

Energy Overview

Global greenhouse gas emissions are rising steadily (+58% between 1990 and 2021), even though they are decreasing at the same time in Europe (-27%) and France (-23%). Two thirds of these emissions are linked to the combustion of fossil fuels.

In France, CO₂ emissions linked to energy combustion was expected to reach 4.1 tons of CO₂ per inhabitant in 2022.

This is due to the concomitant reduction in the carbon intensity of the French energy mix and the energy intensity of the French economy including:

- ❖ partial replacement of coal and oil by gas, nuclear power and renewable energies
- ❖ increased service-sector activity and lower industrial production
- ❖ improved energy efficiency of industrial processes

On the other hand, transport emissions, which account for a third of energy-related emissions, are not declining.

At every level, greenhouse gas emission reduction objectives have been set, starting with those linked to fossil fuels:

- ❖ Global level, with the Paris Agreement signed in 2015
- ❖ European level, with the Green Pact and the European Climate Law
- ❖ French level, with the National Low-Carbon Strategy (SNBC) – starting with those linked to fossil fuels.

In France, electricity is mainly produced from nuclear power (61% in 2022), and is largely carbon-free.

However, the transport and construction sectors are still highly dependent on fossil fuels, which France imports almost entirely.

Tax Overview

Taxation of electricity, gas and oil products in France is governed by European law (directives 2003/96/EC of October 27, 2003 and (EU) 2020/262 of December 19, 2019.)

Directive 2020/262/EU provides a framework for the overall excise duty system (tobacco, alcoholic beverages and energy products).

Directive 2003/96/EC, specific to energy products, sets minimum levels of taxation and, under certain conditions, exemptions or differentiated rates of taxation.

Directive 2023/2413 promotes energy from renewable sources.

In France, the new **Goods and Services Tax Code (CIBS)** came into force in January 2022, providing a clearer overview of the legislative texts relating to the indirect tax framework.

Over the past few years, responsibility for taxes has been transferred from French Customs to the French tax authorities:

- ❖ **2019:** transfer for non-alcoholic beverages
- ❖ **2020 and 2021:** transfer for general taxes regarding polluting activities
- ❖ **2022:** transfer of the French import VAT, the consumption taxes on electricity, gas and carbon, and the annual registration fee.
- ❖ **2023:** transfer of Customs penalties
- ❖ **2024:** the domestic taxes on energy products and the collection of the indirect contribution on alcohol and tobacco

Excise duties on energies are divided into 5 "fractions" on the Goods and Services Tax Code namely:

- ❖ **Fraction levied on electricity:** refers to **TICFE** (Final consumption tax on electricity) which was also known as CSPE (Contribution au service public de l'électricité) – from 0,5€/MWh to 1€/MWh
- ❖ **Fraction levied on natural gas:** refers to **TICGN** (Consumption Tax on Natural Gas) – 1,52€/MWh - 8,37€/MWh
- ❖ **Fraction levied on energy products other than natural gas and coal (France mainland):** refers to **TICPE** (Consumption Tax on Energy Products) – 59,40€/l - 70,04€/l
- ❖ **Fraction levied in French overseas departments and regions on energy products other than natural gas and coal:** refers to the special consumption tax (TSC) applicable in the five overseas departments and regions;
- ❖ **Fraction levied on coal:** refers to **TICC** (domestic consumption tax on coal, lignite and coke).

However, the national Customs code still regulates 2 last taxes:

- ❖ **TIRUERT:** Incentive tax on the use of renewable energy in transport (from 140€/hl to 160€/hl).
- ❖ **TGAP:** General tax on polluting activities levied on companies who have a polluting activity or use polluting products. It consists of 4 components: the TGAP on waste (dangerous and non-dangerous), the TGAP on the emission of polluting substances, the TGAP on laundry detergents, auxiliary washing preparations, fabric softeners and the TGAP on Extraction Materials.
- ❖ The amount varies according to the activity and the product.

Taxation of Energy Projects

The following energy tax measures have been taken in France:

- ❖ **TICPE:** the use of used cooking oil as fuel has been legalised. Used cooking oils are defined as oils produced from or derived from residue of fats of vegetable or animal origin used for human consumption, in the food processing industry or in collective or commercial catering (e.g. frying oils).
- ❖ Some TICPE exemptions will no longer apply from 2027:
 - the exemption for consumption of energy products, excluding electricity, used for the construction, development, testing and maintenance of aircraft and ships or their engines;
 - the exemption applicable to the consumption of coal for the purposes of biomass recovery.
- ❖ **TGAP:** In line with the “polluter pays” principle, the “waste” component of the TGAP is intended to encourage waste producers to comply with the principles of the circular economy, by increasing the cost of thermal treatment and waste storage.
 - Therefore, waste received in exceptional situations unrelated to the circular economy (natural disasters, public landfill sites), for energy production (co-incineration) or material recovery, is exempt from the tax.
 - A TGAP exemption has been added for waste treatment residue received by hazardous waste storage facilities.
- ❖ **HFC Tax:** The introduction of the tax on hydrofluorocarbons (HFCs), which aims to encourage companies to reduce their hydrofluorocarbon emissions by reducing the number of these products placed on the French market, has been postponed until January 1 2025.
- ❖ **TICFE:** The electricity tariff shield has been introduced for the period from February 1 2022 to January 31 2023 and extended until January 31 2025. It means that excise duty on electricity has been maintained at the minimum levels allowed under European law (0,5 €/MWh). On February 1st 2024, this tax increased to 20,50 euros per megawatt-hour (MWh). It will be fully restored to normal levels in February 2025 as it was before (22,50 €/MWh for companies and 32.44/MWh for individuals).
- ❖ **TIRUERT:** from January 1 2023, the rates of this tax were increased from €104 to €140 per hectoliter of gasoline and diesel, and from €125 to €168 per hectoliter of jet fuel, in order to strengthen the tax incentive for the use of renewable energy in transport, in line with European and national objectives.

- ❖ **TICGN:** since January 1 2020, the fuel use of natural gas has been subject to the domestic consumption tax on natural gas (TICGN). Previously, it had been subject to the domestic consumption tax on energy products (TICPE) since 2014.

Energy taxation is therefore constantly evolving. It is imperative for operators to be aware of this in order to optimise their consumption (if applicable) and prevent any associated risks.

Other Tax Issues To Be Considered

Reduced rates and exemptions of energy taxes are available depending on the type of activity performed

- ❖ **TICFE – Reduced rates** (various rates according to the use concerned).
 - for electricity-intensive companies
 - for the transport of people (by bus, streetcar or metro) or goods under certain conditions, and for the collective transport of people by road
 - for data centers
 - for airfield operators for the supply of electricity to sea-going ships and river boats when they are docked at the quayside
 - electricity supplied to parked aircraft at airfields.
- ❖ **TICFE – Zero rate**
 - dual use, i.e. chemical reduction, electrolysis, metallurgical processes etc.
 - manufacture of non-metallic mineral products - electricity-intensive goods production
 - electricity generated onboard ships and boats
 - taxable products consumed for electricity generation purposes, as well as electricity consumed to maintain electricity generation capacity.

Similar reduced rates and exemptions of energy taxes are available on (various rates available):

- natural gas (TICGN e.g. certain industrial processes and activities are zero-rated)
- on coal (TICC e.g. exemption for electricity production) and
- on petroleum product (TICPE e.g. the manufacture of non-metallic mineral products is zero-rated).

❖ TIRUERT – Zero rate and sale of certificates

- This incentive-based tax sets a target (incorporation rate according to the nature of the product) for the use of renewable energy in transport fuels.
- The rate is zero if the taxpayer can demonstrate that sufficient renewable energy has been incorporated.
- Volumes of renewable energy exceeding the thresholds can be sold to other taxpayers in the form of certificates and generate a profit.

The release for consumption and/or use of energy in industrial and commercial processes can therefore be optimised from an energy taxes perspective.

Relevant Experience

ARSENE (Taxand France) has worked on many of France's largest and most innovative energy projects and also performed works covering various EU Member States. ARSENE covers both advice and litigation.

Set out below is a representative sample of some of our work in this sector.

- ❖ Advice and litigation regarding the energetic tax on electricity for freeze production, electro intensive companies and cogeneration.
- ❖ Advice and litigation regarding the energetic tax such as the dual use exemption and electricity production exemption.
- ❖ Petroleum sector intervention regarding customs and excise organization, accounting and authorization requests.
- ❖ Drafting contracts to secure energetic tax treatment and management between parties.
- ❖ Electric charging point mechanism implementation for various companies.
- ❖ Ruling application regarding any energetic tax.
- ❖ Due diligence on any energetic tax.
- ❖ Biofuel tax mechanism analysis and implementation assistance.
- ❖ Lobbying actions regarding French energetic tax regulation or implementation regulation.



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