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A New Golden Age for Renewable Energy

Taxation of wind power – 2023
A country overview

March 2023

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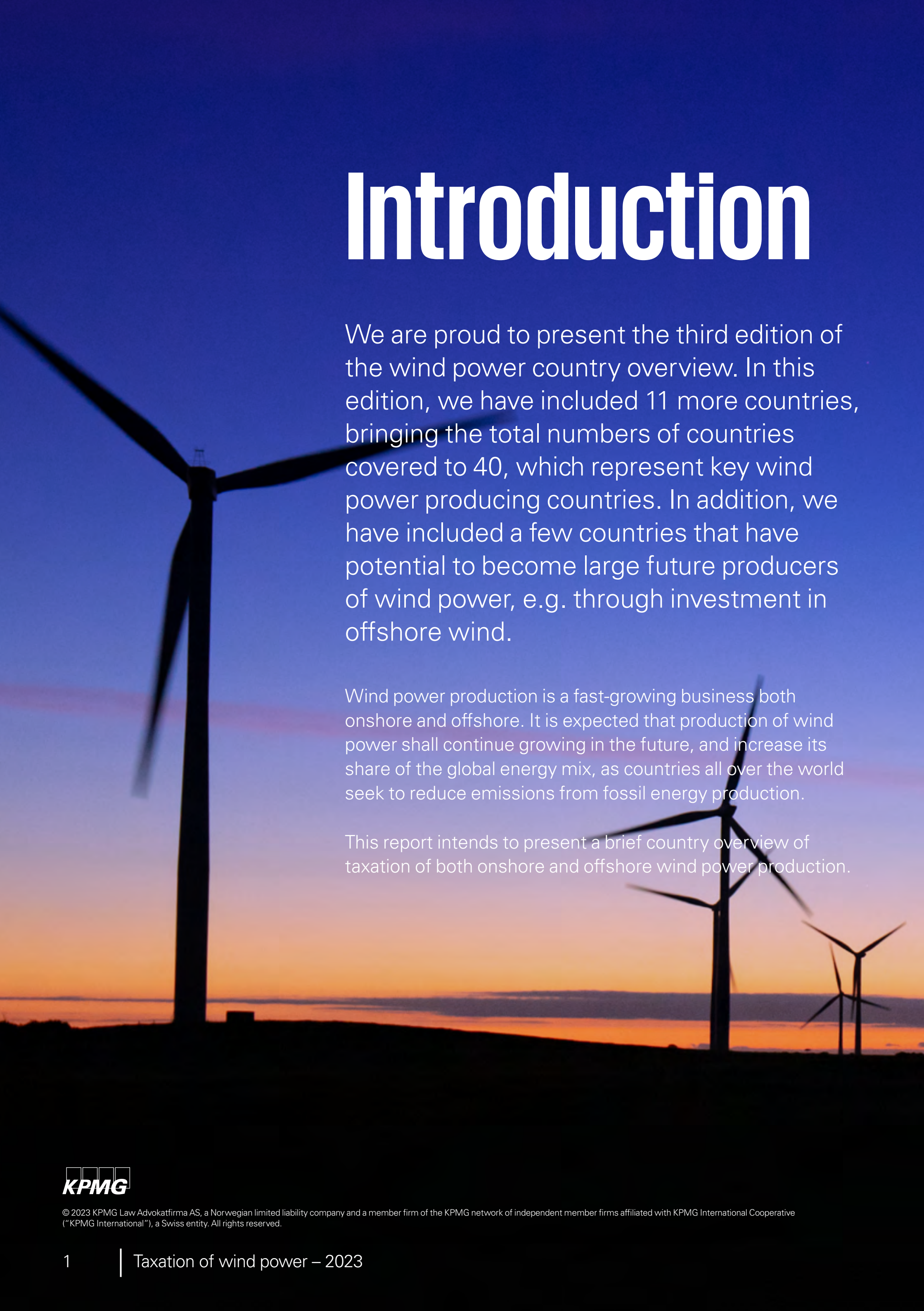

Introduction

We are proud to present the third edition of the wind power country overview. In this edition, we have included 11 more countries, bringing the total numbers of countries covered to 40, 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.

In most countries wind power production is subject to ordinary CIT (Corporate Income Tax) varying from 12.5% (Ireland) to up to 40% (India). Most countries levy CIT on wind power production in the area between 20% - 25%. Please note that applicable tax rates may vary due to local regulations, please refer to relevant country sections for details. The Norwegian Government has recently proposed to introduce a resource rent tax on onshore wind power from 2023 at a rate of 40%, bringing the effective tax rate to approximately 62%.

On the contrary, several countries have introduced incentive schemes such as accelerated tax depreciation for wind power assets, in addition to other grants and subsidies. 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 and illustrates commitments to achieve net zero emission goals.

In light of the current increased power and energy prices, several countries have recently introduced windfall taxes also on renewable power production. Compensation by way of local taxes is a meant 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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A New Golden Age for Renewable Energy

There have been many false dawns for the renewable energy industry over the years but arising from a combination of factors, I now believe we are entering into the golden age for the renewable energy industry where we will see this important industry scale beyond our wildest dreams.

1. The corporate decarbonization agenda and the rise of Corporate Purchase Power Agreements (CPPA)

We now live in a world were achieving net zero is probably one of the most important social, political, and economic objectives at both a national and at a corporate level today. Nearly every country has ratified the 2015 Paris Agreement on Climate Change, which calls for keeping the global temperature rise to 1.5 degrees Celsius above pre-industrial year levels. However, the world continues to increase carbon emissions and temperatures will continue to rise to levels threatening our planet's future. Therefore, many countries and corporations are committed to achieving net-zero emissions within a much shorter timeframe.

The key date used to be 2050. But with growing concern about the acceleration of climate change, significant progress needs to be made between now and 2030.

As corporations account for approximately two thirds of the world's electricity and use consumption, they're likely to play a vital role in decarbonizing global economies by 2050. CPPAs have emerged as a pivotal solution to enable corporations to reduce their scope 2 carbon emissions concerning electricity consumption. As a result, we have been witnessing dramatic growth in the use of CPPAs in recent years across most geographies which permit this type of structure.

While the CPPA phenomenon was most obvious in Europe and North America, it is now spread to other regions, particularly the ASPAC region. This is for a number of different reasons, including the fact that corporations also need to deal with scope 3 emissions or emissions arising throughout the value chain, which means that suppliers, many of whom are based in ASPAC regions, will also need to eliminate their own scope 2 emissions through the use of CPPAs.

2. United States - the Inflation Reduction Act

Probably the most significant legislative development which will impact on the renewable energy industry in a positive way is the Inflation Reduction Act (IRA), which President Biden signed into law on 16th August 2022. The IRA is the largest federal clean energy investment in history and will set the course for substantial changes in how the US produces energy over the next decade.

This legislation includes significant tax incentives for development and production of clean energy, low carbon fuels and energy storage. Most importantly, new mechanisms have been introduced to enable developers to monetize these tax credits by way of simple sale, rather than entering the more complicated arrangements used historically, such as partnership flip arrangements and ITC sale and leaseback structures.

The impact of the IRA globally has been significant, and it is already obvious that many investors, developers and utilities are focusing their renewable energy investments towards the US market to take advantage of this very significant legislation.

The financial impact of the legislation on projects is very material. Also, there are many other related incentives including higher credits for projects that satisfy wage and workforce requirements and for projects that use domestically sourced steel and iron, or where other manufactured goods are used. The IRA is already causing concerns in the EU in terms of the potential loss of investment and there have been some calls for the EU to introduce similar measures.

3. EU Measures to accelerate the drive for more renewable deployment

The European Union (EU) intends for Europe to be the first climate-neutral continent by 2050, which is to be achieved through the European Green Deal and includes the Fit for 55 Package – draft climate, energy and transport-related legislation that is intended to align current EU laws with its 2030 target of cutting greenhouse-gas emissions by at least 55% in 2030 compared with 1990 levels and its 2050 ambition.

In addition, in response to the ongoing energy price crisis, which has been exacerbated (and brought to the fore) by the war in Ukraine, the EU published the RePowerEU Plan on 22 March 2022. This Plan is geared towards making Europe independent from Russian fossil fuels and accelerating the green energy transition. Both investors and developers have had a strong positive reaction to the proposal for joint European action for more affordable, secure and sustainable energy that is not tied to Russia.

One of the key components of this legislation is the push to reduce development timelines for renewable energy projects in the EU.

With more than 75% of the EU's greenhouse gas emissions coming from the energy sector, it is clear that the transition to cleaner forms of energy is a prerequisite for the EU to reach climate neutrality. Only one of the 14 legislative proposals within the Fit for 55 Package specifically addresses renewable energy in its entirety – the Amendment to the Renewable Energy Directive seeking to increase the current target to at least 40% (further increased to 45% under the RePowerEU Plan) renewable energy sources in the EU's overall energy mix by 2030). However, the majority of these proposals relates to renewable energy to a greater or lesser extent. For instance, the FuelEU Maritime initiative proposes a common EU regulatory framework to increase the share of renewable and low-carbon fuels in the fuel mix of international maritime transport; the recast of the Energy Performance of Buildings Directive promotes the uptake of renewable energy in buildings; and the EU's Emissions Trading Scheme encourages a shift to renewable energy by placing a price on greenhouse gas emissions.

More recently, the European Commission presented its Green Deal Industrial Plan, following concerns that targeted incentives for companies contained in the United States' $369 billion Inflation Reduction Act would result in the EU losing its clean technology competitive edge and citing the need for "a more supportive environment for the scaling up of the EU's manufacturing capacity for the net-zero technologies and products required to meet Europe's ambitious climate targets". This package, therefore, seeks to increase EU domestic capability in clean energy technology and industries through measures such as a reform of the electricity market design, providing faster access to sufficient national and EU funding to speed up investment and financing for clean technology production in Europe, and enhancing green technology skills within the European workforce.

Although progress in the uptake of renewables across Member States, economic sectors and organisations has so far been mixed, the dynamic revisions to the EU's climate policies and availability of various funding mechanisms that drive the renewable energy transition evidences the fact that renewable energy is a key focus area of the EU – one that requires active responses from investors, energy suppliers and businesses alike.

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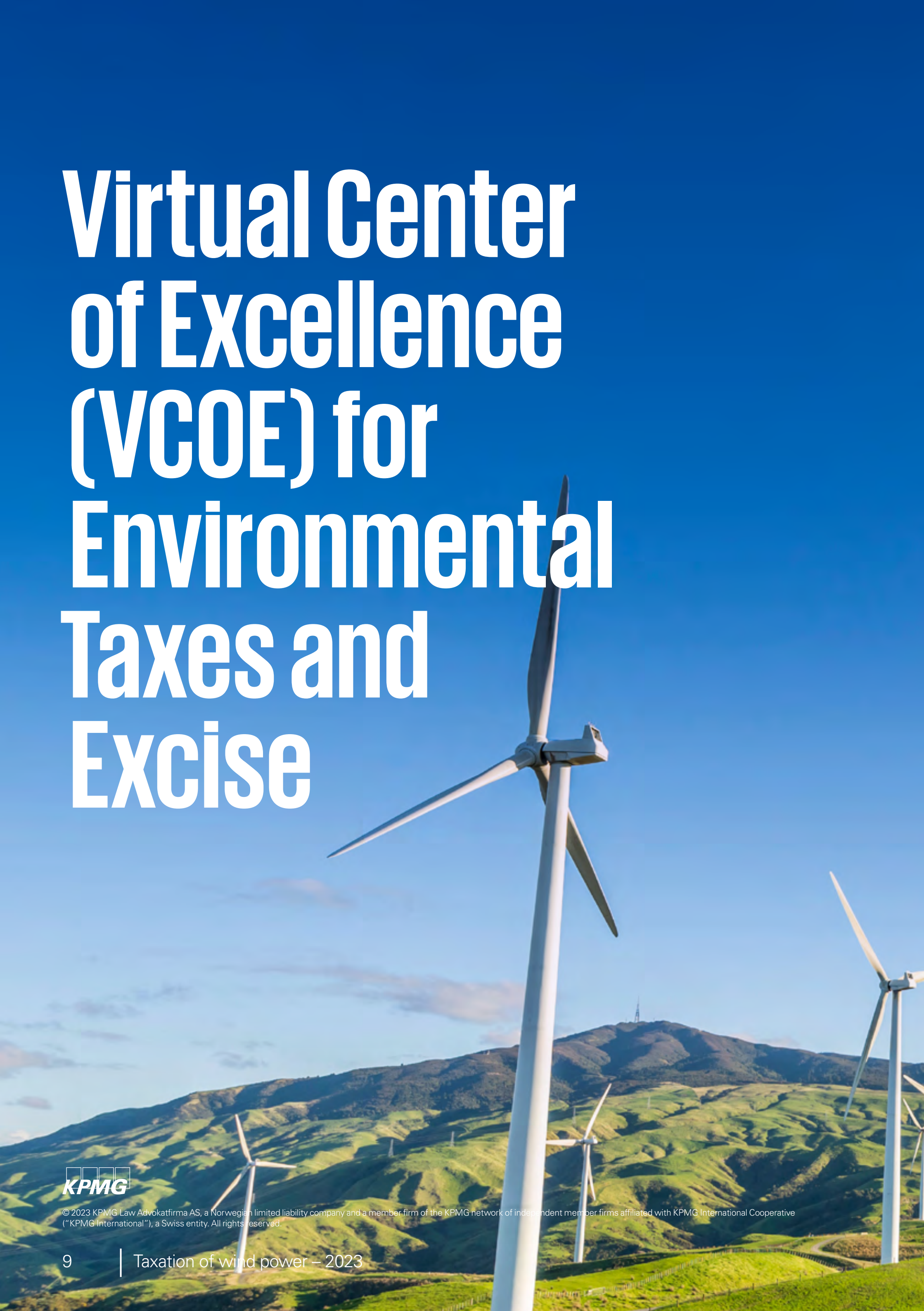

Virtual Center of Excellence (VCOE) for Environmental Taxes and Excise

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KPMG has a global Community of Practice, known as the Virtual Center of Excellence (VCOE) for Environmental Taxes & Excise.

Environmental taxes and excise have a lot in common – they are typically forms of consumption-based indirect taxes (or measures like taxes). These are often imposed on a narrow range of businesses with the intent of changing consumer behaviours. These 'green taxes' and measures are expected to grow significantly over the coming years, for example the European Union Green Deal and its 'Fit-for-55' policy package.

The VCOE has brought together a community of KPMG experts from around the world to support clients with their environmental taxes and measures needs. These typically comprise taxes and levies on carbon emissions, carbon border adjustment measures (CBAM's), transportation-based taxes, road congestion and user levies, and many other so-called 'green taxes'.

The ongoing growth of the VCOE provides KPMG with a strong voice in an increasingly important area of policy focus over the coming years. The VCOE is supporting clients with policy, advisory, implementation and compliance services in relation to these new and emerging taxes and measures.

The group is positioning KPMG as thought leaders in this area, and its work is consistent with the firm's Decarbonisation, Climate Policy and Responsible Tax agendas.

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

Warwick Ryan
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ENR Tax incentives and local taxes summary table

Overview of applicable tax benefits and local taxes

Country	Tax benefits*	Local taxes**
Argentina	x	x
Australia		x
Austria	x	x
Belgium	x	x
Brazil		
Canada	x	
China	x	x
Costa Rica		x
Croatia		
Denmark		
Estonia		x
Finland		x
France	x	x
Germany		
Greece	x	x
India	x	

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Overview of applicable tax benefits and local taxes

Country	Tax benefits*	Local taxes**
Ireland		x
Italy	x	x
Japan	x	x
Korea		x
Lithuania	x	x
Netherlands	x	x
New Zealand		
Norway		x
Pakistan	x	
Phillipines	x	x
Poland		x
Portugal		x
Romania	x	
Serbia		x
South Africa	x	
Spain	x	x
Sweden		x
Taiwan		
Thailand	x	
Turkey	x	
Uganda		
UK	x	
Uruguay	x	
US	x	
Vietnam	x	

*(e.g. accellerated depreciations)

**(e.g. property tax)

Argentina

Corporate income tax

General

By the end of 2015, Law 27191 (amend Law 26190) was enacted for the purpose of fostering the generation of electricity from renewable sources.

Companies that exploit renewable sources in Argentina are subject to the normal Argentine corporate income tax regime with tax benefits

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

Corporate tax rate

Law 27,630 (published 16 June 2021) establishes a tiered structure of corporate income tax rates for different brackets of earnings—the lowest at 25% and the highest at 35%—as well as a tax on the distribution of dividends, imposed at a rate of 7%.

The measures are effective retroactively, for tax years beginning from 1 January 2021.

The following table sets out the tax rate measures in the new law.

Annual taxable income (ARS)	Tax due on lower limit (ARS)	Marginal rate on the excess of the lower limit
0 to 5 million	ARS 0	25%
Over 5 million to 50 million	ARS 1.25 million	30%
Over 50 million	ARS 14.75 million	35%

Depreciation rules

Generally, tax depreciation is similar to accounting depreciation (unless specific exceptions).

The Law 27.191 established the possibility to apply an accelerated depreciation method of personal property and infrastructure investments.

Companies may choose to apply the regular depreciation method established by Corporate Income Tax Law or the special depreciation accelerated method established by Law 27.191, consisting of two or three equal, annual and consecutive instalments depending on whether the investments were made during 2016 or 2017 respectively. On real estate property, the accelerated depreciation result from reducing its estimated useful life to 50% (2016), 60% (2017) or 75% (2018-2025). The relevant assets must be held for three years;

Net Operates Losses

In general, Companies can compute tax losses for five years.

Tax losses arising from benefited project can be computed for 10 years.

Value added tax

General

In general, a company of generation of electricity from renewable sources qualifies as a taxable person for VAT purposes.

Transactions carried out by companies are subject to the standard VAT rate of 21% when the transactions are deemed to take place in Argentina for VAT purposes.

Entitlement to recover input VAT

Law 27.191 established an early tax refund in the construction stage.

Early recovery of VAT for the purchase of new assets or infrastructure works accumulated by means of a refund or a credit against certain other federal taxes

Other taxes and incentives

Local Taxes

From a provincial tax perspective, Law 26,190 invites all Argentine provinces to adhere to the regime enacting local regulations with tax benefits aimed at promoting and encouraging the production of electric energy through renewable sources.

Other incentives

Tax certificate: equivalent to 20% of the amount of the Argentine-source component (60% of Argentine-source component shall be evidenced, which can be reduced up to 30% to the extent that no local production is evidenced). The certificate will be applied against federal taxes.

Import duties: exemptions only for some specific goods (e.g. solar panels)

Australia

Corporate income tax

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

Taxation of a trust structure

Once a trust holding the wind farm assets is not regarded as a public trading trust, it should be regarded as a flow through entity for tax purposes. In this regard, unitholders will be taxed on their share of the income of the trust at their marginal tax rate (e.g. 30% for non-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. less than 50% 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 assets and nature of the interests in land held, etc. 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, 2020-21,2021-22 and 2022-23 income years 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 Threshold ("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. Exemptions are potentially available for these surcharges during development, and potentially on an ongoing basis although this require an active business to be conducted.

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 of an acquisition of shares or units.

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 6.5% 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 is 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 generally limited to residential land although one State currently also applies a surcharge to primary production land.

Special tax regime

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

Austria

Income tax

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 24% (reduced from 25% to 24% with January 1st, 2023). From 2024 onwards, the corporate income tax will be reduced to 23 %.

National Income tax

Private individuals are subject to national income tax at a progressive tax rate up to 55%. From 2022, the income tax for private individuals will be reduced as follows: the marginal tax rates of currently 35 % and 42 % will be gradually reduced to 30 % and 40 % over the next two to three years. The maximum tax rate remains unchanged.

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. Based on negotiations with Austrian-resident power utilities, the Austrian tax-authorities have published a list of useful lives for assets held by power utilities. According to this list, that forms an annex to the Income Tax Directive of the Austrian Ministry of Finance, the useful life for wind power plants is 20 years. Electricity supplier can apply for a declining-balance depreciation for assets acquired or manufactured before Dec. 31, 2025. 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 period agreed upon between the owner of the land and the operator of the wind power plant, the setting-up of a provision for the removal costs may be required, aiming at spreading 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% p.a..

Tax allowances

A new tax allowance for depreciable assets has been introduced for "environmentally friendly" business investments realized after 31 December 2022: In general there is an on-top tax-deduction of 10 % of the acquisition or production costs in addition to the annual depreciation of the asset. For environmentally friendly assets or "green investments", the tax allowance is increased to 15 %. The tax-base for the tax-allowance is still capped at EUR 1 Mio per business year (i.e. tax allowance of EUR 150,000 per year for green investments).

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, 7.5 % from 2023 onwards as to the reduction of the CIT-rate) of the gross-amount is to be withheld and transferred to the tax-authorities. The withholding tax is final for the recipient, still an option for standard taxation of that income is possible. If wind power plants are set up, there may be payments to landowners 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 landowners 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. As of July 2022, no electricity tax will be payable if electricity is produced via renewable assets (wind, photovoltaics, water, etc) and consumed by the producer himself. For transactions in the period from 1 May 2022 to 30 June 2023, the electricity levy is 0.1 cent/kWh.

Real estate transfer tax, stamp duties and property tax

The wind power plant itself is qualified as an operating business facility and is not subject to real estate transfer tax. In case the land (on which the wind power plant has been built) is transferred, RETT of 3.5% of the purchase price paid to the vendor of the land is triggered. Furthermore, registration fee for registration with the Land Register of 1.1 % (same tax base) falls due.

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

If a 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 (capped at 18 years at the maximum). If the leasing contract is entered into for an indefinite period of time, Stamp Duty is calculated by multiplying the annual leasing expense by three.

Windfall Profit Tax

(regulations apply for the period of 1 December 2022 – 31 December 2023)

The National Council has decided to introduce the so called "energy crisis contribution – electricty" ((Energiekrisenbeitrag-Strom; in short: EKB-S) as a measure to implement the EU Emergency Measures Regulation in order to skim off exceptionally high market revenues for electricity producers in the face

of extremely high prices for consumers as well as "windfall profits" in the oil, gas, coal and refinery sectors.

The Energy Crisis Contribution - Electricity (EKB-S) applies to the sale of domestically generated electricity from wind energy, solar energy, geothermal energy, hydropower, waste, lignite and hard coal, crude petroleum products, peat and biomass fuels, except biomethane.

The EKB-S applies to operators of generation facilities with an installed capacity of over 1 MW.

The energy crisis contribution for electricity is 90 % of the positive difference between market revenues (without subsidies) and EUR 140 per MWh (so-called "surplus revenues"). Results from derivatives that are closely economically related to the market revenues are also to be included.

If investments are made in renewable energies and energy efficiency, a deduction amounting to 50% of the actual acquisition or production costs, but not more than EUR 36 per MWh (based on the supply volume underlying the market revenues) may be claimed.

The EKB-S must be calculated by the taxpayer and paid to the VAT tax office on September, 30 2023 (for the period 1.12.2022 - 30.6.2023) and on March, 31 2024 (for the period 1.7.2023 - 31.12.2023). Records of the calculation must be kept and - also on the due date - submitted to the tax office.

Belgium

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 corporate tax (and for that matter, also other Belgian taxes, such as VAT).

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 effectively subject to tax (resulting in a tax cash out effect). This means that even in case of availability of losses carried forward (or other qualifying tax deductions 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).

Note that as a specific adjustment for tax assessment year 2024, this 70% threshold as mentioned above is reduced to 40%, increasing the taxable base which can be effectively taxed despite availability of deductions carried forward. This is in principle only a temporary measure, linked to the introduction of a global minimum tax (as currently being introduced at European level) – after which this basket limitation is set to go back to 70%.

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.

Initial losses

In principle, tax losses in Belgium can be carried forward without limitation in time. Utilization of these losses carried forward is subject to certain annual thresholds (see "minimum taxation" above) and subject to change in control rules (see further).

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 (qualifying) 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. 2023).

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 EUR 2.5 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.

From 1 March 2022 until and including 31 March 2023, the VAT rate for the supply of electricity in Belgium to natural persons that did not communicate an enterprise number to their energy supplier (residential contracts) is reduced to 6%. The Belgian government announced that this reduced VAT rate will become definitive. The less revenue for the Belgian budget resulting from the reduced VAT rate will be compensated by a reform of the excise duties on electricity.

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. However, a potential correction of the input VAT recovered on costs related to the acquisition or construction of business assets may be required in case of failed projects.

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.

As part of its public service task, the transmission system operator (Elia) is obliged to buy from the green power producer who so requests the GEC that were delivered to it at a minimum price.

For the three first-built wind farms (Belwind, C-Power and Northwind), this minimum price is set at 107 euros/MWh for production from the first 216 MW of installed capacity and at 90 euros/MWh for production from an installed capacity above the first 216 MW. For the Nobelwind wind farm (split off from the initial Belwind domain concession), the minimum price is 107 euros/MWh for the first 45 MW of installed capacity (as Belwind has installed 171 MW) and 90 euros for the remaining 120 MW. The purchase obligation is for 20 years for these 4 wind farms.

For the five other wind farms (Rentel, Norther, Mermaid, Seastar and Northwester 2), the minimum price per GEC depends on the electricity price. The minimum price is set by the federal regulator (CREG) in accordance with the applicable provisions. The purchase obligation applies for 19 years for the Rentel and Norther wind farms and for 17 years for the Mermaid, Seastar and Northwester 2 wind farms.

The purchase obligation of GEC for electricity produced through offshore wind power is the subject of a contract between the domain concession holder and Elia.

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 when the electricity is supplied to end users.

The standard excise duty rate on electricity consists of three components: excise duties, special excise duties and the contribution on energy. The standard excise duty rate is calculated according to a degressive rate per consumption bracket. The consumption bracket is calculated on an annual basis. A distinction shall be made between electricity for business and non-business use and whether the end-user is connected to the transmission or distribution network whose rated voltage exceeds 1 kV or not.

Excise duty exemptions may apply depending on the use of the electricity. For example, an exemption for excise duties applies for the use of electricity produced by windmills which is not taken from the transmission or distribution grid.

Belgium introduced for the period 1 August 2022 until and including 30 June 2023 a cap (130 euro/MWh) on market revenues for electricity producers using inframarginal technologies (including the sale of electricity produced from wind energy). A levy of 100% on market revenues exceeding the cap will apply. This levy qualifies as a deductible expense for direct tax purposes at the level of the debtor and cannot be recharged directly or indirectly to other companies or final consumers.

The supply of electricity to end users located in Belgium is also subject to regional levies (e.g. energy contribution, “redevance de raccordement”, contribution Public Service Obligations).

Brazil

Introduction

The typical structure in the wind-power sector comprises different SPEs set up for each energy sale and purchase agreement under the Incentive Program for Alternative Energy Sources (PROINFA), and through concession or authorization granted by the Federal Government. In general, the operational SPEs are held directly by a Holdco or by Sub HoldCos. The main taxes applicable on the legal entities of this sector are presented as follows.

Corporate income taxes (IRPJ and CSLL)

The Corporate Income Tax (IRPJ) is a Federal tax at rate of 15% on taxable income, plus a surtax of 10% on the annual income that exceeds to R$ 240,000.00 (R$ 20,000.00 by month). The Social Contribution Tax on Profits (CSLL) is also a federal tax charged at 9% on the taxable income. These rates are applicable for both presumed and actual profit method.

Actual profit method ("Lucro Real"): Under the actual profit method, the taxable income corresponds to the company's net book profit, arrived at by applying Brazilian GAAP, adjusted by non-deductible expenses and non-taxable revenues as per Brazilian corporate tax legislation. In this regime, companies are required to keep appropriate accounting records, the Taxable Income Control Register (LALUR/ECF) and supporting documentation and calculations to demonstrate the amount of tax due.

Presumed profit method ("Lucro Presumido"): On the presumed profit method the tax calculation base is deemed to be equal to a fixed profit margin on gross sales revenues. The presumed profit margin for sales is 8% for corporate income tax and 12% for social contribution. The total amount of capital gains, financial and other revenues must be added to the taxable income basis. There are some limitations to apply this regime: (i) companies which have higher than R$ 78 million in gross revenue in the previous year; (ii) financial institutions; (iii) similar financial entities or factoring companies; (iv) companies which earn foreign profits, income or gains, or (v) qualify for an exemption of the corporate income tax cannot be considered for this system.

The election of the profit method (actual x presumed) is made on annual basis, at the beginning of the year and the choice may be renewed every year.

Gross revenue contributions (PIS and COFINS)

PIS and COFINS are Federal taxes charged on gross revenues monthly, under two regimes: (i) non-cumulative and (ii) cumulative.

Non-cumulative regime: In general terms, a taxpayer using the actual profit method for income taxes is obliged to use the non-cumulative regime for PIS and COFINS purposes, with rates of 1.65% and 7.60%, respectively. Taxpayers under the non-cumulative system are allowed to recognize tax credits over certain inputs and expenses: (a) products purchased for resale; (b) goods and services used as inputs in the rendering of services or manufacturing of products; (c) electricity; (d) the leasing and (e) the acquisition of fixed assets and (f) returned goods, which are monthly offset with the PIS and COFINS debts. Generally, financial revenues are taxed under the non-cumulative method at a 4.65% combined rate.

Cumulative regime: PIS/COFINS apply at 0.65% and 3%, respectively on the cumulative regime. This method is mandatory for companies under the presumed profit method and does not entitle the company to recognize PIS/COFINS tax credits. Financial revenues are not taxed for PIS and COFINS purposes under the presumed profit method.

State VAT (ICMS) and Municipal Service Tax (ISS)

ICMS is a State type of value added tax levied on the import of products, sale of goods (including electricity) and rendering of transportation/communication services.

In energy sales to concessionaries responsible for the energy distribution, the ICMS would be deferred to the moment of the distribution to the final consumers. However, one exception to this rule is when a generation company sells the energy directly to the final client through the "free market" (Chamber of Electrical Energy Commercialization) within the same state. In this case the generation entity would be responsible to collect the ICMS.

Also, based on the Federal Constitution (Art, 155, item VII), the sale of energy on interstate transactions should not be taxable for ICMS purposes, instead, the acquirer of the energy would be responsible to collect the ICMS.

Regarding ICMS tax incentives, most incentives are related to Capex acquisition. Under this scenario, we highlight the CONFAZ Agreement #101/1997 (valid through 2028) which foresees ICMS exception for the operations with components used on wind power operations. An analysis of the State legislation is recommendable to confirm if these incentives are applicable by the State where the wind power plant is located.

It is important to highlight that, recently, Complementary Law nº 194/2022 brought a change on the ICMS tax rates applicable to electricity operations. Based on the new legislation, these operations should be considered as "essential" and, as a result, the tax rate applicable to each State cannot be higher than 18% (prior to the new legislation, the tax rates were, in general, 25%). The application of the new legislation is currently under discussion through the Brazilian Supreme Court.

As far as the Municipal Service Tax, wind-power sales are not taxed by ISS as this is not considered service rendered.

Federal tax incentives and benefits

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

IPI (Excise Tax): IPI is a Federal tax levied on the manufacture of goods. In many aspects, it operates like a value added tax, which is charged on the value aggregated to the final merchandise. The applicable rate depends on the nature of the products and its classification under the IPI Tax Rates Table ("TIPI"). The classification within TIPI follows the NCM Code has been reduced to zero for equipment and components used on windmills (NCM codes 85.02.31.00 and 85.03.00.90).

II (Import taxes): windmills with power equal or below 3.300 kVA (or 2.640 kW) have import taxes of 11.2% while windmills with power above 3.300 kVA are subject to an import tax rate of 0% ("Resolução Gecex" 272/2021).

PIS and COFINS - Import: foreign windmill parts and components (except for the pan part) imported are benefited to PIS and COFINS rates reduced to zero by the MP 656/14 (Lei 13.097/2015). The internal sales of these components are also subject to a 0% PIS/COFINS tax rate.

REIDI ("Regime Especial para o Desenvolvimento de Infraestrutura"): companies can apply for PIS and COFINS exemptions to import and internally purchase machines and equipment used to develop infrastructure, through the REIDI (Regime Especial para o Desenvolvimento de Infraestrutura). In general terms, whenever a local company sells goods/assets to a Brazilian company, in principle, PIS/COFINS taxes are levied (on the resulting gross revenue). Therefore, such taxes tend to increase the price of the good/assets. Nonetheless, due to the REIDI regime, the PIS/COFINS levied on the sale of certain assets to a company with an infrastructure project may be suspended/ exempted. The REIDI regime was introduced by Law 11.488/2007 and regulated by the Decree 6.144/2007 and the Normative Instruction 1.911/2019.

Please note that only legal entities previously authorized by the Federal Revenue would be able to take advantages of the REIDI´s benefits, moreover, only legal entities with an infrastructure project related to transportation, energy and basic sanitation would be able to request the abovementioned authorization.

The main tax benefits of the REIDI regime is the suspension of the PIS/COFINS (including the recognition of credits) on the following transactions: (i) Local acquisition of goods, machinery and to inputs to be registered as fixed assets and used in infrastructure projects; (ii) Local provision of services related to infrastructure projects; (iii) Import of goods, machinery and inputs to be registered as fixed assets and used in infrastructure projects; and (iv) Import of services related to infrastructure projects.

After the use of the goods, machinery, inputs or services acquired or imported in the infrastructure project, the suspension of PIS/COFINS is converted into a 0% tax rate benefit.

Note that in view of the accounting changes (IFRS), the REIDI's regulations were also adapted by Law 13.043/2014, which wording provides that the REIDI exemption is also extended to expenses that will be capitalized as intangible/financial assets.

Canada

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. However, on a share sale that results in a change in control of the Canadian company there are special rules that limit the corporation's ability to utilize the carryforward net operating losses.

Canada has thin capitalization rules that restrict the deductibility of interest incurred on debt funding obtained from certain non-resident related party. Interest on the debt owing by the Canadian corporation to certain non-residents (i.e., non-resident shareholder and other related parties who together own at least 25% of the votes or value of the shares in the Canadian company) that exceeds 1.5 times the shareholder's equity of the Canadian company is not deductible and treated as a deemed dividend subject to Canadian withholding tax.

Canada has introduced proposed legislation to generally limit the deduction of net interest and financing expenses to 30% of tax-adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) for taxation years starting on or after January 1, 2024. For taxation years after September 30, 2023, and before January 1, 2024, there is a transitional rate of 40% percent as the fixed ratio.

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. However, net capital losses do not get carried forward after a change in control of the Canadian company.

Withholding tax rates

Non-resident withholding tax at a base rate of 25% is applied to payments of dividends, interest, royalties, and other similar items to non-residents. The rate may be reduced under applicable income tax treaties with consideration given to the application of the multilateral instrument (MLI) as it entered into force for Canada on December 1, 2019.

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 timer property) situated in Canada.

- A share of a public corporation, within the preceding 60 months, the non-resident and/or non-arm's length persons owned 25% or more of the shares of the corporation and the share, within the preceding 60 months, derived more than 50% of its value from real or immovable property (including certain resource and timer property) situated in Canada.
- Canadian resource property and timer resource property, or interests in such properties.

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

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

https://assets.kpmg/content/dam/kpmg/ca/pdf/2021/01/ca-tax-facts-2021-2022-en.pdf

Special tax regime

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

Accelerated CCA

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

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

Furthermore, a special accelerated CCA regime was introduced to temporarily allow the immediate deduction for tax purposes the costs of new specified clean energy equipment in Class 43.1/43.2 under the accelerated investment incentive property ("AIIP") regime. The AII regime will be gradually phased out starting in 2024 through to the end of 2027 (i.e., 100% first year enhanced allowance in 2023, 75% allowance in 2024 & 2025, and 55% allowance in 2026 and 2027).

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.

Clean Technology Investment Tax Credits

The 2022 Fall Economic Statement delivered on November 3, 2022 proposed a Clean Technology Investment Tax Credit of up to 30% of the capital cost of certain eligible equipment. The Clean Technology ITC is intended to be available in respect of certain capital cost of property that is acquired and that becomes available for use on or after the day the 2023 Budget is released.

China

Corporate income tax

Corporate Income Tax (CIT) is one of the main taxes for businesses in China. The standard CIT rate in China is 25%. A 15% rate may be secured for qualifying wind power enterprises operating in the western region of China until 31 December 2030 (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 2023) 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).

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 5MW. 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.

Costa Rica

Corporate Income Tax

In Costa Rica, legal entities that carry out lucrative activities from a Costa Rican source, are considered as corporate income taxpayers. In this sense, the country is characterized by a territorial taxation system, due to the concept of a Costa Rican source, with which profits generated from services rendered, assets located, or capital invested within the national territory are taxed.

In general, for all legal persons the tax rate should be 30%.

Capital Gains Tax.

Capital gains derived from the sale of assets or rights should be subject to a 15% tax rate, or if the assets or rights were obtained prior to 1 July 2019, would be subject to tax at a reduced rate of 2.25% of the total amount. Nonetheless, if the assets or rights are linked to the business activity subject to Corporate Income Tax, the obtained capital gain should be subject to the 30% rate.

Value Added Tax (VAT)

The Law establishes a general tax rate of 13%. There is no preferential regimen applicable to wind farms.

The taxpayer has the right to use as a tax credit the VAT paid for the purchases of goods and services that are used for the purpose of their taxed transactions. However, it is important to mention that there are some exceptions to this rule that should be reviewed in detail.

In the pre-operational phase, the acquisition of goods and services directly related to the economic activity subject to the VAT, may be used in full as a tax credit in its first VAT return (D104), at the beginning of the operational phase, only if the taxpayer registration has been completed and economic activity subject to the VAT begins within a maximum period of four years.

Transfer tax and real estate tax

The real estate tax corresponds to 0.25% of the value of the property (considering the land and buildings) registered by the Tax Administration from January 1 of the corresponding year. The fiscal year is annual, from January 1 to December 31 and the tax payment must be done annually, on a six-month basis or in four quarterly tranches, as it is determined by the Local Government. The taxpayer must declare, at least every five years, the value of their property to the Local Government where they are located.

Regarding the transfer of real estate tax, the tax rate is a 1.5% of the highest value between the following: real value of the transaction, value of the property accounted for in the records of the tax administration, and the market value. The transmitters and the acquirers are jointly and severally liable in the tax payment. In this sense, the tax must be paid within the first fifteen business days of the following month after the date of granting of the respective transfer document.

Local government taxes

Corporations that carry out commercial activities must pay a tax to the Local Government for the development of lucrative activities in their corresponding region. Each Municipality has its own particularities regarding the collection and payment of the tax. Additionally, the Municipalities charge fees for the municipal services provided in the region, such as garbage collection, public lighting, security, among others.

Legal Entities Tax.

Registered legal entities must pay the Legal Entities Tax which has a progressive rate according to the following brackets:

a. Within the first year of operation, companies will pay 15% of a base salary (base salary for fiscal year 2022 is CRC 462.200,00 (USD 705 approximately)).

b. Income taxpayers that have declared a gross income in the immediately preceding fiscal year of less than 120 base salaries, will pay 25% of a base salary.

c. Taxpayers who have declared gross income in the immediately preceding tax period, in the range between 120 base salaries and less than 280 base salaries will pay 30% of a base salary.

d. Taxpayers who have declared gross income in the immediately preceding tax period, equivalent to 280 base salaries or more will pay 50% of a base salary.

This tax payment is not considered as a deductible expense for Corporate Income Tax purposes.

Dividends

The dividends distributions are subject to capital income tax at its 15% rate. In this sense, the distribution of disposable income in the form of dividends, social interests, and all types of benefits similar to dividends are considered as movable capital income. The taxable event is produced at the time the dividends are paid or are enforceable, whichever comes first.

When a capital company distributes dividends to another capital company that has an economic activity subject to corporate income tax, said distribution should be exempt from withholding tax.

Withholding Tax on Remittances abroad

Income or benefits from a Costa Rican source obtained by a natural or legal person domiciled abroad, is subject to non-residents tax.

However, the Law covers some special cases that are taxed by the simple fact of having been paid or remitted a profit to non- resident beneficiary. For these purposes, the taxable event occurs when the non-domiciled income is paid, credited or is placed at the disposal of the non- resident.

There are different tax rates according to the nature of the payment: dividends 15%, professional services 25%, Insurance payments 5,5%, technical services, royalties, use of patents, trademarks, franchise and formulas 25%, among others.

Agreements to avoid Double Taxation.

Costa Rica has four agreements entered into force with Germany, Mexico, United Arab Emirates and Spain, to prevent double taxation, including corporate profits, dividends, interest, royalties, capital gains, salaries, among others.

Free Trade Agreements

Costa Rica has a solid platform for foreign trade, with more than thirteen Free Trade Agreements (FTAs) signed and enforced with Colombia, United States (CAFTA-DR), China, Singapur, Mexico, among others, through which favorable conditions for importation are established, as imports with zero or reduced tariffs.

Limitation on the deduction of non-bank interest applicable to CR operating companies.

Article 9 bis of the Income Tax Law establishes a limitation on the deduction of non-bank interest. This limitation applies as of the 2021 tax period. During 2021 and 2022 tax periods, the maximum deductibility will be

thirty percent (30%) and it will be adjusted downwards each year by two percentage points until reaching twenty percent (20%) in tax year 2027.

When there is an amount of interests that cannot be applied as deduction in a tax year, it can be carried forward, provided that the limitation is met in all tax years. In this case, the corresponding deferred income tax should be registered by the taxpayer.

Income Tax Law establishes that interests incurred for financing public infrastructure should not be included under this limitation. Consequently, in case a wind energy project is considered of public nature, there should not be an interest limitation applicable.

Depreciation

With respect to the application of depreciation, this is an issue that is still under discussion before the Tax Administration, since there has been no consensus as to whether the term of the contract or the useful life of the asset should be applied as the depreciation term. Therefore, a particular study must be carried out for each specific case.

Application of losses as deductible expense

When in a fiscal period a company obtains losses, these will be accepted as a Corporate Income Tax deductible expense in the following three periods. For such purposes, the taxpayer should register the corresponding deferred income tax.

Autonomous or Parallel Electric Generation

The Law No. 7593 "Law on the Costa Rican Public Service Regulatory Authority (ARESEP)" of August 9, 1996 establishes that "the Regulatory Authority will set prices and rates, and enforce compliance with standards of quality, quantity, reliability, continuity, timeliness, and optimum rendering of public services", specifically with respect to the generation, transmission, distribution, and sale of electric power. Such Law establishes that the public service of electric energy supply is a regulated activity that is out of the conventional trade, being the Costa Rican State the owner of the same.

In Costa Rica, Law No. 7200, " Law for the Authorization of Autonomous or Parallel Energy Generation ", regulates the two types of Autonomous or Parallel Electricity Generation through which private companies dedicated to electricity production may sell electricity to the Costa Rican Electricity Institute ("ICE" by its acronym in Spanish):

i. Plants of limited capacity (not exceeding twenty thousand kilowatts - 20,000 KW). Concession contracts entered under this modality may have a term of up to 20 years under the so-called BOO (build, Own, and Operate) agreements.

ii. Purchase of Energy under competition regime (up to fifty thousand kilowatts - 50,000 KW). These contracts may have a term of up to 20 years.

Also, they are subscribed as "Build, Operate and Transfer" or B.O.T. contracts, whereby the assets of the power plant in operation must be transferred, free of cost and encumbrances, to ICE at the end of the contract term.

From the signing of the concession contract, private companies or electricity generation cooperatives have a term of up to three years to start generating electricity.

Tax and other incentives and limitations.

Project financing

The Law No. 7200 provides that the Central Bank of Costa Rica may authorize exceeding the maximum credit limit, in the case of loans granted by commercial banks for the development of the industries that have been selected, and for those who are interested in manufacturing the electromechanical equipment necessary for power plants with limited capacity.

For these purposes, the operations in question will be exempt from the provisions of article 61, subsection 5), of the Organic Law of the National Banking System, and article 85, subsection 1), literal b), of the Organic Law of the Central Bank of Costa Rica.

Exemptions on the importation of machinery and equipment.

According to Law No. 7200, private generators will enjoy exemptions on the importation of machinery and equipment for water conduction, as well as for "turbining", generating, controlling, regulating, transforming, and transmitting electric energy.

In this case, the import exonerations are only applicable with respect to tariffs, and not on national taxes such as Value Added Tax. For this exoneration to apply, the company must have a concession contract signed with ICE and ratified by ARESEP.

ICE must issue a technical recommendation so that the concessionaire company can sign an "Exoneration Contract" with the Treasury Department and the Ministry of Environment and Energy.

Croatia

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 10% may be applied for taxpayers with turnover below EUR 995,421.06.Tax base is the accounting profit / loss in line with the applicable accounting standards, adjusted for Corporate Profit tax ("CPT") purposes for non-deductible expenses and non-taxable income.

Some 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.

Tax losses

Tax losses can be off-set against taxable profits and carried forward for a period of 5 years. The earlier tax losses are set off before the later ones.

No provisions exist for the carry-back of tax losses. There are no tax grouping provisions.

Transfer pricing

In accordance with Croatian transfer pricing legislation, prices and other conditions agreed between related persons (of which one is a resident and the other is a non-resident) are recognized for tax purposes if they correspond to the prices and other conditions that would be agreed between independent persons (the arm's length principle). If such prices and other conditions do not conform to the arm's length principle, the Croatian Tax Authorities ("CTA") may make an adjustment.

Taxpayers in Croatia are required to submit, together with the annual tax return, a Report on business transactions with related parties (PD-IPO form). Furthermore, taxpayers are required to provide information on related persons, their business operations and methods used to determine an arm's length price (i.e. transfer pricing study) upon the CTA's request. If a taxpayer does not have a transfer pricing study, the CTA will give the taxpayer reasonable time to prepare the required documentation, without imposing penalties.

Exit

Sale of shares by a Croatian resident company are treated as any other revenue in terms of CPT. Furthermore, if a seller is Croatian tax resident individual, the transaction will be subject to capital gain tax at the rate of 10% increased for surtax. An exemption may apply to individuals for the sale of shares if they have held shares for at least two years.

Croatia does not apply capital gain tax on non-residents who sell shares of a Croatian resident company.

Extra profit tax

On December 23, 2022, Law on Extra Profit Tax entered into force that was prompted by the EU Regulation on an emergency intervention to address high energy prices. The Extra Profit Tax is applicable in fiscal year 2022 to all corporate taxpayers with a total income exceeding HRK 300 million (approximately EUR 40 million) in that year, regardless of their business activity, including also wind power companies. Extra profit is calculated as the taxable profit in accordance with the corporate tax law that is above 20 percent of the average taxable profit of the preceding four fiscal years (i.e. 2018 to 2021.) The Extra Profit Tax rate is 33%.

VAT

Statutory VAT rate in Croatia is 25%, and reduced VAT rates are 13% ,5% and 0%. Reduced VAT rate of 13% is applied on supply of electricity.

The Croatian VAT system is based on the invoice deduction method, under which taxable persons deduct the VAT invoiced by other taxable persons from their VAT liability arising from taxable transactions carried out. Input VAT is only deductible if the goods and services acquired are used for the purpose of carrying out taxable transactions, while for exempt supplies of goods or services the taxable person is not entitled to deduct input VAT.

Generally, the liability to remit VAT to the CTA falls on the person who makes a supply of goods or services. However, in certain circumstances, the VAT due should be remitted by the recipient through the "reverse charge mechanism".

Domestic reverse charge mechanism

Croatian legislation foresees a domestic reverse charge mechanism for certain transactions including:

- construction services (such as construction of a windmill)
- supply of certain real estate
- supply of concrete, steel and iron and products of concrete, steel and iron

In the domestic reverse charge mechanism, VAT is self-assessed by the acquirer instead of the supplier which is generally the case. Since the acquirer is also entitled to deduct VAT, there will be no impact on cash flow.

VAT refund

Entities may be in VAT receivable position if the receivables exceed the VAT liability. In this case, the entity may claim a VAT refund from CTA. The CTA should refund the VAT within a period of 30 days from the day of submission of VAT return. In case of a tax inspection, the CTA should refund the VAT within a period of 90 days from the first day of the tax inspection.

A request for a VAT refund may give raise to a VAT inspection.

Withholding tax

Croatian companies are required to make withholding on certain payments to non-residents. The applicable withholding rate will differ depending on the nature of the payment (dividend, interest, royalties, etc.) and the country of residence/effective management of payment receiver.

The following payments are, in general, subject to withholding tax in Croatia – dividends, interest, royalties, market research, business consulting and audit services.

The withholding tax rate is 15% for all payments except dividends for which a rate of 10% applies. If the payment is made to a company with residence or effective management in country that is listed by EU as non-cooperative country, a withholding tax rate of 20% applies, regardless of nature of the payment.

Other

Taxation of real estate

There is no real estate tax in Croatia. However, the owner of construction land or business space, regardless of economic activity, may be liable to utility charges. Eventual application and rate for utility charges is prescribed by each local municipality for all construction lands and/or business spaces on its territory.

Acquisition of a real estate (land and buildings) is subject to real estate transfer tax ("RETT") of 3% if such real estate is older or used for more than 2 years. RETT is payable by the acquirer and cannot be recovered. In some cases, it is possible to opt for VAT when acquiring a real estate.

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

Exceptionally, construction land is always subject to VAT of 25% rate.

Excise duties

Excise duties are charged on the electricity supply to end users, regardless of whether they are commercial or non-commercial users (or even self-used). Excise duty liability arises at the time of the supply to end users. The supplier of electricity is responsible for reporting and paying excise duties.

Exemption from excise duty applies on the production of electricity from renewable sources, such as wind, for own consumption.

Excise duty rate is calculated per megawatt hour supplied and it depends on characteristics of user as follows:

- 0.50 EUR per megawatt hour for commercial users
- 1.0 EUR per megawatt hour for non-commercial users

Change of currency

Please note that Croatia has swapped her local currency HRK for EUR as of January 1, 2023.

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.

KPMG

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.

Estonia

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).

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 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.

KPMG

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 rate of land tax is 0.1 to 2.5% of the taxable value of land and it 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.

Finland

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, e.g. 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 2022, 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%.

France

Corporate income tax

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

CIT rates

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

Year	2019	2020	2021	2022
CIT rate appli-cable	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 were applied 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;
- 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, thin-capitalization and anti-hybrid rules that incorporate broadly the limitations provided by ATAD 1 and ATAD 2) 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 7.82 per KW installed in 2022).

Specific taxes are applicable to companies that operate offshore wind turbines. For example, in 2022, the yearly tariff of the specific tax on the maritime wind turbine amounted to EUR 18,605 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 (parks still under construction).

Germany

Corporate income tax

The profits / income of a corporation owning and / or operating renewable energy assets (located in Germany including the continental shelf / EEZ) 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.

Taxation of German partnerships

Windfarms located in Germany are often operated in the form of partnerships to which special rules apply under German tax law. A partnership is considered transparent for corporate income tax purposes. Therefore, the taxable income is determined at partnership level and the partnership is liable to pay the trade tax on that income. However, only the partners themselves are subject to corporate income tax on the determined taxable income (provided the partners are corporations). In addition, inter alia the following rules apply for partnerships:

- Start-up losses: Expenses of a partnership incurred during its start-up phase, i.e., between its formation and the actual opening of the business are disregarded for trade tax purposes.
- Change-of-control rules: A partnership's trade tax losses carried forward forfeit by a change of control in the partner's interest.

In addition, if a corporation owns interest in a partnership, the partnership's losses are also subject to the change of control rules for corporate income tax purposes.

Real estate transfer tax

The wind power plant itself is qualified as an operating business facility and is not subject to real estate transfer tax (RETT) in Germany. In case the land on which the wind power plant has been built is transferred, RETT of 3.5% to 6.5% (depending on the federal state in which the land is located) of the purchase price paid for the land is triggered. Further, generally, in case at least 90% of the shares in a corporation or partnership which owns the wind power plant including the land are transferred within a period of 10 years to new shareholders, RETT is also triggered on the tax value (standard land value) of the land. This even applies in case of indirect changes of shareholders of companies or partnerships owning German land and buildings, determined by a special valuation scheme.

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, there are certain exemptions and incentives for the industry in the area of indirect taxation (e.g., electricity tax , see below).

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 or partnerships owning and / or operating renewable energy assets. However, for small businesses an additional tax depreciation of up 20% in the first five years from acquisition of the assets is generally available. A newly established asset-owning corporation or partnership is eligible to qualify as a small business at the time of the acquisition of the assets.

Electricity tax

By generating electricity from wind power, it has to be evaluated whether electricity tax obligations are with the operator of one or more wind turbines.

Electricity is generally subject to a tax rate of 20.50 €/MWh in Germany and arises when the electricity is taken out of the supply network by an end consumer. Whether the generated electricity is subject to electricity tax and subsequently a tax declaration is to be submitted depends on to whom the electricity is delivered or for what purpose it is consumed.

Specific permits from a main customs office are required for the generation and supply of electricity. Electricity from renewable energy sources, such as wind power, may be eligible for tax relief but only under certain preconditions.

Electricity that is required by the wind turbines themselves in the technical sense may be exempted from electricity tax. This requires either a specific permit from the main customs office or a separate application for relief from electricity tax.

In order to apply for relief from electricity tax, the Electricity Tax Ordinance provides for a flat rate of 0.3 percent of the gross electricity production of the respective electricity generation plant. However, the tax relief is only granted upon a specific application which is subject to a statutory deadline.

Greece

Corporate Income Tax

The SPV's that operate onshore wind turbines are subject to Corporate Income Tax ("CIT") under the general standard tax regime. According to the general provisions of Greek tax legislation, all types of income of legal entities, including capital gains, are considered income from the carrying out of business activities and they are taxed after the deduction of qualifying business expenses, depreciation, as well as tax losses carried forward from previous years and withholding taxes that have not exhausted their final tax liability. The CIT rate for all types of Greek legal entities is currently 22%. CIT advance payment applies, equal to 80% of the tax corresponding to the revenues of the fiscal year for which the CIT return is filed (reduced by 50% for the first three (3) fiscal years of business operations).

Tax Losses

Tax loses can be carried forward for five (5) consecutive years in order to be offset against future business profits. Loss carry back is not permitted. The right to carry forward tax losses is lost in case the shareholding ownership status changes by more than 33% and the business activities of the entity are altered by more than 50% in the same and/or subsequent year of the year of ownership change.

Deduction of Expenses

In general, the expenses of a company may be deducted from its taxable income for CIT purposes as long as, the following conditions are cumulatively met: (i) they are carried out in the interest of GrCo and / or in the course of its ordinary business, (ii) they relate to actual transactions whose value is not lower nor higher than respective market value based on information available to the tax administration, (iii) they are duly and properly recorded in the company's books in the year in which they were incurred, (iv) they are supported by relevant tax records/adequate supporting documentation (e.g. invoices), and (v) they are not included in a list explicitly determining non-deductible expenses.

Certain expenses benefit from an increase deductibility. For instance, the CIT deductibility of R&D expenses is increased by 100%.

Interest Expenses Deductibility

Interest expenses should meet the general deductibility conditions laid out above in order to be considered deductible for Greek CIT purposes. However, there are several additional rules that may limit the tax deductibility of interest expenses (e.g. arm's length interest rate for intergroup loans, and specific limitations for loans other than bank loans and corporate bond loans).

KPMG

Greek thin capitalization rules also apply to all loans. In particular, the net interest expenses (i.e. interest expense minus any interest income) are deductible up to a cap that is determined as the higher between EUR 3 million per year and the 30% of tax EBITDA following GAAP adjustments. Any amount not allowed for deduction based on thin capitalization rules may be deferred for deduction and be offset against future taxable income in the following years without any time constraints. Deviation from the above rules may apply to entities, which are members of a consolidated Group for accounting purposes.

Depreciation (amortization) of Fixed Assets

Costs connected to the construction of wind parks may be considered as fixed assets that can be amortized subject to the conditions introduced by the Greek tax provisions. Greek tax legislation provides for mandatory annual tax-deductible depreciation of fixed assets based on standard depreciation rates, e.g. 4% for buildings, 10% for equipment/ machinery etc., calculated on the acquisition cost of fixed assets. Expenses for the acquisition of fixed assets, that are directly related to them (e.g. cost of renovation, reconstruction, notary public expenses, etc.) are included in the acquisition cost of the relevant asset (capitalised) and subject to tax depreciation. Depreciation is not calculated on the acquisition cost of the land (i.e. land is not depreciated). Depreciation is effected by the owner of the fixed assets or the lessee in case of a financial lease agreement. The transfer of depreciated amounts between fiscal years is not permitted. For new fixed assets, depreciation begins from the following calendar month from which they are put into operation and is estimated to be as many

twelfths as there are months until the end of the fiscal year. Newly established entities may defer the depreciation of their assets for the first three (3) years.

Ultimately, the depreciation rate of an asset depends on its classification according to which such asset is recorded for depreciation purposes in the company's accounting books.

Transfer Pricing obligations for Intra-group transactions

Charges for intra-group transactions must comply with the arm's length principle (the relevant rules apply and are interpreted according to the OECD Transfer Pricing Guidelines). An obligation to prepare a Transfer Pricing Documentation File and to file a Summary Information Sheet exists provided the total value of intra-group transactions exceeds:

- EUR 100 000 cumulatively per tax year if the gross revenues of the taxpayer do not exceed EUR 5 000 000 for the tax year under review, or
- EUR 200 000 cumulatively per tax year if the gross revenues of the taxpayer exceed EUR 5 000 000 for the tax year under review.

The Documentation File must be prepared and the Summary Information Sheet must be submitted by the end of the deadline for the submission of the company's annual Corporate Income Tax Return. Upon a tax audit, the Transfer Pricing Documentation File must be submitted to the Tax Administration within 30 days from relevant request.

The possibility to have Advance Pricing Agreements (APAs) exists for cross border intra-group trans-actions. The APA may be unilateral, bilateral or multilateral.

Multinational groups whose consolidated annual group revenues exceed EUR 750 million have Country by Country (CbC) reporting and/or notification obligations within strict deadlines.

WHT framework

WHT on dividend payments

Dividend distributions by Greek legal entities are in principle subject to 5% WHT. A more beneficial WHT rate may be introduced by respective Double Tax Treaties. Moreover, a WHT exemption may apply under the conditions of the EU Parent Subsidiary Directive (PSD).

WHT on interest payments

The domestic WHT rate on interest payments is 15%. Interest payments from bank loans are exempt from Greek WHT. A more beneficial WHT rate may be introduced by respective Double Tax Treaties. Moreover, a WHT exemption may apply under the conditions of the EU Interest-Royalties Directive (IRD).

Capital gains

Capital gains arising from the sale of shares in a Greek entity are in principle taxable in Greece. However, capital gains earned by foreign legal entities with no permanent establishment in Greece from the sale of shares in a Greek legal entity are exempt from income tax in Greece. Moreover, exemption from taxation of the above gains amy also apply based on the Greek participation exemption rules.

Real Estate Taxes

Real Estate Transfer Tax (RETT)

The acquisition of plots of land and buildings not qualifying as new is subject to RETT at the rate of 3.9% on the higher between the purchase price and the objective tax value of the property.

The sale of buildings may be subject to 24% VAT, also burdening the purchaser and generally calculated on the higher between the sale price and the property's objective tax value, provided that the following conditions should be cumulatively met:

- the seller constitutes a VATable person that habitually acts as a constructor, or any other person acting as a constructor and carrying out transfers of real estate on an occasional basis;
- the underlying building's permit has been issued or renewed on or after 1 January 2006; and
- the building qualifies as new, i.e. it has not been leased, transferred, or otherwise used before its sale.

The imposition of VAT on the transfer of new buildings is suspended until 31 December 2022 (suspension expected to be extended until 31 December 2024) through the filing of an application by the constructor. In such cases the relevant real estate transfers will be subject to Real Estate Transfer Tax.

<u>Uniform Real Estate Ownership Tax (UREOT)</u>

Rights on real estate properties located in Greece are annually subject to UREOT, which for legal entities consists of both a main and a supplementary tax. Both main and supplementary tax calculation depends on various factors relevant to the real estate property (location, area and various other coefficients).

<u>Municipality Duty (TAP)</u>

Real estate ownership is further subject to a real estate duty, currently calculated at the range of 0,025% - 0,035% on the objective value of the real estate property.

<u>Special Real Estate Tax (SRET)</u>

Greek and foreign legal entities owning real estate in Greece are, in principle, subject to SRET, which is calculated at the rate of 15% on the objective value of real estate held on January 1st of each taxable year. There is a variety of exemptions from SRET based on conditions such as business activity, overall shareholding structure disclosure etc.

Leasing of Real Estate

Commercial real estate leases (with the exception of industrial installations) are in principle subject to a 3.6% stamp duty. However, there is an option to subject professional leases to VAT (at the standard 24% VAT rate), subject to the fulfillment of specific conditions.

VAT

Transactions giving rise to Greek VAT are generally subject to the standard Greek VAT rate (currently 24%).

The Greek VAT Code provides for a favorable tax scheme allowing non-imposition of VAT upon import or local purchase of new investment assets (subject to certain conditions, documentation requirements, and procedural formalities and following permission granted by the competent

Greek tax office). Such VAT is not paid to the customs office or the supplier (as the case may be) but it is self-accounted by the relevant importer/purchaser through the application of the reverse-charge mechanism (i.e. by offsetting an equal amount of output against input VAT on the same periodic VAT return, thereby not encountering any cash flow impact). Enterprises that exploit wind parks may generally be eligible for the above VAT suspension.

Other Taxes related to renewable energy/ wind parks

The exploitation of wind parks would also give rise to miscellaneous regulatory duties related to the production and supply of electricity. As an indication:

- annual duty in favor of the Greek regulatory authority for Energy, which duty currently amounts to EUR 8.02 per Mwatt of maximum power produced;
- "Special Duty" at the rate of EUR 2 per MWh of produced electricity;
- excise duty imposed solely on the sale of electricity to end-users (i.e. on retail sales and not to wholesalers) calculated at EUR 2, 2.2, or 5 per MWh (depending on the status/consumption needs of the ultimate customer);
- excise duty (calculated at the above rates) is also imposed where production of electricity is for own business purposes;
- special duty calculated at 5‰ on the sum of the amount of electricity sold plus the corresponding excise duty.

Various exemptions from excise duties may apply, depending on the status of the purchaser and the use of the underlying electricity.

Special Tax Regimes and Incentives

There are no special tax regimes for wind parks.

Moreover, activities belonging to the energy sector and infrastructure are not considered as eligible activities for the granting of incentives according to the new Greek Investment Law (which introduces incentives for various business sectors).

However, incentives (e.g. spatial development incentives, expenditure aid, fast track licencing, but also tax incentives such as stabilization of the tax rate, tax exemption, acceleration of the tax depreciations of the assets etc.) are provided in accordance with the provisions of the Greek Law for Strategic Investments, for the category of off-shore wind parks.

India

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 2024;
- 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;

- 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 windmills [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.

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.

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 following entities

- Alternate Investment Funds ('AIFs') (Category I & II) ,
- Company engaged in carrying on prescribed infrastructure business (including generation and transmission of power)
- InvITs
- a domestic company, set up after the 01 April 2021, having minimum 75% investments in companies infrastructure business ~ Specific rules regarding availing the exemption have been issued by the Government
- A non-banking finance company registered as an Infrastructure Finance Company having minimum ninety per cent lending to companies engaged in infrastructure business 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, 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 with exemption from remitting GST to the Government on certain supplies 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 to the Government on the sale of electricity/power. However, wind power generation companies are required to discharge the applicable GST on procurement of goods and/or services.

Since the sale of electricity is exempt in terms of GST law, as 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 to the Company.

Under the GST Law, 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, 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, for renewable energy devices & parts required for the manufacture of ,windmills, wind operated electricity generator ('WOEG'),Ocean Waves/tidal waves energy devices/plants, etc. which fall under Chapter 84, 85 or 94 of the Tariff are taxable at the rate of 12 which were earlier taxed at the rate of 5 per cent[9]. 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.

Further, 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 the manner in which Engineering, Procurement and Construction contract ('EPC Contract') would be taxable. In such cases, 70 per cent of the gross value of tEPC 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, resulting in effective tax rate of 8.9 per cent on the EPC Contract. The said ratio of 70:30 may be applied retrospectively w.e.f 01 July 2017[10]

[9] With effect from 1st October 2021 vide Notification No. 8/2021-Central Tax (Rate) dated 30 September 2021
[10] Circular No. 163/19/2021-GST dated 6th October 2021

However, the aforementioned ratio has been challenged by Solar Power Developers Association ('SPDA') 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. Nonetheless, there is no change in the status quo of the said litigations in this regard.

Further, in accordance with 45th GST council meeting recommendations that with effect from 1st October 2021[11], GST rate for specified renewable energy devices and parts required for their manufacture have been increased from 5% to 12% (as also mentioned above). The said change was undertaken with an intention to allow industries to adjust their Input tax credit accumulated due to inverted duty structure. Such change has however increased the effective tax rate on EPC Contract from 8.9 per cent to 13.8 per cent.

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

[11] Notification No. 8/2021-Central Tax (Rate) dated 30 September 2021

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.

GST on Renewable Energy Certificates ('RECs'):

Further, renewable energy certificates ('RECs'), issued to eligible entities for generation of electricity by renewable energy, which were earlier taxable at the rate of 12 per cent are now taxable at the rate of 18 per cent under the GST Law with effect from 1st October 2021[12]. 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, however, the status quo of the said litigation remains unchanged.

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 this regard, it is pertinent to note that import of certain wind turbine components such as wind turbine controllers, special bearings, gear box, yaw components etc., (under Chapter 84 of the Customs Tariff) are leviable to Customs duty at a rate of 5 per cent[13] subject to fulfillment of certain conditions, prescribed therein. Further, other goods falling under Chapter 84 of the Customs Tariff are leviable to Customs duty at the rate of 10 per cent.

Further, it is imperative to highlight here that under the Project Import scheme, all goods imported for an eligible project irrespective of the HSN would be classified under one tariff heading i.e., 98.01 and Basic Customs duty shall be levied at single rate of 7.5%[14](as mentioned vide Sl. No 601 to the Customs exemption Notification[15]) instead of being separately charged at rates ranging from 5% to 40% depending on HSN classification.

The concessional rate under Project Import scheme is subject to the condition that the goods should be imported with respect to 'eligible projects' and power project is one of such projects which is categorized as an eligible project under the Project Import Scheme. Accordingly, Project Import scheme may be explored while setting up wind power project in India in order to import goods at concessional rate.

12 Notification No. 8/2021-Central Tax (Rate) dated 30 September 2021
13 Entry no 405 of Notification no 50/2017-Customs (Tariff) dated 30 June 2017
14 Leviable at 5% if the goods have been imported against contracts registered on or before 30th September 2022 with the appropriate Custom House in compliance with the Project Imports Regulations, 1986 and leviable at 7.5% if the goods have been imported against contracts registered after 30th September 2022
15 Notification No. 50 /2017 –Customs dated 30th June 2017

Ireland

Corporate income tax

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

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

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

Tax Deductions

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

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

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

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 acquistion 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 acquistion 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:

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

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

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

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

The Rateable valuation formula is being changed as part of the review process. Instead of applying the formula above, each Local Authority is coming up with a Net Annual Value ("NAV") as set out in the Certificate of Valuation which is issued by the Valuation Office. This is calculated as the Annual Rental Value of the windfarm and also takes into account the overall profitability of the windfarm. Based on the reviews carried out to date, there 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 initatives 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 commerical 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.

Italy

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'.

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 installments, 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 for the period from 1st January 2023 to 31 December 2023 (or –provided that, by 31 December 2023, the seller has accepted the order and at least 20 percent of the purchase cost has been paid –30 June 2024) in the capital equipment indicated in Attachment A to Law no. 232/2016 are capped at EUR 20 million and the tax credit amounts to (i) 20 percent of the first EUR 2.5 million invested; (ii) 10 percent of the investments between EUR 2.5 million and EUR 10 million and (iii) 5 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 1 million and the tax credit amounts to 20 percent of the cost for the

investments made up to 31 December 2023, to 15 percent for the investments made in the period 1 January 2024 to 31 December 2024 and to 10 percent for the made in the period 1 January 2025 to 31 December 2025 .

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.

These last investments must be made between 1 January 2022 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.

Budget Law for FY2023 that will be enacted within 31 December 2023 could potentially modify the above percentages and investments' theresholds.

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 installments 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

The first offshore wind farm built in Italy – and the first such project in the Mediterranean – has been completed, commissioned and inaugurated in Taranto in April 2022.

The first wind turbine was installed at the project site in February, with four 3 MW units in place by mid-March and seven in April.

In addition, Italy has 118 offshore wind farm projects of none where construction has progressed enough to connect the turbines and generate electrivity, nore are in the build phase and two are either consented or have applied for consent.

For now, ordinary corporate taxation rules are expected to apply.

Japan

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.

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

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 ± 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 2024.

Korea

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

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). 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:

- Straight-line or declining-balance method for tangible fixed assets, other than plant and buildings.
- 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 ±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 ("VAT-able 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.

Lithuania

General

Currently Lithuania has a number of operative onshore wind farms, including several onshore wind farms currently under construction. On 31 March 2022 Lithuanian Parliament adopted a package of laws for the development of offshore wind energy in the Baltic Sea and gave the green light to the emergence of the first offshore wind farm in Lithuania. The auction for the developer of the first offshore wind farm is planned to be announced in II half of 2023. The park is expected to be operational as early as 2028.

As development of offshore activities in Lithuania currently have no precedent, Lithuanian Government has not yet established any specific rules regarding taxation of offshore activities in Lithuania. Thus, the provided summary is applicable only to the onshore wind farms.

Corporate income tax (CIT)

Companies operating the onshore wind farms in Lithuania are subject to the same CIT rules that apply to other companies. Lithuanian statutory CIT rate is 15%. Taxable profits are arrived at deducting tax exempt income, allowable and partly allowable expenses from taxable income. Also, there are specific tax rules that govern the tax treatment of certain income and costs (e.g. tax depreciation, tax incentives related to fixed assets, the deductibility of interest, provisions, etc.) which means the taxable result may deviate from the accounts. Tax losses can be off-set against taxable profits and grouping tax losses are applicable.

Capital gains (participation exemption)

Capital gains are tax exempt and capital losses are non-tax deductible, if they are derived from the transfer of shares of an entity that is registered in Lithuania or another EEA country, or in a country which Lithuania has a double tax treaty with and is subject to CIT or equivalent tax (participation requirement: more than 10% of shares held continuously for at least 2 years). If the transfer of shares takes place during a corporate reorganization, the minimum holding period is 3 years.

Tax depreciation

Based on current tax legislation no specific rules are provided with regards to deprecation periods for windmills. Depreciation of fixed assets is usually calculated from the acquisition cost on a linear basis or using a double declining balance method over periods as outlined in the Lithuanian Law on CIT. Wind farm assets, depending on the type, are allocated to the "ordinary" depreciation groups. The minimum depreciation periods for the relevant fixed assets are the following:

- Installations (structures) - 8 years using a straight-line method. This may be draining systems, turbines, fundaments and other related constructions;
- Machinery and equipment - 5 years using a straight-line or double declining balance method. This may be windmills, including gear, rotor, generator, control equipment etc.

In Lithuania the company is allowed to use different depreciation periods for the financial accounting and tax accounting purposes. The above-mentioned restrictions for minimal depreciation periods and depreciation calculation types are set for tax accounting purposes.

Investment incentive for certain groups of fixed assets (applicable 2009-2023)

Investment project incentive is the most relevant CIT incentive offered by Lithuanian legislation regarding wind farm renewable energy business. By applying investment project incentive, the company could reduce its taxable profit for the current year up to 100% based on the amount invested (to the assets that meet certain criteria). If the expenses of the investment project exceed 100% of the taxable profit, these expenses can be carried forward for the next 4 taxable years.

Investment incentive is applied until 2023, although it is likely to be extended as it has already been done in the past.

Thin capitalization and interest limitation

A certain part of interest paid to a controlling lender may not be deductible for CIT purposes. Under the thin capitalization rules, the non-deductible part of interest expenses is calculated based on a debt/equity ratio of 4:1

As of 1 January 2019, new interest limitation rule came into force. The exceeding borrowing costs shall be deductible in the tax period in which they are incurred only up to 30% of the taxpayer's taxable EBITDA. This restriction does not apply if interest expenses do not exceed EUR 3 million. Special rules apply to calculation of interest, EBITDA and group interest expenses. Interest limitation and thin capitalization rules apply simultaneously.

Tax losses

Ordinary tax losses can be carried forward indefinitely if a taxpayer continues to perform business activities from which such losses occurred. Ordinary tax losses carried forward can only be set off against up to 70% of the calculated taxable profits of the taxable period. Capital losses from the disposal of securities or financial derivatives can be carried forward for 5 years and exclusively to set off gains from the disposal of securities or financial derivatives (applicable for non-financial institutions).

Grouping

Tax loss of a company incurred for the taxable period may be set off against the respective profit of another company forming a group provided the following criteria are met: the parent company directly or indirectly owns at least two-thirds of the shares in subsidiaries; and the transfer of losses is performed between companies that have continuously been members of the group for at least 2 years, or if the participants of the transfer have been a part of the group since their incorporation and will be part of the group for at least 2 years.

Grouping with a foreign loss is possible where the foreign entity transferring the loss is a tax resident in the EU and where there is no possibility to carry forward respective loss in that foreign country; additionally, such loss has to be calculated according to the rules of the Lithuanian Law on CIT.

Transfer pricing

If the value of a transaction conducted between associated persons 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.

Withholding tax

Dividends

Under the main rule Lithuania levies a 15% withholding tax (WHT) on outbound dividends. However, there are exemptions based on domestic CIT law as well as under applicable double tax treaties. Hence, dividends paid to a company holding not less than 10% of the shares granting the same percentage of votes for at least 12 months are tax exempt, except for dividends paid to tax haven countries.

Lithuania has implemented the anti-avoidance rules suggested by the EU Parent-Subsidiary Directive as of 2016. To note, based on the special anti-avoidance provisions tax exemptions for dividends may not apply where the main purpose (or one of the main purposes of the arrangement) is obtaining a tax advantage.

It is possible to pay interim dividends in Lithuania.

Interest and royalties

Interest is subject to a 10% WHT rate. However, interest paid to an EEA company, or to a company registered in a country which Lithuania has a double taxation treaty with, is tax exempt.

Royalties are generally subject to a 10% WHT rate. Royalties paid to associated EU companies are exempt from WHT. Two companies are deemed to be associated companies if one of them directly holds at least 25% of the capital of the other, or a third EU company holds directly at least 25% of the capital of these two companies. A minimum holding period of 2 years is required.

Real estate tax (RET)

Real estate located in Lithuania is subject to real estate tax. RET is paid by entities owning real estate or leasing it form individuals. RET rates for legal entities range from 0.5% to 3% of the taxable value of real estate. The particular rate is established by the local municipalities (by 1 July of each year to cover the following year). Engineered structures (majority of wind farm assets, windmills) are valued using restoration cost method. Usually only the foundation of windmill is subject to

RET (mast, turbine and wings are treated as movable property). However, it may depend on the type of windmill.

Land tax and land lease tax

Land tax is paid by the owners of private land. The land tax rates range from 0.01% to 4% of the taxable value. The rates are established by local municipalities by 1 July to cover the following year (or they are set by 1 December in specific years). Land tax is paid annually for the whole calendar year according to the taxable value of the land owned on 30 June of the current year. The taxable value is established based on the mass valuation method, which is intended to reflect the market price of the land.

Legal entities and individuals leasing state or municipality owned land must pay land lease tax, which is not less than 0.1% and not higher than 4% of the land value. A precise rate and payment dates for land lease tax are established by the local municipality in each individual case. The land value on which the land lease tax is estimated according to special rules is stated in the land lease agreement.

Value added tax

In general, a company specialized in the development and exploitation of windfarms qualifies as a taxable person for VAT purposes. Currently, the standard VAT rate (including supply of electricity) in Lithuania is 21% when transactions are deemed to take place in Lithuania for VAT purposes. If a company being a VAT payer uses the acquired goods, services for its VAT taxable activities, the incurred input VAT can be recovered.

In Lithuania, qualifying work in relation to immoveable property (e.g. construction) is subject to the local VAT reverse charge mechanism (certain conditions apply).

Excise tax

According to the Lithuanian Law on Excise Duties, electricity is subject to excise duties. A taxpayer is subject to tax if the electricity is:

- sold to an unlicensed person (licenses are regulated by the Lithuanian Law on Electric Energy);
- delivered to unlicensed person from another EU state;
- imported by unlicensed person;
- consumed for own use by licensed person or by the producer of electricity.

The rate of excise duties depends on use of electricity:

- excise rate is EUR 0.52 per MWh if the electricity is consumed for purposes of economic activity;
- in all other cases the excise rate is EUR 1.01 per MWh.

However, among other exemptions, if electricity is generated using renewable energy sources, it is exempt from excise duty. The declaration of excise duties is not filed if there is no payable excise duty.

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 taxpayers) and to non-Dutch resident companies (foreign taxpayers).

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

In 2023 the Dutch corporate income tax rate amounts to 25.8%. A reduced 19% tax rate applies to the first EUR 200,000 of taxable profits.

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[16].
The general rule is that depreciation covers the useful life of the asset. In practise we see that the depreciation period of windmills for tax purposes is in line with the economic useful life of a windmill which is currently estimated at at least 25 years. As the technical lifetime of windmills, specifically at sea, is increasing and permits may be granted for longer periods, the depreciation term is subject to more scrutiny by the Dutch tax authorities so the depreciation term could increase in time.

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). Windmills are however not considered as buildings for Dutch tax depreciation purposes and, therefore, this minimum value should not apply.

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

In addition to the ordinary depreciation regulations, a temporary free depreciation scheme 2023 was introduced. Under this scheme, a taxpayer can in 2023, broadly and subject to conditions, freely depreciate in one go up to a maximum of 50% of the purchase or production costs of a designated operating asset. Free depreciation means that a business itself decides how much of an investment will be deducted from the profit for tax purposes. The remainder of the depreciation potential is depreciated normally, even in the investment year. Ultimately the same amount of tax is paid as would be paid without free depreciation, but the scheme may provide a liquidity advantage. The 2023 free depreciation schema is not available for buildings but as a windmill does not qualify as a building this temporarily 2023 facility can be applied for investments in new windmills in 2023 as well.

A tax deductible decommissioning provision may be set up to cover future decommissioning costs of the windmills. The method for determining the yearly contribution for tax purposes could deviate from the commercial calculation method.

Grants and allowances

Grant for sustainable energy production and climate transition (SDE++, Subsidieregeling Duurzame Energie)

The SDE++ grant potentially offers financial aid for the production of renewable energy or for applying CO2-reducing techniques. Hydrogen by electrolysis which can be part of an offshore wind farm project is included as qualifying technique for the SDE++ grant. This subsidy is intended for companies and organisations (non-profit and otherwise) in sectors such as industry, mobility, electricity, agriculture and the built environment. The SDE++ is expected to be open before the summer of 2023. The amount of funding depends on various factors, including the exact technical nature and scale of the project and the energy produced.

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 at sea are currently not included on the list. However, certain related environmental assets (for example safeguarding sea life) could be qualifying. If windfarms are combined with hydrogen plants, the additional tax allowances may be available for that combined part of the business. Please note that in certain situations there can be no overlap with the SDE++ grant.

Specific conditions and requirements apply. Review based on the facts at hand and applicable yearly list is required. If applicable, additional deductions up to 45.5% of the qualifying asset may apply. In certain scenarios, free depreciation of 75% of the asset value may be applied as well in addition to the allowance for the qualifying assets.

Municipal real estate tax

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

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

Value Added Tax

Taxable Person

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

VAT treatment of the activities

The economic activities resulting from owning and/or operating a windfarm vary dependent on the exact business model (e.g. leasing the wind farm to third parties, supplying energy to re-sellers or supplying energy to end users), however such activities are typically VAT taxed at the standard VAT rate of currently 21%. In case an offshore windfarm is located entirely outside of the 12-mile zone, the supplies may in theory in some cases be deemed out of scope of Dutch VAT or 0% VAT rated, however we are aware that the Dutch tax authorities in practice take the position that supplies outside of the 12-mile zone are also subject to 21% VAT.

The supply of electricity to a recipient who qualifies as a reseller (e.g. electricity trader) for the purposes of this provision is VAT taxable where the recipient is established or has its permanent establishment to which the electricity is supplied. In this context, a reseller is considered to be the entrepreneur whose main activity in relation to the acquisition of energy is the subsequent resale of this energy and whose own consumption of those products is negligible. If the place of supply is in the Netherlands, the supplier of the energy must in principle charge and remit the VAT amount due in its VAT return. However, if the supplier is not established in the Netherlands, the VAT amount will be reverse charged to the recipient if the recipient is in the possession of a Dutch VAT identification number.

Based on Article 119a EU VAT Directive, EU Member States can opt (up to and including June 30, 2022) to apply a local reverse charge mechanism on the supply of gas and energy to a taxable dealer as defined in Article 38 paragraph 2 VAT Directive. The Netherlands has not opted to implement this provision in the Dutch VAT Act.

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 offshore 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 phase

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. 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.

Draft bill on inframarginal electricity levy

In October 2022 the European Commission decided to impose, by means of a Regulation, a mandatory cap on the market revenues of certain electricity producers. In order to implement this in the Netherlands, a draft bill was published in the beginning of 2023, that must introduce a temporary levy on the market revenues from inframarginal electricity production. This concerns electricity generated in the Netherlands or in the Dutch territorial waters of the North Sea, which has been fed into the electricity grid or into a direct line of which the power plant has an installed capacity of 1 megawatt (MW) or more. Only electricity generated with inframarginal energy sources such as wind energy as well as coal, fall under the levy. The aim is to introduce the levy with retroactive effect to 1 December 2022; the entire levy period will cover the period 1 December 2022 through 30 June 2023. The rate is 90% of the taxable market revenues in the levy period. The draft bill contains a general exempt amount of EUR 130 per MWh which applies to wind energy.

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 and/or customs duty compliance obligations.

New Zealand

Corporate income tax

Company structures are most commonly used in New Zealand to hold wind farm assets. However, limited liability partnerships are also a viable option.

Taxation of a company structure

All companies in New Zealand are subject to company income tax. The company tax rate is 28%. 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 tax liability can also be offset through utilisation of tax losses.

Taxation of a limited liability partnership

A limited liability partnership ("LLP") is a similar to a company in that an LLP is a separate legal entity. LLPs must have at least one limited partner and one general partner.

The limited partner is a passive investor and is only liable for debts to the extent of their capital contribution, while general partners are jointly liable along with other general partners for the debts and liabilities of the partnership.

For tax purposes a LLP is treated as a transparent entity (unless it is publicly listed). As a result, income and expenses flow through the limited partnership to the partners. Therefore, the limited partnership itself will not be taxed; instead, partners will be taxed individually.

The taxable income is calculated in the same manner as for a company.

Exit implications

New Zealand does not have a broad capital gains tax regime. However capital gains are taxed in certain situations.

The tax implications on exit will depend on whether the shares of the entity are held on revenue or capital account. Generally, gains made from a sale of shares that are held on revenue account are taxable, and any loss arising from a sale of shares held on revenue account are deductible. Conversely, gains made from a sale of shares that are held on capital account are not taxable and any loss made from a sale of shares held on capital account are not deductible.

Business continuity package

In March of 2021 the New Zealand Government released its "business continuity package" which contained several tax initiatives to provide relief to taxpayers as a result of the COVID-19 Pandemic. Specifically, relevant to businesses that hold wind farm assets were changes made to non-residential building depreciation and the 'Research and Development Tax Incentive' ("RDTI") program.

Non-residential building depreciation

Depreciation on commercial and industrial buildings has been reintroduced from the 2020-21 income year. Applicable buildings in the wind farm space such as buildings that house control centres will be able to be depreciated using the diminishing value method at a rate of 2 percent per annum or the straight-line method at a rate of 1.5 percent per annum.

Research and Development Tax Incentive

The New Zealand government introduced the RDTI in the 2019/20 year. The RDTI is a mechanism for encouraging innovation and growth in New Zealand businesses. Businesses can claim a 15% tax credit in respect of expenditure on research and development incurred in New Zealand. This credit can be used to offset against income tax liabilities.

Originally refundability was restricted to a maximum pay-out of NZ$255,000 subject to meeting certain criteria. For the 2020/21 income year the NZ$255,000 maximum pay-out has been removed and specific criteria has been removed/added to enable more businesses to be able to participate in the RDTI who may not have been able to under the original refundability rules.

There is also the possibility of the tax credit to be cashed out if a business is not in a tax paying position.

Expenditure and Depreciation

In August of 2022 the New Zealand Government introduced a bill which contained new legislation that will affect the way in which distribution networks are depreciated. Businesses that hold wind power assets as part of an electricity distribution network will no longer be able to take a holistic network approach for calculating depreciation in relation to network assets. Instead, operators of utilities networks will need to apply a "component approach" to expenditure incurred on their distribution assets (meaning expenditure on such assets will be capital in nature). Utilities distribution assets will be a defined term which will help taxpayers to identify the individual assets within a distribution network.

These proposed amendments are intended to be effective from the 2024-2025 income year for distribution network taxpayers that have previously filed a return using the holistic network approach for calculating depreciation. However, as at the date of this memo, the bill has not yet been enacted.

Tax loss carry-forward

Prima facie, shareholder continuity of 49% must be maintained for a company to carry forward and utilise tax losses in future tax years. There is no expiration of tax losses to the extent that shareholder continuity of 49% is maintained.

The business continuity test (the BCT) supplements the shareholder continuity test for the carry forward of tax losses. The BCT allows tax losses to be carried forward if shareholder continuity is not maintained (at the minimum of 49%) to the extent that the same or similar business is carried on for five years following the loss of shareholder continuity. This test only applies to losses from the 2013-14 income year and onwards subject to the criteria above being satisfied.

The effect of GST registration is that the GST registered entity will be required to remit GST on its taxable supplies in its GST return. GST returns can be filed monthly, two-monthly or six-monthly subject to meeting certain sales level thresholds.

Non-residents are also required to be registered for GST if:

- they are supplying goods that are in New Zealand; or
- they supply of services that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed.

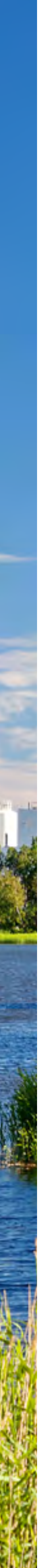
However, if the non-resident supplies such goods or services to a GST registered entity then they are not required to register for GST (although it is common for non-resident entities to register for GST in order to claim input tax credits on GST costs incurred).

State taxes

There is no state tax in New Zealand

Special tax regime

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



Dividend regime

New Zealand resident shareholders

Imputation credits are generated by payments of income tax (including resident withholding tax deducted from income derived) and can be attached to dividends to relieve double taxation of dividend income for New Zealand resident shareholders. Imputation credits are effectively a transfer of corporate tax paid to shareholders to offset against income tax on the dividends.

Shareholder continuity of 66% must be maintained for a company to carry forward imputation credits to future years. There is no expiration of imputation credits to the extent that shareholder continuity of 66% is maintained. Note the BCT does not apply to enable the carry forward of imputation credits.

Non-resident shareholders

Dividends paid to non-resident shareholders will have non-resident withholding tax ("NRWT") deducted at the rate applicable to the country of the shareholders' residence. The rate at which NRWT is deducted is determined based on the double tax agreement between New Zealand and the relevant country.

The requirement to deduct NRWT means that non-resident shareholders are disadvantaged as they receive less cash in hand from a dividend than a New Zealand resident shareholder would. Accordingly, the New Zealand government allows resident companies to pay a 'supplementary dividend' to its non-resident shareholders, which has the effect of compensating the non-resident shareholders for the NRWT suffered on an imputed dividend.

The company receives a tax credit for the supplementary dividend paid, referred to as the foreign income tax credit ("FITC"). Ultimately, the payment of a supplementary dividend means the non-resident shareholders receive the same amount of cash in hand as New Zealand resident shareholders would.

Goods and Services Tax

GST registration

Goods and Services Tax ("GST") is a tax on the supply of most goods and services in New Zealand and also applies to imported goods and certain imported services. The standard rate of 15% is applied to all goods and services to which GST applies unless the supply qualifies for a zero rate of GST.

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

Registration is only available if an entity carries on "taxable activity". This is an activity that is carried on continuously or regularly and involves the making of supplies for the payment of money or other consideration, regardless of whether the activity is for the purpose of making a profit. An entity that carries on a taxable activity is required to register for GST if the value of its supplies in either the previous 12 months or the following 12 months is NZ$60,000 or more. GST registration is optional if an entity makes taxable supplies at or below that threshold.

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.

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 applied to fixed assets acquired from 19 June 2015 up to and including the income year 2021, provided the work on the project did not commence before 19 June 2015. From the end of 2021, the favorable depreciation rules are therefore being phased out. Wind power investments made post 2021 are 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.

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.

Production tax

Up until recently, there was no special tax regime for wind power production in Norway. However, for 2022, the Government introduced a production tax on onshore wind power production. The tax is designed as an ordinary excise duty levied on both new and existing wind farms subject to licensing pursuant to the Energy Act, meaning wind farms with more than five turbines or a total installed capacity of at least 1 MW. For 2023, the production tax was increased from NOK 0.01 to 0.02 per kWh.

Resource rent tax

Near the end of 2022, the Ministry of Finance proposed a comprehensive taxation model for onshore wind power, where a resource rent tax effective from the fiscal year 2023 was proposed introduced on onshore wind power production. The proposal was inter alia based on a report from the Norwegian Water Resources and Energy Directorate (NVE) stating that onshore wind power production is the most cost-effective power producing technology in Norway today. Furthermore, the Ministry is of the view that the development in power prices and costs related to onshore wind power production will give rise to a positive resource rent going forward. This view is also based on calculations from Statistics Norway showing a positive resource rent in onshore wind power production for 2021. The proposal is sent for consultation and the deadline for submitting responses to the consultation paper is 15 March 2023.

Based on the proposal, the resource rent tax is designed as a neutral cash-flow tax with immediate deduction for new investment costs, i.e. investments made in 2023 and later. The effective tax rate is proposed set at 40 per cent corresponding to a formal tax rate of 51.3 per cent as a separately calculated corporate income tax ("resource rent-related corporate tax") is deductible, which will lead to a total marginal tax of 62 per cent. The resource rent tax liability will apply to owners of onshore wind farms subject to licensing under the Norwegian Energy Act, and the resource rent tax will be calculated per wind farm.

The basis for resource rent tax should be the value of the net wind power production volume in the income year and in addition income from sales of Guarantees of Origin and Electricity certificates, and potential gains/loss related to realisation of assets used in the power production.

The value of the power production should as the main rule be based on spot market prices in the corresponding time section, fixed hour per hour. Exemptions from spot market price are proposed for power production related to price hedging agreements in the form of physical delivery of power at a fixed price, and for financial hedging agreements entered before 28 September 2022. In addition, the Ministry proposes an exemption for standard fixed-price agreements in the end-user sector. This production is proposed valued at contract price or secured price.

Deductions are proposed allowed for costs incurred in connection with the resource rent tax liable business, i.e. the wind power production. Relevant costs include operating costs, costs related to new investments, property tax and the above mentioned "resource rent related corporate income tax", etc. Financial costs, sales and marketing costs and land lease are not deductible.

New investments that are immediately deducted for resource rent tax purposes, should be depreciated when calculating the "resource rent related corporate income tax".

For historical investments already capitalised, it is proposed that deductions for depreciations should be allowed for the remaining taxable value in accordance with the declining balance method as for ordinary corporate income tax. For fixed assets that have been or are subject to favourable depreciation rules (accelerated depreciation

over five years), the remaining taxable value may be low. The Ministry opens for a solution where the remaining taxable value for fixed assets covered by the accelerated depreciation rules is determined as if they had been depreciated in line with the declining balance method.

In case of a negative resource rent income, the deficit could be carried forward with addition of a risk-free interest rate and be deducted from positive calculated resource rent income in subsequent years. The interest rate is proposed set at the annual average interest amount on treasury bills with a remaining 12-month term to maturity, corrected to the interest rate after tax on ordinary income. The applicable interest rate will probably be published by the Ministry in January in the year following the relevant financial year.

A separately calculated corporate income tax is deducted from the basis for resource rent income. If the basis of the resource rent related corporate income tax (EBIT) is negative, the negative amount can be carried forward and be deducted in subsequent years.

Natural resource tax

To ensure that a fair share of the value created from the utilization of onshore wind power will benefit the local municipalities/counties, parts of the resource rent tax is proposed redistributed to the local government sector through a natural resource tax of NOK 0.013 per kWh. The natural resource tax is proposed levied on resource rent-taxable wind farms from 1 January 2023. The tax should be calculated per wind farm based on total production in the income year. Production should be valued based the same principles as suggested for resource rent tax.

The natural resource tax and the production tax will be set of NOK by NOK in the assessed resource rent tax payable. Should the natural resource tax / production tax exceed assessed resource rent tax payable for the wind farm, the excess amount may be carried forward indefinitely, with interest, and deducted from positive assessed resource rent tax in subsequent years.

High-price contribution (windfall tax)

Furthermore, a high-price contribution (windfall tax) has been introduced, equivalent to 23 per cent of the price above NOK 0.7 per kWh. The power price is calculated from a volume-weighted average per month by dividing the month's power production income by the power production made the same month. The high-price contribution applies from 1 January 2023 for wind farms that are subject to licensing pursuant to the Energy Act Regulations. According to the Ministry, the high-price contribution will only apply until the end of 2024 at the latest.

Offshore Wind

Norway does not have operative offshore wind farms connected to the power grid, nor any offshore wind farms currently under construction. However, the Norwegian Government has ambitions to allocate areas suitable for 30 GW offshore wind by 2040. In relation to this, NVE has identified two offshore areas as especially suitable for facilitating wind farms, namely Utsira Nord and Sørlige Nordsjø II. In 2020, the areas opened for renewable energy production, and the Norwegian Government aims to tender the first phase of Sørlige Nordsjø II and Utsira Nord by the end of the first quarter of 2023.

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.

Pakistan

Income tax

Profits and gains from power generation, including wind power, are exempt from tax in Pakistan, for projects that have already been installed. The Government is however in process of phasing out this exemption and it will not be available to those projects who receive a 'Letter of Support' [LoS] after 30th June 2023 (including those who have received LoI before 30th June 2021 but fail to obtain LoS by 30th June 2023). Such projects will be required to pay corporate tax on net income basis at the rate of 29%, or 17% of accounting profit as 'alternate corporate tax' [ACT], whichever is higher. The ACT, insofar it exceeds corporate tax, can be carried forward for adjustment against corporate tax liability for up to next ten (10) years.

In determination of net income, generally all expenses are deductible insofar they are incurred for the purposes of business, excluding those paid in cash (except where allowed) or paid without withholding tax (in absence of a tax exemption) or 'excess interest expense' under the 'thin capitalization' rule. In addition, a first-year allowance at 90% of the cost of depreciable assets is admissible in the first year of operations.

The present exemption on profits and gains of power generation does not extend to any ancillary income that the project may earn, such as interest on bank accounts. However, under a separate provision in the tax law, income from sale of 'carbon credits' is tax exempt.

In case of expenses exceeding revenue, that is a tax loss, such loss can be carried forward for up to six (06) tax years next, though deduction representing tax depreciation and first year allowance can be carried forward till it is fully off-set against business income for next years. However, it can only be adjusted against fifty percent (50%) of such income in a year.

With specific reference to deductibility of 'interest expense' on foreign loans from associated enterprises under the thin capitalization rules, it is to be noted that these rules are invoked insofar the expense relates to loan exceeding foreign debt to foreign equity by 3:1 and is non-taxable in Pakistan or taxable at a rate lower than corporate tax rate on assessment.

The local tax law requires the transactions between related parties to be on arm's length basis at fair market price that would have been agreed to between unrelated parties. Pakistan has adopted BEPS Action 13 regarding Transfer Pricing and the tax commissioner may demand 'local file' and 'master file' with respect to transactions with associates. A

‘Country by Country’ report is also required to be filed by enterprises who are part of a Group where the ultimate parent company’s country of residence has not signed the OECD Multilateral Instrument for Exchange of Information, such as USA.

Dividends:

As a general rule, income from dividend is subject to tax at 15% except in case of power generation companies where dvidend tax is a ‘pass-thorugh’ item in the electricty tarriff under the terms of the Power Purchase Agreement, in which case the tax rate is 7.5%. In the new agreements being signed by the Government, the tax is no more a pass-through and hence the standard rate of 15% applies except where a tax treaty provides for a lower rate. It is also to be noted that where dividend is paid by a company which has paid no tax either due to tax exemption or carry forward of business losses, the rate of dividend tax enhances to 25%. It is however not clarified whether the enhanced rate applies to existing power projects, whose exemption is limited to profits and gains from power generation and sale of carbon credits, and does not cover any other income.

Capital gains:

The domestic tax law distinguishes between listed and non-listed shares and separate regimes apply for the two. As a general rule, capital gain arising on disposal of shares in a company incorporated in Pakistan (considered tax resident) is Pakistan-sourced income and hence taxable in Pakistan; unless a tax treaty provides otherwise. Gain on disposal of shares of a non-resident company (such as that incorporated outside Pakistan) is also considered Pakistan-sourced in case such

shares derive their value wholly or principally from assets located in Pakistan. However, in that case too, provisions of a tax treaty override that of the local law.

Capital gain arising on disposal of shares that are not listed in Pakistan is taxable at the corporate rate of 29%.

In case the shares are listed on a stock exchange in Pakistan, the rate of tax varies from 2.5% to 15% according to the holding period with no taxation in case of holding period exceeding six (06) years.

Indirect Taxation

Sales tax (VAT) on power generation:

Supply of electricity attracts 17% sales tax in VAT mode, though certain items in the tariff such as bonus energy, and late payment charges are not subject to sales tax. The power producer is entitled to claim adjustment for input sales tax paid on plant and machinery imported or locally procured and services obtained locally for the power project. Import of plant and machinery for setting up a power project is exempt from sales tax.

As there will be no output sales tax prior to commencement of operations, the input sales tax paid during the said period (such as on locally procured goods and services) will be carried forward and adjusted over a period of time against output tax after commencement of operations.

For services obtained from outside Pakistan for the project, sales tax is payable by the project company in 'reverse charge' mode and is not considered admissible as input credit.

Customs duty:

Customs duty applies as per HS code of the imported item, however it does not exceed 5% during the project installation phase.

Others:

Certain levies under the labour laws are payable by industrial undertakings, including contribution to Workers Profit Participation Fund at 5% of accounting profit and Workers Welfare Fund computed at 2% of taxable income. These two levies are generally pass-through in tariff, unless provided otherwise in the Implementation Agreement signed between the Government of Pakistan and the project company. However, there are questions as to interpretation of provisions of these laws as well as the fact that both the provinces and the Federation have their laws and hence many power generation companies have taken up the matter of jurisdiction before the High Courts.

Phillipines

Corporate Income Tax

Companies in the Philippines are generally organize as domestic corporations or branch offices. These are generally subject to a regular corporate income tax (RCIT) rate of 25% on taxable income or minimum corporate income tax (MCIT) rate of 2% on gross income. The MCIT shall be applicable beginning from the 4th taxable year immediately following the year in which the corporation commenced its business operations and shall be payable whenever it is greater than the RCIT. The MCIT and RCIT will be calculated separately and whichever is higher shall be payable. Any excess of the MCIT over the RCIT shall be carried forward and credited against the RCIT for the 3 immediately succeeding taxable years.

Taxable income means the pertinent items of gross income, as specified in the Philippine Tax Code, less the deductions authorized by the same code and other special laws (e.g., ordinary and necessary business expenses, interest expense, depreciation, research and development).

Gross income, meanwhile, means all income derived from whatever source including, but not limited to, income derived from business, gains derived from dealings in property, interests, rents, royalties, dividends.

Income tax returns are filed on a quarterly and annual basis. For the annual income tax return, the taxpayer must also submit, among others, financial statements audited by a certified public accountant.

Withholding Taxes

Expanded withholding tax (EWT)

Income payments made to local suppliers of goods and services are generally subject to EWT at varying rates. The most common income payments relate to professional services (5% to 15%), local suppliers of goods (1%) and non-professional services and other service contractors (2%), and lease (5%).

Withholding tax on compensation (WTC)

Employers are liable for WTC on the salaries and compensation paid to its employees based on a withholding tax table with progressive rates ranging from 0% to 35%.

Final withholding tax (FWT)

Income payments made to non-resident foreign corporations and non-resident foreign individuals not engaged in trade or business in the Philippines are generally subject to 25% FWT on the gross amount received. This rate may be reduced by invoking the provisions of the applicable tax treaties. Common payments include royalties, interests, and dividends.

Withholding tax returns are filed on a monthly, quarterly, and annual basis.

Value-Added Tax

The sale of goods and services rendered in the Philippines are generally subject to 12% value-added tax (VAT). However, the sale of power generated through renewable sources of energy such as wind power is subject to 0% VAT. 12% VAT is also imposed on the importation of goods.

Excess input VAT may be carried over to the succeeding periods. Excess input VAT attributable to VAT zero-rated sales (e.g., sale of power generated through renewable sources of energy) may also be the subject of a claim for refund. The claim must filed within 2 years from close of the taxable quarter when the zero-rated sales were made. Further, excess input VAT may also be the subject of a refund upon closure/cessation of taxpayer's business.

VAT returns are filed on a monthly and quarterly basis.

Local Taxes

Local business tax. The municipality/city where the taxpayer is registered may impose local business tax at a rate not exceeding 2% of gross sales or receipts of the preceding calendar year.

Real property tax (RPT)

The province where the real property is located may impose RPT at a rate not exceeding one 1% of the assessed value of real property. Meanwhile, real properties located in a city within the Metropolitan Manila area may be the subject of RPT not exceeding 2% of the assessed value of real property.

Incentives

Incentives under Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008 ("RE Law")

Qualified renewable energy (RE) developers such as Wind Power may be entitled to the following incentives under the RE Law:

- Income tax holiday (ITH) for the first 7 years of commercial operations.
- Duty-free importation of RE machinery, equipment and materials within the first 10 years upon issuance of a certification of an RE developer.
- Special realty tax rates on equipment and machinery.
- Net operating loss carry-over (NOLCO) – The NOLCO of the RE developer during the first 3 years from the start of commercial operation may be carried over for the next 7 consecutive taxable years following the year of such loss.
- Lower corporate tax rate – After the 7-year ITH, the RE developer shall pay a corporate tax of 10% of its taxable income, provided that the RE Developer shall pass on the savings to the end-users in the form of lower power rates.
- Accelerated depreciation – If an RE project fails to qualify to receive an ITH before full operation, it may apply for accelerated depreciation in its tax books and be taxed based on such.
- VAT zero-rating on local purchases – The purchases of local supply of goods, properties and services needed for the development, construction and installation of plant facilities shall be subject to 0% VAT. This applies to the whole process

of exploring and developing renewable energy sources up to its conversion into power which, in as interpreted by Philippine courts, may include importation of goods and purchase of services from non-residents.

- Cash incentive of RE developers for missionary electrification – An RE developer may be entitled to a cash generation-based incentive per kilowatt hour rate generated equivalent to 50% of the universal charge for power needed to service missionary areas where it operates the same.
- Tax exemption of carbon credits.
- Tax credit on domestic capital equipment and services – A tax credit equivalent to 100% of the value of the VAT and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer.

Incentives under the Tax Code, as amended by RA No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act ("CREATE Act")

Enterprises which do not qualify as RE developers but would engage in other activities under the Strategic Investment Priority Plan may be entitled to the following incentives available for domestic market enterprises:

- ITH of 4 to 7 years. The period of entitlement shall depend on the location and industry tier of the registered project or activity.
- Enhanced deductions of 5 years – This includes, among others, the following:
  - Additional depreciation allowance of 10% for buildings and additional 20% for machineries and equipment;
  - 50% additional deduction on the labor expenses incurred in the taxable year;
  - 100% additional deduction on research and development expense incurred in the taxable year;
  - 100% additional deduction on training expense incurred in the taxable year;
  - 50% additional deduction on domestic input expense incurred in the taxable year;
  - 50% additional deduction on power expense incurred in the taxable year;
  - The net operating loss during the first 3 years from start of commercial operation may be carried over as deduction from gross income within the next 5 consecutive years immediately following the year of such loss.
- Customs duty exemption on importation of capital equipment, raw materials, spare parts or accessories directly and exclusively used for the registered project.

Poland

Corporate income tax

Wind power companies in Poland which are established and operating as limited liability companies, joint-stock companies, limited joint-stock partnerships, limited partnerships and to some general partnerships fulfilling specific conditions. The corporate income tax rate is 19% (from 1 January 2021, a preferential rate of 9% applies to small taxpayers with annual turnover not exceeding EUR 2 million and to start-ups). The tax base comprises of revenue minus tax deductible costs. As a rule, in case of fixed assets with a value exceeding PLN 10,000.00 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 below.

- Foundation and tower of the wind power plant – 4,5%,
- Wind turbine – 7%,
- Cable lines – 10%.

Municipal real estate tax

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

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

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

Special regulations

General

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 by the annual inflation rate.

Offshore

In 2021 a tax on offshore wind power plants was introduced by the Act on promoting the production of electricity in offshore wind power plants. The taxpayer is an entity conducting business activity in the field of electricity generation in an offshore wind power plant. Based on the amended Energy Law, the amount of the concession fee for a given year is calculated as a product of the installed electric capacity of the offshore wind farm (expressed in MW) resulting from the concession for the production of electric energy in this offshore wind farm, and an appropriate coefficient set at an amount not higher than PLN 23,000/MW. The maximum value of concession fee is equal to PLN 2,500,000.

Onshore

The concession fee is a product of the revenue obtained by an entity from the sale of goods or services in its licensed activity, achieved in the year in which the obligation to pay the fee arose, and the relevant coefficient (pursuant to the Regulation of the Council of Ministers for the production of energy the coefficient is equal to 0.0005).

We would like to draw your attention to the fact that Polish regulations specify the distance from specific residential buildings at which a wind power plant may be built. 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.

Legislative works are currently underway on a special act the location of the wind power plant at a reduced distance to no less than 700 meters from the buildings after fulfilling certain conditions. Recently, the act has been passed by Sejm (lower chamber of the parliament) and currently the act is being processed in the Senat (higher chamber of the parliament). The date for completion of legislative process is not known.

Portugal

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 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.

In January 2023, the Portuguese Government launched a public consultation on the locations for offshore wind farms, aiming to reach a total installed capacity of 10 gigawatt by 2030.

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.

There is however a 17% reduced CIT rate applicable to "Small Mid Cap" companies. This rate shall apply only to the first EUR 50,000 of 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. 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

The carry forward of tax losses is no longer subject to time limitation (different carry forward periods were applied in the past).

The deduction of tax losses is limited to 65% of the taxable profit of the year.

Tax losses assessed in 2020 and 2021 benefit from an additional deduction of 10 percentage points (75% instead of 65%).

The ability to deduct tax losses following a change of ownership of more than 50 percent of the share capital of a company or of most of its voting rights is lost unless one can conclude that the operation does not have as main purpose, or one of its main purposes, the tax evasion which can be excluded in case there are valid economic reasons.

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.

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;
ii. Salary expenses and related social security, insurance and pension contributions;
iii. Taxes (such as local taxes);
iv. Financial expenses (it being noted that several tax rules limit the tax deductibility of said financial expenses, as addressed below);
v. Amortization and depreciation; and,
vi. 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.

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.

Incentive for the capitalization of companies

For periods starting after 1 January 2023, and envisaging the replacement of previous tax regimes, a new regime was introduced which consists in a deduction of an amount corresponding to 4.5% to net increases in "eligible equity" (if the taxable person qualifies as a micro, small, medium or small mid cap, the rate is increased to 5%).

This deduction is computed over the sum of the net increases in "eligible equity" that take place in each of the previous nine following tax periods. This deduction may not exceed, in each tax year, the higher of the following two limits: (i) €2,000,000 or (ii) 30% of EBITDA. In what respect amounts that would exceed this last limit a carry-forward mechanism for the following five years is in place.

For this regime, only net increases in equity that occur in tax periods beginning on or after 1 January 2023 are considered.

Generally, the following may be considered as eligible equity increases:

a. cash contributions made in connection with the incorporation of companies or the increase in the share capital of the beneficiary company;

b. contributions in kind made within the scope of the share capital increase that correspond to the conversion of credits into capital;
c. premiums for issuing of securities; and,
d. accounting profits of the year that are applied to retained earnings or, directly, to reserves or to an increase in share capital.

Some exceptions and additional requirements needs to be considered.

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% (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.

Moreover, the State Budget Law for 2021 introduced a new taxable transaction in the scope of RETT, according to which RETT will be triggered on the acquisition of shares of a company, namely the acquisition of shares of a non-listed public limited liability company ("sociedade anónima" or "S.A."), when the following cumulative conditions are fulfilled:

i. By that acquisition, by amortization or any other facts, the acquirer should retain at least 75% of the share capital of the company;
ii. The real estate asset value of the company is, directly or indirectly, composed by more than 50% of real estate assets located in Portugal, considering the balance sheet of the immovable properties at stake or,

if higher, the property tax value of these properties;

iii. The immovable properties are not directly allocated to a commercial, industrial, or agricultural activity, excluding the activity of purchase and sale of real estate assets.

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% for any urban or rural property if the purchaser is a company resident in a listed tax haven, or by an entity dominated or controlled, directly or indirectly, by an entity which is tax resident in a 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 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;
- 10% for any urban or rural property if the purchaser is a company resident in a listed tax haven, or by an entity dominated or controlled, directly or indirectly, by an entity which is tax resident in a tax haven.

As laid down in article 44-A of the Tax Benefits Regime, urban immovable property exclusively allocated to the production of energy from renewable sources (e.g. wind) 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.

According to Circular Letter No. 8 of 4th October 2013, 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.

Moreover, the Portuguese Tax Authorities issued and established generic guidelines, through Circular Letter No. 2 of 3rd March 2021, according to which "wind and solar plants are realities that fulfil the structural elements of the building concept". In this sense, the Portuguese Tax Authorities expressed its latest understanding that wind and solar power plants should be qualified as urban industrial buildings. This Circular Letter revoked the previous understanding expressed in Circular Letter No. 8 of 2013.

The Portuguese Tax Authorities also clarified that for the purposes of assessing wind power stations, the substations, control buildings and wind towers that make up the power station must be taken into account, as well as the land where these buildings are located.

As regards the wind towers per se, only the foundation (reinforced concrete footing) and the tower (in steel or concrete) must be taken into account, not the blades, rotor and cabin (nacelle).

This latest understanding may be favourable to the taxpayers, as it limits the area of the building to the area effectively implanted in the soil, not considering the area occupied, namely, by the blades, which would significantly increase the same.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.
- On transfers of goods and supplies of ongoing 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 16 percent in the Autonomous Region of Azores.

The sale of electricity is subject to the standard VAT rate. However, a reduced VAT rate is applicable 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.

Additionally, there are a reduced VAT rate to other supplies to end users, namely, Law No. 19/2022, of 21st October, that introduced item 2.38 on the List I annexed to the VAT Code, which provides that, between 1st October 2022 and 31st December 2023, the supply of electricity for consumption, excluding its fixed components, in relation to a contracted power not exceeding 6.90 kVA, to the extent that it does not exceed a) 100 kWh per 30-day period; or b) 150 kWh per 30 day period, when acquired for the consumption of large families, i.e. families with five or more members.

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 issuance of invoices in accordance with the requirements foressen in article 36 (5) of the VAT Code and Decree-Law no. 28/2019, of February 15th (e.g.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 7 July), leisure-boats, helicopters, aircrafts and motorcycles;

- Fuel (except diesel, LPG and natural gas, deductible in 50 percent);
- Travel, accommodation, and meals.

Refund

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

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

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

VAT returns

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

The electronic data processing systems used by entities to register their operations, namely for invoicing and accounting purposes, must

fulfill the SAF-T 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 2023.

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.

Notwithstanding the above, give the high energy prices at MIBEL, the clawback mechanism has been suspended in Spain in Portugal since the third quarter of 2021, being expected to be further extended.

Romania

Corporate income tax

General

Companies that exploit a windfarm in Romania are subject to the normal Romanian 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.

Romania does not have any offshore windfarms.

Corporate tax rate

The general corporate income tax rate in Romania is 16%. For Romanian micro-enterprises with a turnover of up to 1,000,000 euros the tax rates are 1% for companies that have at least 1 employee or 3% for companies with no employees. However, starting from 1 January 2023 the tax rate will be 1% regardless the number of employees, and the turnover ceiling drops to 500,000 euros.

Windfall tax of 80% on electricity producers

As of 1 November 2021, a new law introduced the windfall tax on electricity producers (and windfarms producers are not exempted), which have to declare and pay monthly to the state budget a windfall tax of 80% on any additional revenues, that are calculated based on the difference between the monthly selling price of electricity and RON 450/MWh). The purpose of the law is to cap prices and clear invoices. The initial period of application was November 2021-March 2022, but the regime was extended via Government Emergency Ordinance until March 2023, for all energy producers, except for production capacities put into operation after the date of entry into force of the ordinance, that is, after 22 March 2022.

Tax consolidation

Tax consolidation has been made possible, optionally, starting from 1 January 2022, for corporate income tax, i.e. to offset the taxable profits of companies in a group against the tax losses of other jointly owned firms, directly or indirectly, if the member of the group which benefits from the offset holds a proportion of at least 75 % of the value/number of shareholdings or voting rights in the entity which incurs the tax losses, for an uninterrupted period of one year prior to the start of consolidation. The period of application of the system will be five fiscal years, after which the option may be renewed.

Initial losses

In principle, tax losses in Romania may be carried forward for 7 years. There is no carry back of losses. Changes in ownership do not affect carrying forward tax losses. Tax losses recorded by taxpayers which cease to exist as a result of reorganisations are transferred to the taxpayers which are the beneficiaries of these reorganisations.

Tax incentives

Small (up to 27 KW installed power) producers of renewable energy (individuals mostly) are exempt from income tax and social security contributions, as well as VAT. Also, to support the production of renewable energy, certain incentive schemes are available in Romania. From a corporate tax point of view, the most commonly applied tax incentive by energy companies in Romania is the "tax relief on reinvested profit".

Tax relief on reinvested profit

Corporate tax relief is available for profit reinvested in technological equipment, computer programs and the right to use computer programs, and investments in assets used in retrofitting, production and processing activities. A company that is eligible for the exemption will be able to deduct 16% of the investment made in assets from the corporate tax due.

The accelerated depreciation method cannot be applied for these assets. Equipment must also be kept for at least half its normal useful economic life in accordance with the applicable accounting rules, but for no more than 5 years. Otherwise, corporate tax is recalculated accordingly and late payment interest and penalties are imposed.

Depreciation rules

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

In Romania, wind turbine support towers and their foundations are considered buildings and for buildings only the straight-line method can be used. In practice, we often see buildings depreciated over a 40-60 years period.

Exit

A sale of shares in a Romanian company owning a windfarm (often referred to as "project company") by a non-resident is subject to capital gain tax in Romania. The tax rate is 16%.

A wide network of Double Taxation Avoidance Treaties concluded by Romania may allow non-residents to be taxed at a reduced rate, or to be exempt, subject to certain conditions being fulfilled (e.g. presenting a certificate of tax residence).

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 simplification measures and apply reverse charge for the applicable standard VAT rate of 19% when the transactions are deemed to take place in Romania for VAT purposes. Sales of energy to end-users are subject to the standard rate, but as of April 1st 2022, the VAT rate was reduced to 5% for households which have a monthly consumption below 300 KWh.

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 Romania, 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.

Local taxes

While, wind turbines are considered as “equipment” for real estate tax purposes in Romania, the wind turbine support towers and their foundations are considered buildings for purpose of local tax.

Other taxes

In principle, the supply of electricity in Romania attracts excise duties, in particular when the electricity is supplied to end users, although exemptions can apply depending on the use of the electricity (e.g. an exemption for excise duties applies for the use of electricity produced for own use)

However, delivery of energy produced from renewable sources (windmills qualify) is exempt from excise duties.

Serbia

Corporate income tax

Wind power companies in Serbia are taxed in the same way as other companies. The CIT rate in Serbia is flat and amounts to 15%. Tax period is a business year which as a rule coincides with the calendar year (it is possible to amend the tax year to align it with corporate which is different from the calendar year). Taxable profit is determined in the CIT return by adjusting the taxpayer's profit or loss declared in the P&L prepared in line with IAS and IFRS / IFRS for SME and local regulation, further adjusted in line with the CIT Law. Adjustments to the company's P&L result include certain disallowed costs, non-taxable revenues, TP adjustments as well as depreciation calculated in accordance with the CIT Law (i.e. tax depreciation).

Tax depreciation

Tax depreciation is assessed on all non-current assets. All fixed assets are divided into five tax depreciation groups. In general, tax depreciation is calculated for each asset separately using the straight-line method and a base consisting of the cost of the asset applying group rates from the table below.

Tax depreciation rates per group are presented in the table below:

Tax depreciation rates	
Group	**Type of asset**
I	Buildings, warehouses, oil pipelines, airport runways, etc.
II	Airplanes, air conditioners and other cooling, heating and air flow equipment, elevators, fences, office furniture, real estate with a useful life of less than 40 years, etc.
III	Cars, photocopies, trucks, equipment for production of electricity, all other fixed asset not specified separately in other group, investments in real estate of other taxpayer, etc.
IV	Equipment for air and water pollution control, oil well equipment, equipment form processing of minerals, returnable packing given to customers in the sale of products with the obligation to return, spare parts for airplanes, mobile telephone equipment and devices, fax machines and telegraph equipment, etc
V	Movable construction equipment, billboards, neon signs, computers and IT equipment, carpets, curtains, uniforms, etc.

In practice, the wind turbine in the accounting records is divided into parts that constitute immovable and movable property and accordingly various parts are classified into different tax depreciation groups. Land is not subject to depreciation.

Tax losses

The operating losses stated in the tax balance may be carried forward for five years and offset against operating profits. Capital losses may also be carried forward for five years and offset with capital gains only.

Thin cap and TP rules

The CIT Law provides that deductibility of interest from related party financing is tested both in line with thin capitalization and TP rules. Thin capitalization rules aim at restriction of excessive related party loan financing. Broadly, a debt to equity ratio of 4:1 must be satisfied for interest on the debt to be deemed deductible for tax purposes (except for banks and other financial institutions for which debt to equity ratio is 10:1), and there are special rules for its calculation.

After completing thin capitalization test, interest expenses should be further tested in line with the TP rules. The CIT Law provides that the taxpayer should disclose separately in the tax balance all transactions with related entities and to disclose transfer pricing adjustment (if any).

Tax incentives

Taxpayer could benefit from pro-rata Tax Holiday for a period of 10 years, if the following conditions are cumulatively met:

- Taxpayer invests at least RSD 1 billion in its fixed assets, or such amount is invested in taxpayer fixed assets by other entity. These assets would need to be put to use and paid to the supplier. The invested assets are used for performing of taxpayer registered activity in Serbia as well as any other activity inscribed in its Deed of incorporation/other internal document;
- Taxpayer employs during the investment period at least additional 100 qualifying employees for an indefinite period.

Conditions for application of the Tax Holiday would be met in the tax period in which the above requirements are cumulatively met (investment in fixed assets and employment). The 10-year period would start to run in the tax period in which the taxable profit before utilization of tax losses is realized after fulfillment of above investment and employment conditions.

Exit

In general, capital gains generated by a non-resident company through the sale of shares in a local Serbian entity is subject to 20% capital gains tax (CGT), unless otherwise is stipulated by the DTT between Serbia and country of income recipient's tax residence. Tax compliance requirements would exist regardless of whether the transfer of shares in Serbian company would be taxed in Serbia or not.

WHT

According to the CIT Law, payment of interest, dividends, royalties, service fees (i.e. fees for market research services, accounting and auditing services, other services in the field of legal and business consulting) and lease of movable and immovable properties in Serbia to non-resident companies is subject to WHT at the rate of 20%, unless otherwise prescribed by the relevant DTT. In addition, WHT is charged at 25% rate when payments of interest, royalties, lease and all types of service charges are made to non-resident companies based in a jurisdiction with a preferential tax system (i.e. tax havens).

Value added tax

VAT is assessed on the following:

- supplies of goods and services for business purposes by a taxpayer within the territory of Serbia; and
- the import of goods into Serbia.

Supply of electricity is considered a supply of goods to which general VAT rate of 20% is applied. A tax debtor is a taxpayer which performs supply of electricity. However, tax debtor is recipient of electricity in case of supply performed by VAT payer to another VAT payer which purchased the electricity for further sale (reverse charge).

Real estate transfer tax and property tax

In general, the transfer of ownership rights over real estate, which is not subject to VAT, is subject to transfer tax at a rate of 2.5%. The taxpayer is the seller.

In Serbia, tax on property is paid by the titleholder of the property rights (ownership, right of use, tenure, etc.). Property tax rate may not exceed 0.4%. Please note that in line with the Ministry of Finance opinion, wind turbines would be subject to property tax in Serbia. In this case, the whole turbine including basis, tower, rotor, blades etc. is subject to property tax.

KPMG

South Africa

Corporate income tax

Large-scale independent power producers (IPPs) in South Africa operate under the Department of Mineral Resources and 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% (to reduce to 27% for tax years ending on or after 31 March 2023), dividends tax is charged at 20% (although dividends declared between South African companies are exempt from dividends tax), and a withholding tax of 15% applies to interest paid to non-resident companies. Where a Double Tax Agreement is in place between South Africa and the jurisdiction in which the shareholder or creditor is tax resident, the withholding tax rate may be reduced, subject to certain required written declarations and undertakings which confirm the applicability of treaty relief, being in place.

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

Special tax regime

Capital allowances

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

Capital allowances are calculated with reference to the cost to the taxpayer of acquiring such renewable energy assets or of making capital improvements thereto. An assessment of which costs will qualify for capital allowances must be done on an asset-by-asset basis. It is therefore imperative that IPPs componentize their tax 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 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 crystalise financial implications of pollution, to encourage South Africans to take this into account in their future production, consumption and investment decisions. The tax is administered as part of South Africa's customs and excise system, and will be implemented in three phases: The first phase was initially extended to run from 1 June 2019 to 31 December 2022, the second phase from 2023 to 2030, and the third phase thereafter. The Carbon Tax Act was amended (as part of the 2022 Budget Review) to extend phase 1 until 31 December 2025.

Phase 1 includes numerous sector exemptions and allowances to reduce the initial impact on businesses, whilst encouraging the transition to a low carbon economy and meeting international climate action commitments.

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.

Spain

Corporate income tax

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

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

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

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

Main adjustments to the taxable base

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

Depreciation

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

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

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

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

Spanish CIT Law provides for other depreciation methods for CIT purposes, including accelerated depreciation, which could be tax efficient.

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:

- 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.

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.

In this regard, the European Court of Justice issued a judgment on March 3,2021 (case C-220/19) stating that this tax does not infringe EU Law. Therefore, it is applicable in Spain.

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%.

Tax on construction, installations and building works

Under Spanish Tax Law, the construction, installation and building works within a municipality where a license is required is a taxable event for the purposes of Tax on construction, installations and building works (in Spanish, "ICIO").

The taxable base is formed by the cost of the construction, installation or worksite.

In the case of wind projects, in 2010 the Spanish Supreme Court issued a judgement by stating that the taxable base includes the cost of the installed equipment as it is essential for the project.

The applicable tax rate depends on the municipality where the works are carried out with a maximum rate of 4%.

Sweden

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.

Machinery and equipment and acquired types of intangible assets with limited economic life are normally depreciated by the declining-

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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, Örnsköldsvik.
- 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"

Taiwan

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%).

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.

Tax Exemption and Reduction on Withholding tax for Cross-Border Service Fee

Besides the aforementioned tax incentives, there are also other regimes that are available to reduce the withholding tax burden for services remuneration paid to foreign companies for providing cross-border services to Taiwan companies.

In the case where the company that provides foreign services to Taiwan is a tax resident of a country that signed a tax treaty with Taiwan, the foreign company can seek to apply for tax exemption treatment provided under the business profits article in accordance with the provisions of double tax treaties. To be entitled to such benefits, pre-approval from competent tax authorities is required, and a retroactive claim within 5 years from the date of WHT is paid is applicable once approved. To date, Taiwan has signed agreements with 34 countries, in particular European countries such as the UK, Germany, the Netherlands, Denmark and other Asian countries such as Japan, Singapore, Malaysia, Australia, and India.

In addition, if the foreign company is located in a non-tax treaty country, but the service provided is regarded as "technical services", the foreign company can consider applying for Article 25 of the Income Tax Act. Upon obtaining pre-approval from tax authorities, the taxable income of the company is deemed as 15% of revenue derived in Taiwan, indicating the effective tax rate applicable is now reduced to 3%. Companies can also seek refund for paid WHT after approval.

Thailand

Corporate income tax

A juristic company or partnership incorporated in Thailand is subject to corporate income tax (CIT) rate assessed on its taxable profits derived from worldwide income. The CIT rate in Thailand is 20 percent. A reduced CIT rate is available for small and medium enterprises (SMEs), which are entities with paid-up capital not more than THB 5 million and earning total revenues from the sale of goods and provision of services not exceeding THB 30 million in each accounting year.

The tax system in Thailand is a self-assessment system, which requires a taxpayer to submit its tax returns to the Revenue Department, along with any tax payment due, in accordance with the provisions of the Revenue Code.

CIT returns and payments are made twice each year. A mid-year CIT return must be filed within two months after the end of the first six months of an accounting period. The mid-year CIT due is computed on one-half of the estimated net taxable profit for the full accounting period, except for certain companies, such as listed companies and financial institutions, that must calculate determine the tax liability on the actual net taxable profits for the first six months of the accounting period. The annual CIT return must be filed within 150 days after the end of an accounting period.

The due dates for all tax return filings and payments is extended by eight days if the taxpayer electronically files its tax returns.

Tax and non-tax incentives

The Board of Investment (BOI) grants tax and non-tax incentives to promote investments in renewable energy in Thailand. A BOI certificate is granted on a project-by-project basis; therefore, it is possible for a Thai company to hold multiple BOI certificates with different start and expiration dates. In such case, the taxpayer would be required to calculate profits on a project-by-project basis until expiration of the tax incentives.

Standard tax incentives

A company that obtains an investment promotion from the BOI should be entitled to tax privileges under the Investment Promotion Act. The tax incentives available for a company that produces electricity from wind energy include:

- Exemption of import duties on machinery;
- Exemption of import duties on raw materials used in R&D;
- Exemption of import duties on raw materials used in production for export; and

- CIT exemption and additional deductions:
  - Net profits generated from the promoted business activity exempt for CIT, with the CIT incentive expiring at the earlier of (1) eight years or (2) realizing CIT exemption benefits that reach the amount of investment (excluding the value of land and working capital) made in the promoted business activity;
  - Exemption from withholding tax deducted from dividends paid to shareholders that are (1) traced to profits generated from CIT exempt income, and (2) paid while the BOI tax incentive is valid;
  - Double deduction from the costs of transportation, electricity, and water supply; and
  - Additional 25 percent deduction of the cost of installation or construction of facilities.

Additional tax incentives

Additional tax incentives can be obtained through merit-based investments. Applicable to wind-power electricity producers are merit-based incentives for (1) competitiveness and enhancement investments or expenditures, and (2) decentralization investments.

A company that already has a BOI certificate can increase its tax exemption period from one to five additional years through "competitiveness and enhancement" investments or expenditures. The extension of the tax exemption period would depend on the ratio of investment capital or expenditures to total sales in the first three years of the project.

The types of investments or expenditures eligible for additional incentives include:

- R&D of technology and innovation;
- Donations to technology and personnel development funds, educational institutions, specialized training centers in science and technology;
- Training or job training to develop skills in technology, and innovation for students studying science and technology;
- Licensing fees for commercialized technologies developed in Thailand;
- Advanced technology trainings;
- Development of local suppliers of raw materials or parts; and
- Product and packaging designs.

Qualifying "decentralization" investments can provide the taxpayer a reduction of the CIT rate by 50 percent for five years after expiration of the tax exemption period.

A merit-based incentive for decentralization investments requires the project to be operated in one of 20 provinces with the lowest per capita income, which are Amnat Charoen, Bueng Kan, Buri Ram, Chaiyaphum, Kalasin, Mae Hong Son, Maha Sarakham, Mukdahan, Nakhon Phanom, Nan, Nong Bua Lamphu, Phrae, Roi Et, Sa Kaew, Sakhon Nakhon, Si Sa Ket, Sukhothai, Surin, Ubon Ratchatani, and Yasothon, but excluding border provinces in Southern Thailand and Special Economic Zones which have separate special incentive packages.

Tax incentives for enhancement measures

With the goal of enhancing competitiveness for manufacturing and service sectors, the BOI offers productivity enhancement measures, namely:

- Measure to improve the efficiency of energy conservation, alternative energy utilization or environmental impact mitigation;
- Measure to promote improvement in efficiency by upgrading and replacing machinery, such as implementation of robots and automation systems;
- Measure to improve the efficiency of research and development or engineering design;
- Measure to improve the efficiency of upgrading a production line to acquire international sustainability certification;
- Efficiency enhancement measure for digital technology adoption; and
- Supporting Industry 4.0 transformation, which is one of the government's initiatives to enhancement production lines.

An application must be filed with the BOI by the last working day of 2022 to qualify for these enhancement measures.

Additional capital investment of at least THB 1 million is required for the enhancement measures. A successful applicant can receive an extension of the tax exemption period; the extension period and maximum tax incentive will vary according to the measures.

Non-tax incentives

Non-tax incentives provided through the BOI include:

- Permission for up to 100 percent foreign ownership;
- Permission to own land;
- Permission to bring into Thailand skilled workers and experts to work in investment promoted activities;
- Permission for foreign nationals to enter the Kingdom for the purpose of studying investment opportunities; and
- Permit to take out or remit money abroad in foreign currency.

Depreciation rules

Capital expenditures or expenses for the addition, change, expansion, or improvement of an asset, but not for repair to maintain its present condition, are regarded as fixed asset cost that can be depreciated annually at the rate not exceeding the allowable rate of the Revenue Department.

The depreciation rates are varied depending on the categories of properties, as follows:

Type of Assets		Statutory Annual Depreciation Rates
1.	Buildings	
•	Permanent buildings	5 percent
•	Temporary buildings	100 percent
2.	Cost for acquisition of depletable natural resources	5 percent
3.	Cost of acquisition of leasehold rights	
•	Without a written lease agreement or with a written lease agreement that provides for renewal of the lease whereby the renewal condition allows the renewals of indefinite period	10 percent
•	With a written lease agreement that does not provide for renewal of the lease or that provides for renewal for a definite period	100 percent divided by the total number of years of the lease term plus renewable period
4.	Cost for acquisition of right in process, formulae, goodwill, trademark, business license, patent, copyright, or other right	
•	In case of indefinite term of use	10 percent
•	In case of definite term of use	100 percent divided by the number of years of usage
5.	Other properties, which by their nature, can deteriorate or depreciate in value, other than land and goods	20 percent

The straight-line basis is the most commonly method of depreciation in Thailand, but any generally accepted accounting method is permitted.

Tax losses

A taxpayer's net taxable loss can be carried forward to offset future taxable profits incurred over the five succeeding accounting periods. There is no provision for a loss carry-back in Thailand.

Taxable losses incurred during the BOI CIT exemption period can be used to reduce taxable income for up to five accounting periods after expiration of the CIT exemption period.

Tax credits

Thai CIT that has been withheld at source, and the mid-year tax paid by the taxpayer, are creditable against the tax due as calculated in the annual CIT return of the relevant accounting period.

In calculating a taxpayer's CIT liability, the taxpayer can claim a credit for foreign tax paid on its income that is also subject to Thai CIT. The foreign tax credit must not exceed the amount of Thai CIT payable assessable on the revenue derived from the business operation in the country where the foreign tax was paid.

Withholding taxes

A company is required to withhold tax at source upon paying certain types of assessable income. The withholding tax (WHT) obligations and WHT rates depend on the types of assessable income, whether the recipient is a legal entity or individual, and the tax residency of the income recipient.

Generally, WHT is deductible from payments made to Thai and non-Thai suppliers of services, and employees of the Thai taxpayer.

Remittance of certain types of assessable income to foreign companies not carrying on business in Thailand, broadly, are subject to WHT at the rate of 15 percent, except for dividend, which is subject to 10 percent WHT. Tax relief from WHT may be provided through the 61 double tax treaties in force with Thailand. WHT for dividend payments to shareholders can be exempt if the dividends are paid during a BOI tax exemption period, and the dividends are sourced to profits generated from the BOI promoted business activity that benefitted from CIT exemption.

Transfer pricing

All transactions must be carried out at the market price.

The Revenue Code has been amended to include rules for transfer pricing. The Revenue Code requires taxpayer to follow the arm's length principle when pricing related party transactions.

Transfer pricing rules require a Thai taxpayer with more than THB 200 million of revenues in a year to disclose all related parties and all transactions made with any related party. This transfer pricing disclosure is included in the annual CIT return. The taxpayer is required to maintain full transfer pricing documentation, and to provide the documentation to the Revenue Department if requested during a tax audit.

Value added tax

The statutory VAT rate in Thailand is 10 percent, but reduced to 7 percent through 30 September 2023. A 0 percent VAT rate is applied to following circumstances:

- Export of goods;
- Service provided in Thailand, but totally used in a foreign country; and
- Sales of goods and services between bonded warehouses or between enterprises located in a duty-free zone.

The supply of electricity is regarded as sales of goods which is subject to VAT.

A windfarm operator is required to register as a VAT operator once it has annual turnover from sales of goods or provision of services over THB 1.8 million. During the start-up period, an operator can choose to register for Thai VAT before it begins to generate revenue.

Payment of service fees to non-resident suppliers, and where the services are used in Thailand, are subject to VAT on a reverse charge basis. The Thai taxpayer, in this situation, is liable to pay VAT on behalf of the non-resident suppliers.

Importation of goods are also subject to VAT when the goods clear Thai Customs. The taxpayer will be required to pay import VAT and import duties directly to the Thai Customs Department.

Input VAT is creditable against a VAT operator’s output VAT on each month’s VAT return required to be filed with the Revenue Department. Input VAT is VAT paid on expenditures directly related to the operator’s VAT business. Output VAT is VAT charged to customers for the supply of goods and services.

The VAT operator is required to file a monthly VAT return, and remit a tax payment to the Thai Revenue if the output VAT exceeds the input VAT. An excessive input VAT balance is eligible for a refund or can carried forward to credit future output VAT.

Turkey

What are the opportunities offered by the Incentive System for investments in "Wind Turbines"?

1. Minimum Investment Amounts

Decree No. 2012/3305 lowered the minimum investment amount required for the issuance of incentive certificates for investments in the automotive industry. The aim is for more investments to benefit from the incentive system. Accordingly,

- The size of the investment required to be included in the scope of incentives is 3 million TL for Regions 1 and 2, and 1.5 million TL for Regions 3, 4, 5 and 6.

2. Investments in the Energy Sector Fall within the Scope of General Incentives and Regional Incentives. Energy sector investments covered by the general incentives are as follows:

- Licensed Wind Energy Investments

If we were to categorize the incentives for investments covered by the General Incentive into headings:

- Exemption from VAT,
- Exemption from Customs Duties,

3. The investments in the energy sector covered by the regional incentives are as follows:

- Unlicensed wind energy investments

Regional incentives minimum investment conditions

Investments benefiting from regional incentives must meet the following conditions.

- Electricity generation within the scope of an unlicensed activity
- Not exceeding the contractual authority in the affiliation agreement
- Wings sourced from domestic producers
- Generators sourced from domestic producers
- Turbines sourced from domestic producers

To categorize the incentives granted for investments under Regional Incentives into headings:

- Exemption from VAT,
- Exemption from Customs Duties,
- Allocation of Investment Sites
- 6 years of support for the Employer's Share of Insurance Premiums,
- 30% Investment Contribution Rate and 70% Tax Reduction,

If we were to categorize the support to be granted for priority investments into headings:

- Exemption from VAT,
- Exemption from Customs Duties,
- 7 years of support for the employer's share of insurance premiums,
- 40% investment contribution rate and 80% tax reduction,
- Interest subsidies up to 1,400 thousand TL.
- Allocation of Investment Sites

Taxation of wind energy

In addition to the tax advantages arising from the incentive, normal taxation provisions apply to wind energy. We can summarize this as follows.

- The normal corporate tax rate will be taken into account, except for the discounted corporate tax due to the incentive.
- They will use general income tax rates, except for incentive-based income tax exemptions.
- Likewise, normal VAT rates will be taken into account except for incentive-based VAT exemptions.

For detailed information on Turkey's current tax system, please see the "Investment in Turkey 2022 report": https://kpmgvergi.com/Content/Publications/InvestmentinTurkey2022_28072022_053732707177.pdf.

Uganda

Corporate income tax

Companies in Uganda are subject to income tax rate of 30%.

The taxable income of the company includes operating income from the wind farm, less allowable tax deductions such as repair and minor capital equipment expenditure, wear and tear of plant & equipment, initial allowance for eligible property placed into service for the first time during a year of income, industrial building deduction, 25% of the start-up costs among other allowable business expenses.

Tax adjusted losses are carried forward to the subsequent years of income and considered as an allowable deduction.

Any tax that has been withheld is used to reduce the tax payable for the year of income. Where there are foreign tax credits, the amount of tax credit allowed shall not exceed the Ugandan income tax rate.

Branch repatriated Profits.

In addition to the 30% corporate tax, where the company is registered as a branch, it will pay an additional 15% as tax on the branch repatriated profits for a year of income.

Withholding tax obligation.

The company is required to withhold 6% on any payment made for professional services.

Where the company is a gazetted withholding tax agent by notice issued by the Ministry of Finance, it is required to withhold tax at 6% on payments made for supply of goods and services where the consideration exceeds 1 million Ugandan shillings (USD 263.16).

The company is also required to account for and remit the withheld tax to Uganda Revenue Authority monthly by the 15th day of the month following the month when payment was made.

Exit implications

The tax implications on exit will arise where the company decides to dispose off its assets and the consideration received for the assets exceeds the cost base of the assets disposed off. Where the consideration exceeds the cost, the company would be required to pay 30% as tax on the gain on the disposal.

Capital gains is included as gross income in the corporate income tax return for the year of income in which the disposal takes place. In case of a loss on disposal, the company will be allowed the loss as a deduction if such is included in the gross income in the year of income in which the disposal occurred.

The company will not have to pay tax on a gain arising out of a disposal of its assets if such a disposal was involuntary and the proceeds from the disposal are reinvested in an asset of a like kind within one year of the disposal.

Value Added Tax (VAT)

VAT registration

The supply of wind power is not exempt from VAT and therefore will attract VAT at a rate of 18%. This is to be declared in the monthly VAT returns by the 15th day of the month following the month in which the supply relates.

An entity making taxable supplies is required to be registered for VAT within 25 days of the end of any period of three calendar months if;

- During that period the person made taxable supplies, the value of which exclusive of any tax exceeded one-quarter of the annual registration threshold of UGX 150m (USD 39,473.68) or
- At the beginning of any period of three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person during that period will exceed one-quarter of the annual registration threshold of UGX 150m (USD 39,473.68).

Exemption of supply to contractor and subcontractor of wind power projects

A supply of goods and services to the contractors and sub-contractors of a Wind energy Project is exempt from VAT. Please not that in practice, the supplier is required to obtain a confirmation from the tax authority in form a private ruling confirming the exemption status.

VAT on imported services

Where the company imports services, it will be required to account for VAT on imported services at a rate of 18%. VAT on imported services is not claimable and is a cost to the company

Recovery of input tax credits

Where the company is VAT registered, it is entitled to claim input tax credit for all taxable supplies made to it during the tax period including imports of goods. The company can also claim input tax credit for all goods and imports supplied to it prior to being registered provided the import or supply occurred 6months prior to date of VAT registration.

The VAT registered person is not entitled to claim any input tax in respect of a taxable supply for entertainment, repairs of passenger automobile or telephone services to the extent of 10%.

Customs taxes

Import duty will be payable by a Wind Power Operator on importation of goods that are not exempted under the 5th Schedule of the East African Community Customs Management Act.

This duty is computed on the ad valorem value of the goods as determined using the methods in 4th Schedule to the East African Community Customs Management Act. The import duty rate depends on the item being imported.

Stamp Duty

Lease of land

Where the company leases land to set up the wind power plant, it will be liable to pay stamp duty of 1% of the total value of land. This will be payable upon execution of a lease instrument.

Transfer of shares

Stamp duty of 1% of the total value of shares transferred will be payable upon execution of a share transfer instrument.

Stamp duty at a rate of 0.5% is also applicable on the issue and increase of share capital.

United Kingdom

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%, increasing to 25% in April 2023..

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 for accounting depreciation, depletion or amortisation charges recognised in the Income Statement, instead relief is claimed 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.
- 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.

- Structures and buildings allowance – 3% straight line relief for qualifying construction expenditure on non residential structures and buildings (but not land).
- 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 31 March 2023) of expenditure on P&M assets (Annual Investment Allowance ("AIA")).
- Super-deduction – certain qualifying expenditure incurred from 1 April 2021 to 31 March 2023 can claim a super -deduction of 130% on P&M or a first year allowance of 50% for SRP assets

Incentives exist for revenue expenditure incurred on qualifying research and development. SME sized entities can claim an additional deduction 130% in their computation of taxable trade profits, which will decrease to an86% deduction for expenditure on or after April 2023, and the cashable credit rate for loss marking companies will decrease from 14.5% to 10% for expenditure on or after April 2023. Large companies can claim an above the line credit at 13% on qualifying revenue expenditure, increasing to 20% for expenditure on or after April 2023.

Electricity Generator Levy (EGL)

EGL is a new levy on the revenues of certain low carbon electricity generators, which was announced by the UK Government in November 2022. The EGL will be charged at 45% to revenues above £75 per MWh from 1 January 2023 to 31 March 2028.

It will apply on a measure of "Exceptional Generation Receipts" that groups realise from electricity generation from nuclear and renewable (including biomass) sources. The levy is limited to groups generating more than 50 GWh per annum of electricity and will not apply to electricity generated under a Contract for Difference entered into with the Low Carbon Contracts Company. There is an allowance per group of £10 million per annum.

EGL will be calculated on a group basis, defined as the ultimate parent, its 75% subsidiaries, and 75% subsidiaries of those subsidiaries. Other companies in the group will be jointly and severally liable.

There are also complex provisions in respect of the application of EGL to joint ventures.

The EGL legislation is currently in draft and is expected to be finalised in the Spring Finance Bill in 2023.

Special tax regime

No special tax regime exists for wind farm developments.

Uruguay

Tax overview

Income obtained from windfarm activities in Uruguay is subject to Corporate Income Tax (IRAE), which applies at the rate 25% on net Uruguayan source income obtained from economic activities of any nature carried out in national territory. The general principle to determine the net taxable income is to deduct from the gross Uruguayan source income (basically that obtained from activities developed, goods located or rights economically used in Uruguayan territory) the necessary expenses to obtain and maintain it accrued during the fiscal year.

Fiscal losses can be carried forward for five years. As a general rule depreciation is linear, based on expected useful life of the assets.

Uruguayan source income obtained by non residents is subject to Non Resident Income Tax (IRNR). This tax is levied, for example, as withholding on dividends paid abroad by IRAE taxpayers (7%), as well as on technical service fees, interest and royalties (12%). Reduced rates may apply under Double Tax Treaties executed by Uruguay.

Another direct tax applicable under Uruguayan law is Net Worth Tax (IP), levied on assets located in Uruguay less certain debts, as at the close of the fiscal year.

For industrial and commercial business entities the tax rate is 1.5%.

In terms of indirect taxes, the main one to be considered is Value Added Tax (VAT), which applies on the internal sale of goods, on services provided within Uruguayan territory, on imports to Uruguay and on the aggregate value generated through real estate constructions. The basic rate is 22%, with a reduced rate of 10% applying to the sales of certain goods (including fish) and services.

Tax incentives

As part of the renewable energy sector, windfarms are subject to certain tax exemptions and benefits.

Decree 354/009, for example, granted them specific tax incentives under Investment Promotion Law N° 16.906, including partial exemption from IRAE, as follows:

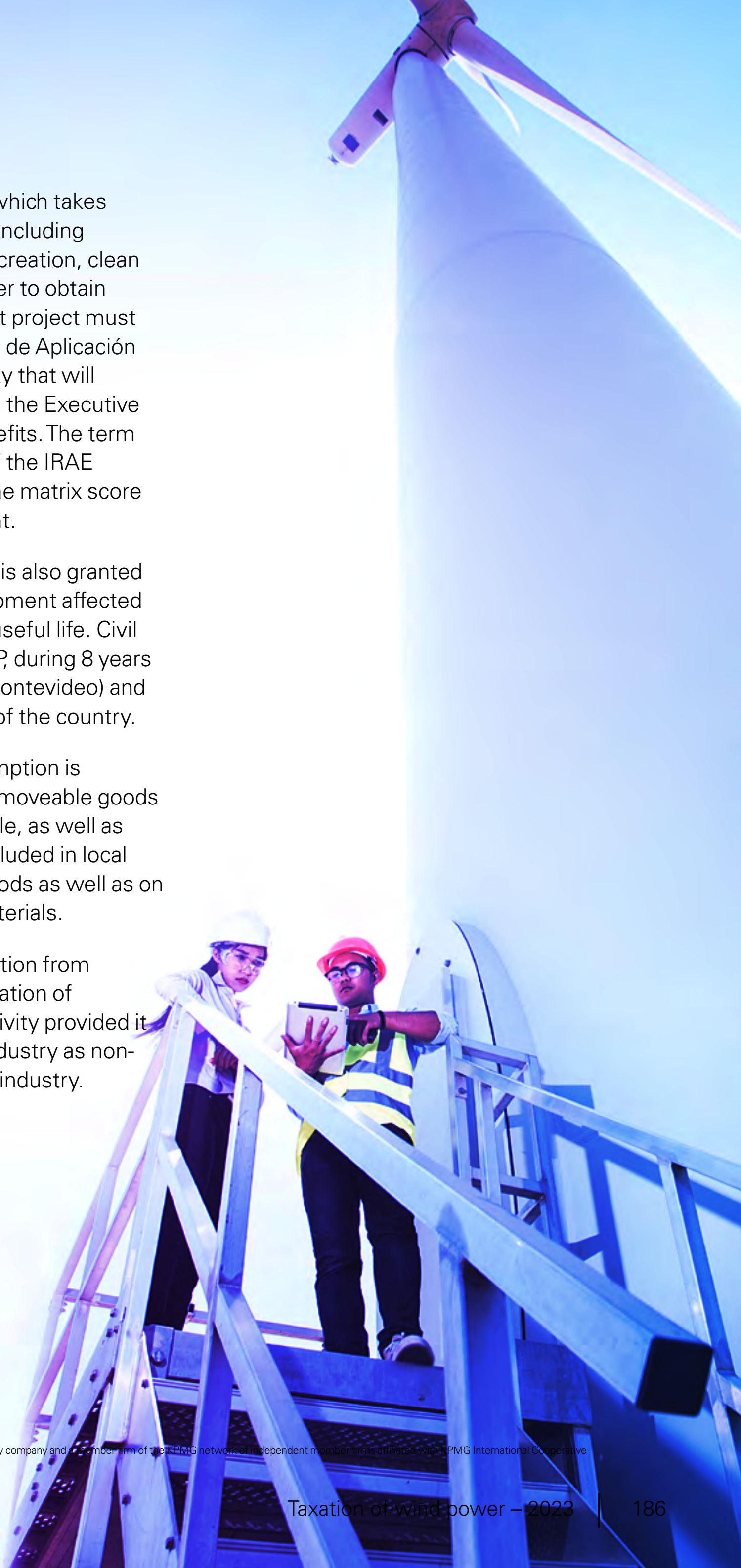
- 90% of their income until 31/12/2017.
- 60% of their income between 1/01/2018 and 31/12/2020.
- 40% of their income between 1/01/2021 and 31/12/2023.

In addition, Decree N° 268/020 also promotes investment in fixed assets through IRAE exemptions for an amount equivalent to a percentage of the eligible investment, based on an indicator matrix which takes into account different factors including exports, decentralization, job creation, clean technologies and R&D. In order to obtain this exemption, an investment project must be presented to the Comisión de Aplicación (COMAP), a government entity that will evaluate it and recommend to the Executive Power the amount of the benefits. The term in years granted for the use of the IRAE exemption will be based on the matrix score and on the investment amount.

In relation to IP, an exemption is also granted for moveable goods and equipment affected to the activity during all their useful life. Civil works are also exempt from IP, during 8 years if located in the capital city (Montevideo) and 10 years if located in the rest of the country.

From a **VAT** perspective, exemption is granted to the importation of moveable goods affected to the productive cycle, as well as reimbursement of the VAT included in local purchases of the indicated goods as well as on construction services and materials.

Other benefits include exemption from customs duties on the importation of equipment affected to the activity provided it declared by the Ministry of Industry as non-competitive with the national industry.



USA

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. 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, NOL's, 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.

Taxpayers that own and operate new wind farms are eligible to claim a production tax credit ("PTC") over a 10-year credit period beginning on the date the facility is placed in service. The PTC amount for each taxable year during the credit period is the product of the amount of energy produced by the facility and sold to unrelated persons, multiplied by the applicable PTC rate, which is subject to adjustment annually for inflation.

A taxpayer may elect to claim an investment tax credit ("ITC") in lieu of the PTC for wind facilities.

Congress enacted the Inflation Reduction Act of 2022 (the Act") on August 16, 2022, and this legislation made substantial changes to the tax subsidies for wind energy facilities.

The Act creates a multi-tiered PTC rate structure, consisting of a base credit rate of 0.5 cents per kilowatt hour (in 2022) and, alternatively, a bonus credit rate of 2.75 cents per kilowatt hour (in 2022) (after the adjustment for inflation) that satisfy new prevailing wage and apprenticeship requirements, and the PTC rate is further increased if new domestic content or energy community requirements are satisfied. Projects can continue to elect the ITC instead of the PTC, as under prior law but the base rate is 6% and the bonus rate is 30%.

Prevailing Wage and Apprenticeship Requirements

In order to claim the PTC (or ITC) at the bonus credit rate, the taxpayer has to satisfy:

1. A prevailing wage requirement for the full construction period and for the duration of the 10-year PTC credit period, and
2. Apprenticeship requirements during the construction of the project.

The prevailing wage requirement means that taxpayers must ensure that any laborers and mechanics employed by contractors and subcontractors are paid prevailing wages during construction and, in some cases, for the alteration and repair of such project for a period of time after the project is placed into service. If a taxpayer fails to satisfy these requirements, the taxpayer may cure the failure by compensating each worker the difference between wages paid and the prevailing wage, plus interest, in addition to paying a $5,000 penalty to the Treasury for each worker paid below the prevailing wage during the tax year. If the failure to pay prevailing wages is due to intentional disregard, the taxpayer must pay three times the pay differential to laborers and pay a $10,000 penalty per worker within 180 days of the date of determination of noncompliance (hereinafter the "Prevailing Wage Requirement").

The apprenticeship requirement requires taxpayers to ensure that no fewer than the applicable percentage of total labor hours are performed by qualified apprentices. The applicable percentage for purposes of this requirement is 10 percent for projects for which construction begins in 2022. This rate is increased to 12.5 percent in 2023, and 15 percent thereafter. In the event a taxpayer fails to satisfy these requirements, the taxpayer may cure the failure by paying a $50 penalty for each labor hour for which the requirement is not satisfied ($500 if the government determines that the failure to follow the requirement was due to intentional disregard). There is also an exemption process in the event there is a lack of available qualified apprentices. (hereinafter the "Apprenticeship Requirement").

Projects that

1. Commence construction prior to January 29, 2023 ("Safe Harbor Period") or
2. Have a maximum net output of less than one megawatt

are treated as eligible for the bonus rate even if the Prevailing Wage and Apprenticeship Requirements aren't satisfied.

Domestic Content & Energy Community Rules

The domestic content provision provides a credit increase of 10 percent of the amount otherwise allowable with respect to such facility (e.g., from 2.75 cents per kilowatt hour to 3.025 cents (before rounding) per kilowatt hour).

The domestic content rule requires taxpayers to ensure that facilities are composed of steel, iron, or products manufactured in the United States. For purposes of these requirements, a manufactured product is deemed to have been manufactured in the United States if an applicable percentage of the total cost of the components of such product is attributable to components that are mined, produced, or manufactured in the United States.

The Act also provides a credit increase of up to 10 percent of the amount otherwise allowable for a facility located in an energy community. An energy community includes (i) a brownfield site, (ii) an area which has or had a certain amount of employment or tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas and has an above-average unemployment rate, or (iii) a census tract or adjacent area in which a coal mine has closed after 1999 or a coal-fired electric generating unit has been retired after 2009.

If the facility is financed with tax-exempt bonds, the PTC (or ITC) is reduced to the lesser of: (i) 15 percent or (ii) the percentage of tax-exempt bond financing relative to total capital expenditures.

Transferability and Direct Pay

Notably, for taxable years beginning after 2022, the Act provides that a taxpayer may elect to transfer the PTC (or ITC) (or any portion of the PTC/ITC) to an unrelated taxpayer for a cash payment and exclude such sale proceeds from gross income. The transferability election must be made annually and separately with respect to each facility.

In addition, certain tax-exempt or governmental entities may elect for the PTC (or ITC) to be considered a direct payment of tax and essentially refundable.

The credit phases out for projects that begin construction two years following the applicable year, which is the later of:

- The year in which annual greenhouse gas emissions from the production of electricity in the United States is equal to or less than 25% of the annual greenhouse gas emissions from the production of electricity for calendar year 2022 or
- 2032.

The applicable PTC (or ITC) rate will be 75% during the second year after the applicable year (possibly 2034 depending on emissions reductions) and 50% for the third year after the applicable year (possibly 2035, depending on emissions reductions). The credits will be unavailable for facilities that begin construction four years or more after the applicable year.

Offshore wind farms can claim the PTC above, or alternatively, they are eligible for a 30% ITC if they begin construction by the end of 2025 and are in-service within 10 years of the year following the year that they began construction. Given the high per-kilowatt cost of offshore wind farms relative to onshore wind farms, offshore wind farms are expected to typically claim the ITC.

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.

Vietnam

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 particularly, 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 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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