authorities:

- The value of constructions. In 2019, the initial value of wind power plant for real estate tax purposes was 75% of its building cost (excluding the abovementioned chattel/non-fixed parts). The initial value is deducted by the annual age discount, which is 2.5% (however, the value cannot drop below 40% of the abovementioned 75%) and the result will form the actual tax base. Where the construction is not ready, the value is calculated on basis of the degree of completion. The real estate tax rate for constructions depends on the municipality where the real estate is situated, but usually it is approx 0-3.1%.
- The value of the land. The authorities maintain databases on land values per square meter all over Finland. This schematic value is multiplied for real estate tax purposes either by the actual land's area square meter size or planning permission's square meter size, which will form the initial tax base. If the wind power plant is on agriculture or forestry area, the presumption is that the size of the land reserved for the wind power plant is 2000 square meters because forestry and agricultural land are not subject to real estate tax. The actual tax base is the product of the abovementioned initial tax base multiplied by 75% (the formula follows the logic of the value of constructions). The real estate tax rate for land depends on the municipality where the real estate is situated and it varies between 0.93-2%.



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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 EUR500,000 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 EUR 2,283,000, an addition social contribution of 3.3% applied on the fraction of the CIT exceeding EUR 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 EUR 763,000 will be subject to the 3.3% additional social contribution.

Specific CIT rates will apply for 2020 and 2021 for companies realizing an annual turnover exceeding EUR 250 M (i.e., respectively 31% for the portion of tax profit exceeding EUR 500K and 27.5% for the total tax profit realized in 2021).

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.

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 1mEUR and (ii) for up to 50% of profits exceeding this threshold (i.e., a minimum taxation of 50% of profits exceeding 1mEUR).

CIT deductible expenses

Are tax deductible if the following cumulative criteria are fulfilled?:

- If the concerned expenses are incurred in relation with the business interest of the company or derive from the normal management of the company;
- If they are evidenced and effectively incurred by the company;



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- If they are comprised in the accounts of the Financial Year during which they were incurred by the company;
- If 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 has 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.

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 1 January 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, “Cotisation sur la Valeur Ajoutée des Entreprises” 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., EUR 7.65 per KW installed in 2020).

Specific taxes are applicable to companies that operate offshore wind turbines. For example, in 2020, the yearly tariff of the specific tax on the maritime wind turbine amounted to EUR 17,227 per MW installed. In counterpart, they are exempted from certain local taxes, it being noted that for the time being no offshore wind turbines 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 has 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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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 the 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 that a company whose POEM during that year is outside India will be a 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 ('cess') at the rate of 4% of the tax payable.

Beginning from Fiscal year 2019-20, the domestic companies have an option to pay corporate tax at a reduced rate of 22% (plus applicable surcharge and cess). However, this benefit shall be available only when total income of a company has been computed without claiming specified deductions, incentives, exemptions and additional depreciation provided under the domestic tax laws.

Further, any domestic company engaged in manufacturing of article or thing including generation of electricity, power which is set up and registered on or after 1 October 2019 will have an option to pay tax at the rate of 15% (plus applicable surcharge and cess) provided it fulfils the following preliminary conditions:

- It commences manufacturing on or before 31 March 2023;
- It is not formed by splitting up or reconstruction of a business already in existence;
- It does not use any plant or machinery previously used for any purpose;



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- It does not use any building previously used as a hotel or a convention centre in respect of which deduction under section 80-ID had been claimed and allowed;
- This benefit shall be available only when total income of a company has been computed without claiming specified deductions, incentives, exemptions and additional depreciation provided under the domestic tax laws

Further, the option to pay tax at reduced rate shall have to be exercised on before the due date of filing corporate tax return and such option once exercised cannot be subsequently withdrawn.

Tax rates

Particulars	Rate of tax
Domestic company:	
1) Where total turnover or gross receipts is below the prescribed limits	25 per cent ++
2) Where total turnover or gross receipts is above the prescribed limits	30 per cent ++
3) Availing option to pay corporate tax at lower tax rates under new regime (i.e. where no exemption / incentive is available)	22 per cent ++
4) Domestic manufacturing company which fulfils the conditions for availing option to pay lower corporate tax rates	15 per cent ++
Company other than domestic company	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%
Domestic company opting for lower tax rates of 22% / 15%	10%	

Health & Education Cess is levied in all the above cases on total of tax liability + surcharge @ 4%

Withholding tax Rates

Withholding tax rates	Paid to domestic company	Paid to foreign company
Dividend	10% ++	20% ++
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%)

***The above rates are as per the domestic tax laws and is subject to beneficial provisions of the Double Taxation Avoidance Agreement (DTAA), if any, entered between India and the relevant country**

Taxation of Dividend Income

Earlier, any Indian company distributing dividends to its shareholders, both resident and non-resident, was required to pay Dividend Distribution Tax (DDT) @ 20.56% to the Government. Such dividend income was exempt in the hands of the shareholders. Indian Finance Act 2020, has abolished such DDT with effect from 1 April 2020 and now dividends declared by Indian companies would be taxable in the hands of the shareholders.

For resident shareholders, dividends would be taxed in their hands based on the tax rates they are governed with. An Indian company paying dividends would be required to withhold tax at source at the time of payment of the dividend since the recipient of the dividend is subject to tax. Under the Indian domestic tax law, the WHT on dividends paid to resident shareholders is 10% whereas the rate to non-resident shareholders is 20% (plus applicable surcharge and cess).

In case of payment of dividend is made to non-resident shareholders preferential withholding tax rates are available under the DTAA that India has with other countries provided that the recipient of such dividend fulfils the eligibility criteria for claiming treaty benefits, including the beneficial ownership condition provided in the relevant DTAA.

Where an Indian company receiving dividend income from any other domestic company or foreign company or a business trust further distributes dividend, it would be allowed a deduction in computing its total income to the extent of dividend distributed up to 1 month prior to the due date of filing of the income tax return. The said provision has been introduced to remove the cascading effect of dividend taxation in multi-layer structure.

No expenditure other than the interest expenditure incurred in respect of the dividend income will be allowed as a deduction for the shareholder. Moreover, deduction in respect of the interest expenditure will be restricted to 20% of the dividend income.

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 1 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 1 April, 2014] – Depreciation at the rate of 40%

In addition to the 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, 50% depreciation i.e. 1/2 of 20% (i.e. 10%) is available (Balance 50% of Additional Depreciation can be claimed in next year). However, where the domestic company opts for payment of corporate tax at lower rates of 22% / 15%, it will have to forego additional depreciation (if any) available to it. Please note that such additional depreciation of 20% mentioned above, is not available for companies opting the new regime of taxation as discussed earlier.

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.



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Restrictions on interest deductions

Thin capitalization provisions:

In accordance with the OECD's BEPS project, India has 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 a 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. Further, these provisions may also apply to a company which borrows funds from a non-resident person and such loan constitutes more than fifty-one per cent of the book value of the total assets of the borrower company since, in such cases, the borrower and lender entities become associated enterprise.

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.

The above provisions do not apply where the interest is paid in respect of debt issued by a lender which is a permanent establishment of a non-resident bank in India.

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. In this regard, the domestic law provides that any interest paid by a company, on a loan used to purchase an asset, for the period before the asset is put to use, should not be allowed as a revenue expenditure and should be capitalized along with the cost of the asset.

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 domestic tax laws.

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 indefinitely.

Business loss can be carried forward only if the return of income/ loss of the year in which loss is incurred is furnished on or before the due date of furnishing the Income Tax Return.

Unabsorbed depreciation can be carried forward even if return of income is furnished after the due date of filing income tax return.

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 15% 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.

Domestic companies exercising the option to pay tax at the concessional tax rates of 22% / 15% have been excluded from the applicability of MAT.

Further, foreign companies not having a permanent establishment in India and which belong to a country which has a tax treaty with India or a foreign company which is not required to seek registration in India under any law for the time being in force and belongs to a country with which India doesn't have a tax treaty are not subject to MAT provisions in India.

Double Taxation Avoidance Agreement and foreign tax relief

India has 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 the foreign income. Specific rules exist regarding the mechanism for granting a foreign tax credit.

Multilateral Instruments ('MLI')

The Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (the so-called multilateral instrument, or MLI) entered into force in India on 1 October 2019. This initiative spearheaded by the Organization for Economic Co-operation and Development (OECD) enables parties to concurrently modify their bilateral tax treaties to prevent base erosion and profit shifting.

In accordance with the adoption of the provisions under the MLI by contracting parties, the respective tax treaties between such parties shall be modified to the extent of the provisions adopted.

The primary amendment brought about through MLI is the introduction of Principal Purpose Test which acts as a minimum standard. With the advent of the same, where obtaining tax benefit is the principal purpose of any arrangement or transaction, then such tax benefit could be denied.



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General Anti-Avoidance Rule (GAAR)

Indian tax law contains anti-avoidance provisions in the form of GAAR, which provide extensive power 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 aggregate tax benefit arising to all the parties from an arrangement in a relevant tax year does not exceed INR 30 million.

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

Infrastructure Investment Trusts (InvIT)

InvIT is a trust formed under the Indian Trusts Act, 1882 and registered under the Indian Registration Act, 1908. As per the extant Indian InvIT related provisions, infrastructure related activities include all activities in all major sub-sectors viz. roads and bridges, ports, airports, electricity generation, transmission or distribution, telecommunications etc.

The key participants involved in the functioning of InvIT are the Sponsor, the Trustee, the Investment Manager and the Project Manager, with each of them having their roles defined under the Indian InvIT regulations.

Further, InvIT regulations provide for two categories of InvITs, i.e. public and private InvITs, wherein private InvITs are further sub-categorized as listed and unlisted InvITs. A brief gist of private and public InvITs is mentioned below:

- Private Placed InvITs: These InvITs are the ones wherein the funds are raised by way of private placement only. These types of InvITs can either be listed / unlisted, i.e. the funds can be raised either by way of placement of units on a recognized stock exchange in India or by way of placing units privately;
- Publicly offered InvITs: Unlike private placed InvITs, these type of InvITs can only raise funds by way of placing its units on a recognized stock exchange in India.

For both above type of InvITs, there are certain general and specific conditions required to be fulfilled by such InvIT.

From a domestic tax standpoint, the Indian government has provided a pass-through status for such InvITs in respect of certain streams of income, i.e. certain income not being taxable in the hands of the trust and shall be taxable at the level of investors.

Among key advantages, the unitholders / investors may enjoy tax exemption on dividend income received from the InvIT subject to fulfillment of certain conditions, lower rate of 5% for non-resident unitholders on distribution in the nature of interest by the InvIT.

Tax exemptions for Sovereign Wealth Funds and Global Pension Funds

The Indian Government has provided significant relief to Sovereign Wealth Funds ('SWFs') and Global Pension Funds (GPFs) by way of an exemption from income tax in India on dividend, interest and capital gains income on any investment made in India in companies, Alternate Investment Funds ('AIFs') and InvITs engaged in infrastructure businesses (including generation and transmission of power) between 1 April 2020 and 31 March 2024 and where the investment is held for a continuous period of at least 3 years. The said exemption would be available on fulfilment of certain conditions and upon specific notification by the Government for such SWF / GPFs in the official gazette.

The exemption is available subject to certain prescribed conditions applicable to SWFs / GPFs and as may be prescribed by the Government at the time of notifying the relevant SWFs / GPFs in the official gazette. Some of the common conditions required to be fulfilled are mentioned below:

- The fund is created or established under the law of a foreign country (including provincial, state or local body laws);
- The fund is not liable to tax in such foreign country;

- The fund satisfies such other conditions as may be prescribed; and
- The fund is specified by Government of India through notification.

The SWF / GPF is required to file an application in prescribed form along with supporting documents with Government.

Transfer pricing regulations

India has comprehensive transfer pricing regulations wherein Indian taxpayers who enter into related party transactions with associated enterprises outside 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.

Indirect Taxation

Background: Goods and Service Tax

Goods and Service Tax ('GST') is a destination based comprehensive value-added taxation system, which has been effective in India from 1 July 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 objective 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 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 has 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 taxpayer 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.

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 become 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 1 January 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. Further, the Wind Power sector is being equally affected by 70:30 ratio, hence, Indian Wind Turbine Manufacturers Association has also challenged the ratio before the Hon'ble High Court stating that the deemed ratio of 70:30 (Goods: Services) does not depict Industry average and requires re-evaluation.

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.

Background and applicability of Customs duty on Wind Power Project

In addition to the above, import of any goods into India from a place outside India is exigible to Customs duty (at the rate prescribed in Customs Tariff), the input tax credit of which would not be available to the Importer.

In the said regard, it is pertinent to note that import of wind turbine components (under Chapter 84 of the Customs Tariff) is leviable to Customs duty at a concessional rate of 5 per cent subject to condition that Ministry of New and Renewable Energy recommends such exemption.⁹

⁹As per Information available on public domain, discussions have been taken place between Ministries on withdrawing the concessional Customs duty rate. Further, it is expected that such withdrawal would commence from April 2021 onwards in a phased manner and would be completely phased out in a year. The Link for such news is <https://economictimes.indiatimes.com/industry/energy/power/make-in-india-government-likely-to-withdraw-duty-concessions-for-wind-turbine-parts/articleshow/77234154.cms>





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 excess of EUR 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 has been used to date is as follows:

- $\text{Rateable Valuation (see below)} \times \text{Annual Rate on Valuation (ARV)}$

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

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

- $\text{Rateable Value} = \text{MWs} \times \text{Value Multiplier} \times 1/200$

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

Withholding taxes

Dividends

Generally dividends paid by Irish tax resident companies to non-resident companies or individuals are subject to withholding tax. The current rate of dividend withholding tax is 25%. 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 that 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 for small and micro companies will be 30% (this is still subject to a Ministerial Commencement Order but once issued should apply for accounting periods beginning on or after 22 December 2019).

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 in the case of Small and micro companies it will be the aggregate of twice the payroll tax liabilities for the relevant accounting period) or the corporation tax liabilities for the 10 preceding accounting periods for the company.

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. There will be more relaxed rules in the case of pre-trading expenditure for small and micro companies.

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 consisted 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 was extended to 30 June 2020 if at least 20% of the cost is paid in advance by the end of 2019).

The Budget Law for 2020 repealed the above mentioned "super" depreciation regime and replaced it with a special tax credit (or 'bonus'), which is basically a tax credit for 'Industry 4.0' investments and varies according to the type of investment made by the taxpayer, i.e. whether it is one of the types indicated in Attachments A and B to Law no. 232 of 11 December 2016 or a third type indicated in that law, namely 'new ordinary capital goods'.



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This tax relief can be taken by enterprises resident in Italy and by Italian permanent establishments of foreign enterprises, provided they are not involved in insolvency proceedings and: i. comply with industry rules on occupational health and safety; ii. fulfil their obligations to pay their workers' national insurance contributions.

As a general rule, this bonus cannot be assigned or sold, is excluded from the direct tax base, and can be combined with other forms of tax relief. In most cases the tax credit can only be used by offsetting it in five or (depending on the type of investment) three equal annual instalments, starting from the year subsequent to that in which the asset becomes 'interconnected' or goes into use. The bonus varies according to the type of investment, as follows.

Eligible investments in the capital equipment indicated in Attachment A to Law no. 232/2016 are capped at EUR 10 million and the tax credit amounts to (i) 40 percent of the first EUR 2.5 million invested; (ii) 20 percent of the remaining investment. However, certain capital goods including – for example – cars and other means of transport are ineligible.

Eligible investments in the intangible assets indicated in Attachment B to Law no. 232/2016 are capped at EUR 700,000 and the tax credit amounts to 15 percent of the cost.

For capital goods other than those listed in the attachments to Law no. 232/2016, the tax credit amounts to 6 percent of the cost.

Each of these investments must be made between 1 January 2020 and 31 December 2020 or –provided that, by 31 December 2020, the seller has accepted the order and at least 20 percent of the purchase cost has been paid –30 June 2021.

The investments in new capital goods must be made for production facilities located in Italy. If, by 31 December of the second year subsequent to that of the investment, the assets are sold or transferred to production facilities located abroad, the bonus will be cut, by excluding the corresponding portion of the cost from the original calculation. Any surplus tax credit already used must be repaid directly by the taxpayer, within the deadline for the payment of the balance of income tax for the financial year in which the sale/transfer takes place, without any penalties or interest.

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 has 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.



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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 29.37%. For business tax, the scope of taxation has been extended from gross revenue to net taxable income for fiscal years beginning on or after 1 April 2020 pursuant to the 2020 Tax Reforms (with a small decrease in the amount assessed on revenue as noted below).

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 has 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. As noted above, business tax for an electricity supplier will also be assessed on the net taxable income arising from electricity sales for fiscal years commencing on or after 1 April 2020; in connection with this, the applicable rate of business tax on revenue for energy companies operating in Tokyo with annual

revenue of more than JPY 200M has been reduced to 1.1025%. For completeness, the standard rate for companies generating less than JPY 200M of annual revenue is 1.05%.

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 is 10%.

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 14% 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 2021.

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 2022.



Corporate income tax ("CIT")

Korean resident corporations are taxed on their worldwide income and the tax base for wind power projects shall be determined basically in the same manner as other types of businesses.

Annual CIT returns must be filed and corporate income tax payable must be paid within three (3) months from the end of the entity's fiscal year (by the first following business day in case the last day of the three (3) months filing/payment period is holiday).

Additionally, local corporate income tax ("LCIT") shall be assessed on the same tax base to that of CIT. LCIT returns shall separately be filed and relevant tax payables should be paid within one (1) month after the due date of the annual CIT return filing and payment.

Tax base

Taxable income is determined from accounting net income after tax reconciliation pursuant to Korean CIT law provisions by adding non-deductible (taxable) items and subtracting deductible (non-taxable) items to/from net income shown on the financial statements.

Applicable tax rates

The following tax rate table summarizes the CIT rates and LCIT rates applicable for the fiscal year starting on or after 1 January 2018.

CIT base bracket	CIT rate	LCIT rate
KRW 200 million or less	10%	1%
Over KRW 200 million up to KRW 20 billion	20%	2%
Over KRW 20 billion up to KRW 300 billion	22%	2.2%
Over KRW 300 billion	25%	2.5%

Tax credits

Korean resident corporations are eligible to claim tax credits for their investments made until the end of 2021 in the energy-saving facilities designated by the Tax Incentive Limitation Law. Such designated facilities include the facilities generating new and renewable energy (e.g. wind energy, solar energy, etc.) and the facilities for the manufacturing of those new and renewable energy generating facilities (i.e., traveling cars for windturbine assembly, synchronous generator testers, assembly testers for windturbine, assembly testers for rotor hub, 3D measurement machines, and bolting robot for pitch bearing in case of wind power facility manufacturing).



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The tax credit for investment in energy-saving facilities would be calculated at 1% (3% for Middle-standing Enterprises, 7% for Small and Medium Enterprises (“SMEs”)) of the amount of such investments.

Currently, tax credits can mostly be carried forward five (5) years. However, according to the summary of proposed Korean tax law 2021 amendments released in July 2020, the extension of tax carryforward period up to ten (10) years is expected for the investments from 2021.

Tax losses

Net operating tax losses (“NOL”) are allowed to be carried forward and utilized up to 60% of taxable income earned during the subsequent ten (10) years, starting from the immediate subsequent business year after the fiscal year the NOL incurred. NOL cannot be carried back.

However, SMEs are eligible to use the tax losses carried forward to offset 100% of taxable income. Also, ‘Special carry back’ rules enable SMEs to carry back losses to the preceding year.

Depreciation and amortization

Depreciation of all property, plant and equipment (“PP&E”) used to generate income is allowed as a deduction for CIT purposes. Interest of borrowing to acquire or construct a long-term asset shall be capitalized unlike interest expenses for any other purpose. Capitalized interest is not expensed immediately when paid, rather increases the cost basis of the related long-term asset and shows up in installments through periodic

depreciation expense recorded on the associated long-term asset over its useful life.

Korean tax law allows the following methods for calculating depreciation:

- a. Straight-line or declining-balance method for tangible fixed assets, other than plant and buildings.
- b. Straight-line method for plant, buildings, and intangible assets.

The standard useful lives are also stipulated for each type of fixed assets, and the applicable useful life can be adjusted by $\pm 25\%$ of the standard useful life at the taxpayer's election. The elected depreciation method and useful life should be consistently applied.

Under the Korean tax law, standard useful life of fixed assets used for electricity supplier is 16 years. Therefore, the wind power producers are able to elect any useful life within the useful life range from 12 to 20 years (i.e., 75% to 125% of the standard 16 years). And there is no accelerated depreciation rule for wind power companies under the current Korean tax laws.

Withholding tax

A withholding tax shall be applied to Korean-source income paid by a Korean resident corporation to a non-Korean resident corporation. Preferential tax rate may be granted, or the withholding tax may be exempted under double tax treaties agreed between Korea and the contracting State where the recipient is tax resident.

Withholding tax rates under the Korea domestic rules are as below:

Classification of Korean-source income	Withholding Tax Rate (%)
Dividends	22%
Interests	15.4%(*) or 22%
Royalties	22%
Capital gains	11% (of the payment amount) or 22% (of the capital gain)(**)

(*) 15.4% rate applies if interest arises from bonds issued by a Korean corporation or government bodies.
() The withholding tax amount would be calculated as the lessor of 11% of the amount paid or 22% of the capital gains on a transfer of real estate, securities, etc.**

The income payer, as the withholding agent, shall pay the tax withheld to the tax office and local government having jurisdiction over that income payer by the 10th day of the following month of the payment (e.g., by 10th of July for the payments in June). Also, annual payment statement thereof should be filed by the end of February in the following year.

Value-Added Tax (“VAT”)

VAT is levied on the added value created by a company in each step of the production, supply or distribution process for goods or services. In other words, VAT is determinate by subtracting the input-VAT from output-VAT.

Registration

Based on the Korean VAT law, if an office is a place where employees are stationed ordinarily and conduct all or part of the transactions for business purposes at that place, such office should be registered as a VAT payer within 20 days from the opening date of the business for VAT purposes, and each registered business place, as a VAT

payer, should issue and receive VAT invoices under its own business registration number (or “Tax ID Number”).

VAT-able transactions

From the VAT perspective, the supply of goods and services can be classified into the following two categories: (i) transactions subject to VAT (“VATable transaction”), (ii) VAT exempted transactions. The VAT-able transactions then would be classified into two sub-categories depending on the applicable VAT rates: (i) normal VAT-able transactions subject to 10% VAT rate and (ii) Zero-rate VAT-able transactions subject to 0% VAT rate.

In principal, supply of goods and services and importation of goods subject to 10% of VAT unless the subject goods and services are not falling into VAT exempted goods and services listed specifically under the Korean VAT law. Provision of strictly designated daily necessities such as unprocessed agricultural products and tap water, etc. is VAT exempted.

VAT-able goods include all corporeal things, such as commodities, products, raw materials, machines, and buildings. Manageable natural forces, such as electricity, gas and heat are also included in VAT-able goods. Goods imported into Korea from a foreign country shall also be subject to VAT.

VAT-able services include not only performed services but also granting rights to use anything that has economic value such as mining rights, patent rights, and copyrights.



Zero-rated VAT usually applies to export of VAT-able goods and services. Unlike export of goods, there are some exceptions where 0% VAT rate may not be applicable in case of export of services.

Renewable energy provided by a private corporation is not listed as one of VAT-exempted goods and, thus, will be subject to 10% VAT.

VAT returns

In principle, the taxable period for the VAT purposes is each half-year period which ends on the end of June and the end of December respectively. For each of those half-year periods, the VAT payer must file the final VAT returns and pay the VAT payable amounts within 25 days from each half-year end (i.e., by 25th of July in the current year for the 1st half-year and by 25th of January in the following year for the 2nd half-year of the current year).

For each half-year period, one preliminary VAT return should be filed for the first quarter of the relevant half-year within 25 days from that quarter end and preliminary VAT payable amount thereto should be paid by such filing due.

VAT Refund

To the extent that input-VAT amount exceeds output-VAT amount for certain for each half-year period, the net input-VAT amount after crediting against the output-VAT amount will be claimed as the refundable amount. The VAT refund shall be granted within 30 days after the filing due date for each half-year period.

Property tax

A property tax ranging from 0.07% to 5% is levied on land and buildings for residential and commercial use, vessels, and aircrafts. Land acquired for building a manufacturing plant shall be subject to 0.2% - 0.4% of progressive property tax, however, the land of power production facilities for the development of power resources projects shall be subject to the special flat low tax rate of 0.2%.

Customs duties

Customs duties may be reduced by 50% on machines and materials (including machines and tools used for manufacturing such machines and materials) imported by SMEs by no later than 31 December 2021, to produce and use new energy and renewable energy including wind renewable energy or to improve conditions of connections of electric systems of such new energy and renewable energy. This provision is contingent on the condition that such machines and materials are not produced in Korea. Goods subject to reduced customs duties are specifically listed under the relevant law.



Netherlands

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. 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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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 (onroerendezaakbelastingen) 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%.

¹⁰Based on our experience, the Dutch tax authorities do not accept the declining balance system for windmills.

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.

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 has 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.



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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.





Norway

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 has 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.

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.



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

https://assets.kpmg/content/dam/kpmg/no/pdf/2020/03/Tax-facts-2020_WEB.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 is 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 is 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 does not have operative offshore wind farms, nor offshore wind farms currently under construction. However, the Norwegian directorate of Energy (NVE) has identified 2 offshore areas as especially suitable for facilitating wind farms, namely Utsira nord and either Sørilige Nordsjø I or Sørilige 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.

Special tax regime

There is no special tax regime for wind power production in Norway. The municipalities' interest organizations and the wind power producers' interest organizations have advocated the introduction of a natural resource tax and/or an environmental duty for wind power producers. Today, natural resource tax is reserved for hydropower producers. The natural resource 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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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.

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 have affected the possibility 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.

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 the taxpayer is obliged to apply the linear method of calculation of the depreciation write-offs from this year on.
Cable lines	10%	



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. We would like to note that the Polish government has announced the introduction of a special act which will allow the location of the wind power plant at a reduced distance from the buildings after fulfilling certain conditions.

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.

We would like to point out that the Polish government has presented a draft of an act on promoting the production of electricity in offshore wind power plants. Under the draft act, there is a planned tax on offshore wind power plants. The taxpayer will be an entity conducting business activity in the field of electricity generation in an offshore wind power plants. The amount of the tax for a given year will be calculated based on the multiplication of the installed capacity of the offshore wind power plants resulting from the concession (described in megawatt) and the amount of 23,000.00 PLN.



Brief legal 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.

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.



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In case the company has 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 periods 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 request analysed on a case-by-case basis.

Please note that in case 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.

Following the approval of a special measures package to tackle Covid-19, a special regime has been introduced, according to which tax losses computed in 2020 and 2021 may be carried forward for 12 years.

The limit of deduction is also increased from 70 percent to 80 percent whenever the difference derives from the deduction of tax losses computed in 2020 and 2021 tax years. Moreover, the calculation of the deadlines for the tax losses carry forward available in the beginning of 2020 tax years, is suspended during 2020 and 2021 tax years.

Moreover, under the same package, it should be noted that a special regime was also introduced aimed to create more favourable conditions for the transmission of tax losses carried forward, applicable to companies who acquire shareholdings in other companies or are involved in restructuring transactions, under certain conditions namely if the companies involved qualify as micro, small or medium-sized enterprises.

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:

- i. lease payments;
- i. salary expenses and related social security, insurance and pension contributions;
- i. taxes (such as local taxes);
- i. financial expenses (it being noted that several tax rules limit the tax deductibility of said financial expenses, as addressed below);
- i. amortization and depreciation; and,
- ii. 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 are 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 no. 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 (%)
Specific table		
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
Generic table		
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 no. 25/2009 (as for instance the production unit's 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 n. 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 percent 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".

Special tax credit on investment (“CFEI”)

Following the approval of a special measures package to tackle Covid-19, a special tax credit has been created, the so-called “Extraordinary Tax Credit of Investment II” (“Crédito Fiscal Extraordinário de Investimento II”).

It is proposed to grant a tax credit to the CIT taxpayers who mainly carry out an activity of a commercial, industrial or agricultural nature, corresponding to a deduction to the CIT assessed of 20 percent of the investment expenses in eligible assets, performed between 1 July 2020 and 30 June 2021 (up to a maximum investment amount of EUR 5,000,000).

As part of the eligibility conditions, it is established the non-termination of employment contracts for three years, counted from the date on which the benefit is applicable.

The deduction of the Extraordinary Investment Tax Credit II should be limited to 70% of the CIT assessed in fiscal years started in 2020 or 2021, depending on the date of the eligible investments, or, in case of insufficient CIT assessed, to the CIT assessed in the five subsequent fiscal years.

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 has been signed between Portugal and the State where the non-resident entity has 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.

Stamp duty also applies at the rate of 4 percent on interest charged by credit institutions, financial companies or other financial entities.

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 has 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.

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 has 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.

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.



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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 has 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.

On 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:

- 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, there 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, 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 does not exceed the amount fixed in the Ministerial Order no. 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 rise 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 2020.

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

- i. holders of operation licenses for power plants (except those located in the Autonomous Regions of the Azores or Madeira);
- ii. 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);
- iii. 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:

- i. tangible assets;
- ii. intangible assets, with the exception of intellectual property; and,
- iii. 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, namely wind power operators.

The following renewable energy producers continued to be exempt from the ESEC regime:

- i. 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);
- ii. operators of small scale generation units or self-consumption generation units;
- iii. producers of electricity and heat through micro-cogeneration plants. and,
- iv. producers of electricity through power plants using renewable energy sources with an installed capacity of less than 20 megawatts (as long as all the power plants owned by the same taxable person may not exceed an installed capacity of 60 megawatts covered by FiT schemes).

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 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 no. 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 no. 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 2.24 per MWh.





Russia

Corporate income tax

Russian-resident wind power companies are subject to general corporate income tax at 20% rate (3% paid to the Federal budget and 17% to the regional budget) on taxable profit. The taxable profit is calculated as income minus economically justified and properly documented expenses recorded in the tax accounts.

Depreciations

Depreciable assets include assets that have a limited useful life (more than 12 months) that declines in value over time and have an initial cost exceeding RUB100,000. Depreciable assets are allocated to depreciation groups (there are 10 groups depending on the assets useful live' term (from 1 to more than 30 years), which are determined partly by statute and partly by the taxpayer. A taxpayer is entitled to choose either the straight-line or reducing-balance method of depreciation, taking into account special considerations provided in the Tax Code. Assets with estimated useful lives exceeding 20 years are subject to straight-line method.

Accelerated depreciation (up to two times) is available for fixed assets classified as highly energy-efficient facilities (including fixed list of assets used to generate renewable energy sources). For application of accelerated

depreciation, the taxpayer should disclose an application for accelerated depreciation in accounting policy and maintain accounts for such facilities separately from other depreciated objects.

Property tax

Property tax applies to the net book value of fixed assets (or cadastral value for some types of immovables) of Russian companies at 2.2% rate (subject to regional reductions and exemptions). Movable property is not subject to property tax.

Regional governments could provide a property tax exemption for fixed assets classified as highly energy-efficient facilities. Tax exemption is limited to the first 3 years of using the fixed asset.

Investment tax credit

Companies invested in creating highly energy-efficient facilities and/or renewable energy facilities are eligible for investment tax credit that postpones the payment of corporate income tax and property tax until the postponed sum breaks even with the amount of the investment credit.



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Withholding taxes

The general rate of the withholding tax (WHT) on dividends paid to foreign organizations is 15%. The rate can be lower if a double tax treaty applies that provides a lower rate, the minimal tax rate achievable under treaty is 5%. The rate of WHT on interest, royalties and leases of movable property is 20%. The lowest rate possible if a double tax treaty applies is 0%.

VAT and Custom duties

Electric power companies are subject to the same VAT rules that apply to the other companies. The general VAT rate is 20%.

For import of the key parts and raw materials used for production of the high power wind turbine generator systems or their components custom legislation of the Eurasian Economic Union stipulates an incentive rate 0%.

Special Investment Contracts (SPIC)

Investment projects in wind electric power industry are eligible for conclusion of SPIC - a relatively new form of cooperation between the Government of Russia / the governments of Russian Regions and private investors. Under SPIC, an investor undertakes to set up a new (or modernize an existing) production facility, while the Russian Federation and/or Russian Region undertakes to provide certain tax and non-tax benefits. SPICs are concluded for the period of time when a project starts to earn operating profits, plus 5 years; but not for more than 10 years.

SPIC investors may be eligible for the following key benefits:

tax incentives:

- application of a 0% income tax rate for taxes due to the Federal budget (instead of the normal rate of 2% or 3%) during the period when the regional income tax incentive introduced by the Regional regulations applies;
 - reduction to 0% of the income tax due to the Regional budget, depending on the region (but not beyond 2025);
 - exemption or a reduced property tax on the fixed assets generated within the investment project;
 - other tax incentives that can be introduced by regional governments (including land tax, transport tax and regional levy)
1. no increase in the tax burden, and, for certain regulations, guaranteed regulatory stability;
 2. “Single Supplier” status for investment projects with the minimal budget equal to 3 billion rubles (USD 38,500,000);
 3. simplified procedures for receiving land plots for the investment project;
 4. subsidies, etc.

When concluding a SPIC, the investor takes on certain obligations, including the following:

1. For Federal SPICs: to invest at least 750 million rubles (USD 9,700,000). Regional authorities may introduce different thresholds for investments under their own specific Regional and Multilateral SPICs if the Region is one of the parties;
2. Certain KPIs must be achieved within the SPIC's term, such as production volumes, tax payable amounts, number of jobs created, etc.;
3. Production of unique products must begin; that the best technologies must be introduced; etc.

Other incentives

Wind power producers are eligible for signing a capacity supply agreement - the grid company (Distribution System Operator) undertakes to purchase electricity from wind power generation facilities in order to compensate the transmission losses. This project enjoys long-term tariffs, which aim to guarantee returns on investment over 15 years. The capacity to be produced by such facilities is selected by way of annual tenders for renewables at a price that is usually several times higher than the price for existing conventional capacity.

Such projects shall meet the minimum requirements – at least 5MW capacity, localization requirements - a certain percentage of Russian technology and locally-produced components shall be used (65% for wind projects). If the localization criteria are not met, the price will be reduced by 45%.



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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 Procurement 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-



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by-asset basis. It is therefore imperative that IPPs componentize their tax asset register. In doing so, 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 has 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.



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. Transport-networks and energy grids	5%	40
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:
- 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.



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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.

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

Swedish tax resident corporate entities are subject to corporate income tax at the rate of 21.4% on its worldwide income (for fiscal years commencing 2021 and onwards the corporate tax rate is 20.6%). There are no local or municipal taxes on business income and companies are not subject to net wealth tax. There is no transfer tax, stamp duty or similar tax on the transfer of shares. Social security contributions are normally also levied for employers.

A company is resident in Sweden if it is registered with the Swedish Companies Registration Office (Sw: Bolagsverket). Sweden does not apply the so called effective management principle to determine the tax residency of a company under domestic law.

The taxable result is calculated per financial year and should be reported in an annual corporate tax return. Swedish GAAP normally forms the basis for the calculation of the taxable result. However, there are specific tax rules that govern the tax treatment of certain income and costs (e.g. the deductibility of interest, tax depreciations etc.) which means the taxable result may deviate from the accounts.

Consolidated balance sheets are not recognized for tax purposes (no full tax consolidation). However, Swedish tax law allows shifting of income through "group contributions", a form of group relief, provided certain criteria are fulfilled. The group contribution regime basically enables companies within a group to offset profits against losses.

Participation exemption

Under the Swedish participation exemption, dividends and capital gains on business-related shares are generally tax exempt and capital losses on such shares non tax deductible. For a holding of shares to qualify as business-related several requirements need to be fulfilled. A shareholding in an unquoted Swedish limited liability company normally qualifies for example.

Depreciation

When doing investments on a property the costs should normally be activated for tax purposes either as machinery and equipment, land, land improvements or buildings. It may also be possible to directly deduct certain costs for tax purposes. Wind turbines are normally classified as machinery and equipment under Swedish tax depreciation rules but certain costs may also be related to land improvements and buildings.



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Machinery and equipment and acquired types of intangible assets with limited economic life are normally depreciated by the declining-balance method, the maximum depreciation allowance being 30% – or the straight-line method at 20% per annum. Under these methods there must be a correspondence between the depreciations in the accounts and for tax purposes. Hence, where the depreciation rate in the accounts is less than the depreciation under the declining-balance method, the difference is booked in the accounts as an untaxed reserve called “depreciation in excess of plan.” It is also allowed to use a tax declining balance method at 25% per year. Under this method there is no requirement regarding corresponding accounts. Please note that there are no minimum depreciation rates that must be used.

Land improvements may maximally be depreciated at a rate of 5% annually, while certain rural road construction may be depreciated at an annual rate of 10%. Buildings are depreciated with between 2-5% per year. Land may not be depreciated.

It should be noted that it is not allowed for tax purposes to capitalize interest expenses over the acquisition costs for machinery and equipment, buildings, or land improvements.

Interest deduction limitation regimes

There are multiple tax rules to consider when determining the deductibility of interest expenses in Sweden.

Interest deduction may only be obtained to the extent that the interest expenses are in line with the arm’s length principle.

In this context, it may be noted that the OECD has recently updated their transfer pricing guidelines and is now implying that debt may be reclassified as equity for tax purposes under certain conditions. The Swedish tax agency generally follows OECD guidelines.

Tax deduction of arm’s length interest expenses may nevertheless be denied under the Swedish interest deduction limitation regimes.

Under the Swedish intra-group interest deduction limitation regime, interest expenses on loans from affiliated parties are in principle non-deductible unless the beneficial owner of the interest income (corresponding to the Swedish company’s interest expenses):

- has its tax residence in a jurisdiction within the EEA;
- has its tax residence in a jurisdiction that has concluded a full scope tax treaty with Sweden and the beneficial owner is entitled to enjoy the treaty benefits; or
- is subject to a 10% hypothetical taxation on the interest income.

If the beneficial owner of the interest income meets at least one of these criteria, it must further be demonstrated that the debt relationship was not established almost exclusively (90-95%) for the purpose of obtaining a significant tax benefit for the group (the “principle purpose test”). An additional test applies if the debt was established as funding for acquisition of shares. Under this test, the taxpayer must further be able to be demonstrated that the share acquisition was made by business reasons (in contrary to tax reasons).

There are also specific restrictions on tax deduction for certain arrangements that are deemed to be hybrids from a Swedish tax perspective.

Apart from the above regimes there is a general interest deduction limitation that applies for all companies with a negative interest net as defined under Swedish tax law. Under the general interest deduction limitation regime, interest expenses are fully tax deductible to the extent that the company has corresponding interest income. Net interest expenses are, on the other hand, only deductible up to an amount equal to 30% of the company's tax EBITDA. There is no group escape rule and the only alternative is the safe harbor rule allowing for a tax deduction of up to SEK 5 million of negative net interest on a group-level per fiscal year. The EBITDA threshold and the safe harbor rule cannot be combined meaning that the cap is SEK 5 million if the safe harbor rules are applied.

Non-deductible interest may be carried forward and be deducted against a future fiscal year's excess interest deduction headroom. Any interest carried forward not deducted within six years is forfeited. All non-deductible interest carried forward is also forfeited upon a change of ownership directly or indirectly.

It should be stressed that the tax definition of interest is relatively wide and may encompass a wide range of costs incurred for the purpose of raising debt financing.

Withholding tax

Under the main rule Sweden levies a withholding tax at 30% on outbound dividends. There are, however, exemptions available under domestic law and the WHT may also be eliminated or reduced under applicable tax treaties. Sweden has implemented the anti-avoidance rules suggested by the EU parent-subsidiary directive as of 1 January 2016 and there is also a pending proposal on changes in tax law regarding WHT. There is no WHT levied on interest payments.

Transfer Pricing Rules

Intra-group transactions, including interest levied on intra-group loans, should be valued at arm's length. Certain documentation requirements have existed since 1 January 2007 for cross-border transactions between affiliated companies.

Under Swedish tax legislation, there are no direct sanctions if the documentation requirement is not fulfilled. However, in case the pricing is challenged by the Swedish Tax Agency, lack of documentation entails that the burden of proof as to the arm's length pricing of the transactions is shifted to the taxpayer and may impact tax surcharges.

Tax losses carry-forward

Tax losses can generally be carried forward indefinitely and be offset against taxable profits subsequent years. Carry back of losses is not allowed.



There are specific restrictions on the utilization of tax losses by companies when a “change of ownership” has taken place, directly or indirectly, as defined under Swedish tax law. The purpose of these restrictions is to prevent trading in companies having tax losses. The losses may both be forfeited or restricted under these limitation rules.

There are no provisions for a carry-back of tax losses.

Public subsidies

Under certain circumstances public subsidies may be granted to e.g. limited liability companies (Sw. Näringsbidrag). Public subsidies, in case applicable, should be treated as a fully taxable income as any other income if it is connected to a direct expense.

If the subsidy is used to acquire an asset that will be depreciated through annual depreciations, the assets cost of acquisition should instead be reduced correspondingly. This will be the case if it is used to build the wind turbine, which means that the subsidies will decrease the wind turbines acquisition cost and therefore also the depreciation base.

There are also specific COVID-19 subsidies available for different taxpayers.

Property Tax

Wind farms are subject to real estate tax and are thus also assessed from a tax assessment value perspective. The tax base for real estate tax is an assessed tax value that should reflect approximately 75% of the fair market value of the assets in question.

The assessment is made by the Swedish Tax Agency every sixth year for industrial properties and power generation units such as wind mills. The Swedish Tax Agency basically uses actual prices on historical transactions in a geographical area to calculate the average price two years before the calculation is made and use 75% of this average price as tax base.

For wind mills the tax assessment value is calculated using a standardized method that considers the value of the wind mill, installed gross effect, age, profitability etc. The method is used to ensure that the tax base for the wind mill is as close to 75% of its fair market value as possible.

The statutory tax rate is 0.2% of the turbine’s assessed property tax value. The rate applicable to other types of power plants is 0.5%. The Administrative Supreme Court has in a ruling from April 2019 concluded that applying a lower tax rate to wind turbines constitutes unlawful state aid. In brief, the court held that the property tax should be levied based on the 0.5% rate, if using a 0.2% rate means that the EU de minimis aid threshold is exceeded. According to the EU rules, state aid must not exceed EUR 200,000 for a three-year period. The threshold should be used on a group level, if applicable.

Property tax is defined as a special tax and should be deductible as an operating cost in the business.

Value Added Tax

The sale of electricity generated by wind power turbines is considered as a provision of goods for Swedish VAT purposes and is subject to a VAT rate of 25%.

Energy tax

Electricity produced in Sweden is subject to energy tax. However, a producer is only obligated to charge tax on electricity when they deliver electricity to consumers who are not registered for energy tax on electricity. E.g. if a supplier purchases electricity from a producer and delivers it to a consumer, the supplier is liable for the tax and not the producer. The standard tax rate is 0.353 SEK/kWh.

However, in the following areas in the northern Sweden it may be reduced by 0,096 SEK/kWh:

- Norrbotten County: All municipalities.
- Västerbotten County: All municipalities.
- Jämtland County: All municipalities.
- Västernorrland County: Sollefteå, Ånge, Örnköldsvik.
- Gävleborg County: Ljusdal.
- Dalarna County: Malung-Sälen, Mora, Orsa, Älvdalen.
- Värmland County: Torsby.

But here, in order to obtain the tax exemption, the electricity must not be consumed for the following purpose:

- Industrial activity
- Computer hall
- Professional farming or forestry activities
- Professional aquaculture activities
- Trains or other means of rail transport
- Cold ironing "Landström"



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Corporate Income Tax

In Taiwan, wind farm operators usually set up a company to hold the wind farm assets. Taiwan companies are subject to corporate income tax on the income derived world-wide. If companies have generated taxable income over TWD 120,000 in a financial year, their total taxable income will be taxed at the rate of 20%.

Taxable income is computed by revenue less costs and deductible expenses and losses. In general, expenses and losses are deductible for corporate income tax purpose to the extent that they are necessary and related to companies' business operation. Key deduction items for wind power companies could include:

- Interest paid on project financing;
- Depreciation on the depreciable project assets;
- Professional service fees incurred with respect to carrying out business operation.

In the event where wind power companies incurred loss in a financial year, such loss could be carried forward for a 10-year period, provided that certain criteria is met, i.e. the company must file corporate income tax return on time, maintain a complete set of accounting books, and has its tax return certified by a certified public accountant (for

the year which loss is incurred as well as the years which the loss is utilized).

Withholding Tax

Taiwan companies are required to make withholding on certain payments that are within the scope of withholding tax. The applicable withholding rate will differ depending on the nature of the payment (dividend, interest, salary, etc.) and the status of the recipient (resident or non-resident, company or individual).

For wind farm companies, the common types of payment that are subject to withholding and their respective withholding rate are as follows:

- Payroll (generally 5% for resident and 18% for non-resident);
- Interest paid to domestic non-banking institutions (10%);
- Commission, royalty or service fee paid to offshore supplier (20%);
- Dividend paid to offshore shareholder (21%).



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Business Tax

Business tax is imposed on sale of goods or services in Taiwan and import of goods. Basically, for general business entities, including wind power companies, are subject to VAT. The current VAT rate is 5%.

Under the VAT system, unless excluded under the Business Tax Act, input VAT incurred by business entities from purchase of goods and services can be used to offset against output VAT generated from their business operation. The difference will be the payable/overpaid VAT. Overpaid VAT should be carried forward and be used to credit against future payable VAT but could be refunded under certain circumstances (e.g. overpaid VAT is related to acquisition of fixed assets).

VAT return should be filed on a bi-monthly basis before the 15th day of every odd month. For instance, the VAT return for January and February should be filed by 15th March.

In addition, business entities should issue "government uniform invoice" to the purchasers on sale of goods and services according to the time stipulated in the Business Tax Act.

Special Tax Incentive for Wind Power Investment

Customs Duty Exemption on Import of Specific Goods Related to Renewable Energy

According to the Renewable Energy Development Act ("REDA"), if a company imports machine, equipment, specific construction vehicle, training gear, and relevant parts/components for the purpose of constructing or operating renewable energy generation facilities, and currently such goods are not manufactured and supplied domestically, after obtaining certificate from the Bureau of Energy ("BOE"), the import of such goods could be exempted from customs duty.

After obtaining approval from the BOE, upon importation, companies will have to provide the Customs with the BOE certificate to prove that the goods meet the requirements set forth in the REDA.

Tax Exemption on Royalty and Technical Service Fee Paid to Offshore Suppliers

In the case where a foreign patent owner licenses a Taiwan wind power company to use its patent, if such patent has met the requirements set forth in the Income Tax Act ("ITA") and relevant tax rules, i.e. the licensing arrangement could substantially introduce new technologies which are currently not available in Taiwan or the technologies are domestically available but could not satisfy the needs of the Taiwan wind power company, and have been certified by the Industrial Development Bureau ("IDB"), the royalties derived by the foreign patent owner could be exempted from Taiwan corporate income tax.

Further, under the ITA, if a Taiwan wind power company acquires technical services, i.e. construction planning, basic/detail construction design, and design of machine/equipment, from offshore service providers for the purpose of constructing power plants and has obtained certificate from the BOE, the technical service fees derived by the offshore service providers could also be exempted from Taiwan corporate income tax.

In general, royalties and technical service fees derived by offshore suppliers would be subject to withholding in Taiwan. To mitigate the withholding tax implication, offshore suppliers could first seek for certificate from the IDB/BOE, and subsequently, file application with the National Taxation Bureau ("NTB"). The NTB will further review and make assessment on whether royalties/service fees derived by foreign suppliers could be eligible to the foregoing tax exemptions.



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UK

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. 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%.

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 a 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 are generally available for financing expenses with tax relief following the accounting treatment. However, this is 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 capital expenditure on a wind farm attracts relief through plant and machinery ('P&M') allowances computed on a reducing balance basis.

- Main pool – P&M assets with an expected useful economic life of < 25 years. Rate of 18% per annum.



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- 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% 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 GBP 1 million (GBP 200,000 from 1 January 2021) of expenditure on P&M assets (Annual Investment Allowance).

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 (USD 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.



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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.”

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 (2027 for certain property with longer production periods).

Specifically, the expensing generally 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 certain property having a longer production periods 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 affect 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. Furthermore, as a result of the Covid-19 pandemic, temporary rules increased the 30% limit to 50% for tax years 2019 and 2020. While the limitation increase was not extended to partnerships for the 2019 tax year, 50% of the interest expense limited in that year may be deductible by owners in 2020 without being subject to the same limitation.

Special tax regime

Since 1993, the United States tax law has 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 legislature in the past, the wind industry is not seeking an extension.

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, a tax equity investor may make a large upfront capital contribution, which might exceed 50% of the construction cost of the project, and be allocated up to 99% of the tax items (including PTC and tax deductions) for a period of years or until a specific internal rate of return is achieved.

In a partnership flip arrangement, net cash flow is often negotiated between the parties and shared differently than tax items.

A tax equity investor might be allocated only 5-25% of the net cash flow.

As outlined above, the PTC 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.

In response to project delays caused by the Covid-19 pandemic, projects that began construction in 2016 and 2017 are provided relief with an extra year for its required placed-in-service date.

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.



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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.





Investment incentives

Under the current laws of Vietnam, there are various investment preferences and incentives to investors who have investment projects in the preferential investment sectors and/or areas as follows:

- Corporate Income Tax ("CIT") exemption and CIT reduction from the first profit making year.
- A preferential CIT rate of 10% to 15%. (Normal rate is 20%)
- Import duty exemption on the importation of equipment, materials, means of transportation and other goods for implementation of investment projects in Vietnam
- Export and Import Duties;
- Land rental exemption or reduction.
- Accelerated depreciation of fixed assets.
- Losses carry forward.

Renewable projects are regarded as preferential investment sector which may be entitled to the above incentives. In particular, the preferential rate of 10% is 15 years in addition to 4 year of CIT exemption and subsequent 9 years of 50% tax reduction.

The Corporate Income Tax ("CIT")

Law applies to all domestic and foreign entities that invest in Vietnam. The CIT Law expands the taxpayer pool to include all foreign enterprises having income from Vietnam regardless if they have a permanent establishment in Vietnam or not.

Taxable Income

Taxable income is defined as income derived from production, operation, and other sources from all business sectors and industries.

Deductions

In general, deductible expenses for corporate income tax purposes are reasonable expenses incurred related to income-producing activities of the business with supporting legal documentation. Deductions will be scrutinized by the tax authorities.

Capital gain tax

Immoveable property

The definition of immoveable property (property rich) is very broad. It includes but not limited to:



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Land;

- Houses and constructions attached to land;
- Other property attached to land, houses and constructions;
- The immoveable property will be used to determine whether double tax relief can be applied for capital transfer. Wind power project is likely considered as property rich projects.

Indirect transfer

The regulations on indirect transfer are very limited. The tax authority interprets that indirect transfer involving Vietnam sourced income will be subject to CGT in Vietnam. However, it is unclear on how to declare and pay the tax.

Direct transfer

Transfer of limited liability company will be subject capital gain at 20% of net gain. Tax declaration and payment must be made within 10 days from the share transfer agreement's date or the approval date of the licensing authorities.

Value Added Tax

The VAT system in Vietnam applies to goods and services used for production, business and consumption in Vietnam. Two methods can be used to calculate VAT payable/refund. Taxpayers meeting the requirements can apply the credit method. VAT payable/refund under the credit method is the difference between VAT Output (VAT collected for sales) and VAT Input (VAT paid for purchases).

Taxpayer not qualified for the credit method can apply the direct method. Under the direct method, taxpayer will pay VAT by applying a deem rate on the added value of the transaction. Corporate taxpayer is required to file and pay VAT on a monthly basis. The standard VAT rate is 10%, but the rates are classified into four groups: exempt, 0%, 5%, and 10%.

VAT refund may be available for renewable projects during construction period.

Foreign contractor tax

Foreign organizations and individuals carrying on permitted businesses in Vietnam without a legal entity are subject to Foreign Contractors Tax ("FCT") comprising VAT and CIT. Applicable taxation rates will vary depending on whether a foreign contractor (from 1% to 10% for each kind of tax).

FCT is a major tax of an EPC contract for wind power projects. Depending on the tax declaration method opted by the EPC contractor, the tax obligation may rest with the investor or the EPC contractor.



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