

## Energy Reform

After several months of constant rumours regarding the possible alternatives the Spanish government might implement to reduce the tariff deficit of the electricity sector in Spain, on Friday, 14 September, the Council of Ministers finally approved and brought before Spanish Parliament the Draft Bill on tax measures to ensure energy sustainability.

This Draft bill contains a series of fiscal measures, effective on 1 January 2013, which can be summarised as follows:

### **1. Creation of a tax on the sale of electricity.**

In order to increase the taxes collected and thus attempt to balance the budget, the Spanish government has created a tax on the value of electricity generation, applicable nation-wide.

Under this new tax, those parties or entities who generate or discharge electricity to the electric system will pay 6% tax on the total income they receive from these activities (including the corresponding premiums, as the case may be) at each power plant during the tax period, which will coincide with the calendar year.

This tax will accrue on the last day of the tax period and must be settled and the resulting amount paid within the first 20 calendar days of the month of December in the year after the tax has accrued (i.e. the tax corresponding to the 2013 year must be paid between 1 and 20 December 2014). Meanwhile, four instalments must be paid, in the months of May, September, November and February, based on the value of the electricity generated during the immediately prior calendar quarter. If it is not possible to determine the total amount corresponding to the payment instalment in question, the amount is to be set provisionally, according to certain justified criteria.

### **Executive summary**

1. Creation of a tax on the sale of electricity.
2. Creation of taxes on the production and storage of radioactive waste.
3. Changes to the Hydrocarbons Tax and the Special Tax on Coal.
4. Creation of a canon for the use of continental waters to generate electricity.
5. Other measures.

## 2. Creation of taxes on the production and storage of radioactive waste.

The government has created two taxes to compensate Spanish society for the costs it must bear due to the production of radioactive waste as a result of the generation of nuclear power: a tax on the generation of the nuclear fuel utilised and on the radioactive waste produced as a consequence of the nuclear power generated, and a tax on the storage of the nuclear fuel utilised and the storage of radioactive waste at nuclear storage facilities. In both cases, the taxes accrue on the last day of the tax period, which will coincide with the calendar year.

Under these two new taxes, the parties or entities who generate nuclear fuel utilised and produce radioactive waste as a result of generating nuclear power, and those who own facilities where nuclear fuel utilised and radioactive waste is stored, will pay the following taxes:

- I. In the case of the generation of nuclear fuel utilised and the production of the resulting radioactive waste:
  - a) 2,190 euros per kilogram of heavy metal contained in the nuclear fuel utilised (irradiated in the reactor and permanently extracted from it) generated during the tax period.
  - b) 6,000 euros per cubic metre of low and intermediate-level radioactive waste, conditioned for temporary storage at the site of the plant where it was produced, produced during the tax period.
  - c) 1,000 euros per cubic metre of very low-level radioactive waste, conditioned for temporary storage at the site of the plant where it was produced, produced during the tax period.
- II. In the case of storing radioactive waste, each facility would pay the following<sup>1</sup>:
  - a) 70 euros per kilogram of difference between the weight of the heavy metal contained in the nuclear fuel utilised, stored at the end versus the start of the tax period.
  - b) 30,000 euros per cubic metre of difference between the volume of high-level radioactive waste, other than radioactive fuel, or intermediate level and long life, other than the nuclear fuel utilised, stored at the end versus the start of the tax period.
  - c) 10,000 euros per cubic metre of low-level and intermediate-level radioactive waste, brought to the plant for storage during the tax period.
  - d) 2,000 euros per cubic metre of very low-level radioactive waste, brought to the plant for storage during the tax period.<sup>2</sup>

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<sup>1</sup> An exemption is established for the storage of radioactive waste from medical or scientific activities, or from exceptional incidents at nuclear plants not subject to nuclear regulations classified as such by the Spanish Nuclear Safety Council.

<sup>2</sup> For the storage of intermediate-, low- and very low-level radioactive waste, a variable reduction is established according to a multiplier ratio.

The tax must be settled and the resulting amount paid within the first 20 calendar days following its accrual. Instalments of the total amount due during the corresponding tax period underway must be made within the first 20 calendar days of the months of April, July and October, according to the amounts determined from the tax base on the settlement date.

### 3. Changes to the Hydrocarbons Tax and the Special Tax on Coal.

Several changes are made to Law 38/1992, dated 28 December, on Special Taxes, in relation to the Hydrocarbons Tax and the Special Tax on Coal.

The Hydrocarbons Tax will now involve the following rates:

- a) 0.65 euros/gigajoule of natural gas for use other than as fuel and for stationary engines.
- b) 29.15 euros/1,000 litres of diesel oil for the generation of electricity or the cogeneration of electricity and heat.
- c) 12.00 euros/tonne of fuel-oil for the generation of electricity or the cogeneration of electricity and heat.

Changes to the Special Tax on Coal involve the elimination of the exemptions applicable until now on (i) the generation of electricity at power plants and the generation of electricity or the cogeneration of electricity and heat at combined plants, and on (ii) the use of coal for the generation of electricity and the cogeneration of electricity and heat. In addition, this tax rate rises to 0.65 euros per gigajoule.

### 4. Creation of a canon for the use of continental waters to generate electricity.

In an effort to strengthen the protection policies of the hydroelectric public domain, Article 112 bis is added to the Law on Waters, approved by Royal Legislative Decree 1/2001, dated 20 July, which creates a fee ("canon") for the use of continental waters to generate electricity. This canon will accrue upon the initial awarding and annual maintenance of the hydroelectric concession and will be payable, in the corresponding amount, on the due dates indicated in the conditions of said concession or authorisation.

By virtue of this canon, concession holders using continental waters to generate electricity will be obliged to pay taxes at the rate of 22% of the economic value of the hydroelectric power generated, measured at power station busbars, during each annual tax period.

In this regard, a 90% tax reduction is expected for electric power plants with a capacity of 50 MW or less, and hydraulic pump electricity technology generation plants with a capacity of more than 50 MW.

This tax will be managed and collected by the relevant Basin Entities ("*Organismos de Cuenca*"); 2% of the canon collected will be considered as the Basin Entity's income and the remaining 98% must be paid to Spain's Public Treasury.

This canon will also apply to the owners of electric power plants who hold a hydroelectric concession when the tax enters into force, which will require the adaptation of the conditions of such concessions to this new regulation.

## 5. Other measures.

Lastly, in the case of power plants which use non-consumable renewable energies as their primary energy source, these legislative changes eliminate the premiums charged on electricity that uses fossil fuels in their generation.

To the extent to which the taxes established in this Draft Bill apply to events taxed by Spain's Autonomous Communities<sup>3</sup>, and this causes their income to decrease, the provisions of Article 6.2 of Organic Law 8/1980, dated 22 September, on the Financing of the Autonomous Communities, will apply. According to this article, these regional taxes will no longer apply, but this will not reduce the income the Autonomous Communities would receive from this tax.

The next step in the approval process by the Spanish Parliament will be for these proposed legislative changes to be published and an amendment period to begin, which is to be ordered by the Parliamentary Committee and cannot last for more than 8 days.

This Draft Bill is expected to be definitively approved before 1 January 2013 and to enter into force then.

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<sup>3</sup> This is the case of Andalusia and Castilla la Mancha, for example, for which taxes on the storage of radioactive waste have been approved.

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