GREECE

Energy Overview

Greece's energy and climate policies are focused on achieving net zero emissions by 2050 while promoting energy projects, ensuring energy security and improving economic competitiveness.

The National Energy and Climate Plan (NECP), adopted in 2019, is the main document setting energy and climate policy through 2030 and includes targets and supporting measures to put the country on a path to net zero emissions.

The National Climate Law (Law 4936/2022) on the transition to climate neutrality and adaptation to climate change introduced Greece's legal framework on climate action. More specifically, it aims at reducing total greenhouse gas emissions by 55% by 2030, by 80% by 2040 and to reach net zero emissions by 2050. It also provides measures on key emissions reduction, including the phase-out of lignite-fired generation by 2028.

Pursuant to the data provided by the Independent Power Transmission Operator, Renewable Energy Sources (RES) have rapidly developed in our country in recent years. More specifically, 2023 marked a historic milestone in Greece's clean energy production, with 57% of the energy mix being supplied by Renewable Energy Sources (wind and solar) and hydroelectric units, surpassing 25 TWh. In 2022, the corresponding percentage was 50.12%.

Concerning demand, over the last decade, the coverage of total demand by RES production increased by 151%, reaching over 43% in 2023, the highest percentage recorded so far.

Additionally, last year witnessed a further reduction in lignite's contribution to the domestic energy mix, reaching a historic low of 10.1%. This decrease reflects the significant progress of the country's lignite phase-out program—given that in 2014, energy production from lignite exceeded 54%—and the continuous upward trend of environmentally friendly energy sources.

More specifically, pursuant to the data published for 2023 by the Independent Power Transmission Operator, the energy production mix for 2023 comes from:

- RES
- Natural gas
- Lignite
- Hydroelectricity

Tax Overview

- Greek tax resident entities are subject to corporate income tax at a rate of 22% on their worldwide income, while foreign tax residents may be subject to tax in Greece on their Greek-sourced income.
- Taxable income is determined in accordance with tax law provisions, which provide both for a general test of business relevance of the respective expenses and for specific categories of expenses that do not qualify as deductible for tax purposes; hence tax adjustments for non – deductible expenses should be made for tax purposes on the accounting revenues depicted in the financial statements.
- Business expenses should in principle be tax deductible provided that they are made to the interest/ benefit of the business, correspond to an actual transaction, are recorded in the accounting books of the period in which they are incurred and are duly supported by proper documentation, as well as do not fall under the restrictively listed non-deductible expenses, as determined in the Income Tax Code.
- A corporate income tax prepayment for next year equal to 80% of the current tax is also due upon submission of the tax return, while for newly established companies prepayment is reduced to 50% for the first three years of their operation.
- Tax losses may be carried forward for 5 consecutive years, while no carry back option is available.
- No tax grouping rules are available in Greek tax law.
- Withholding taxes may be applicable on various payments (e.g., interest, dividends, royalties, technical works) made by Greek residents to non-residents, under conditions and subject to the provisions of double tax treaties as well as EU directives that have been transposed into domestic tax legislation.
- Distribution of profits in particular is subject to a withholding tax of 5%, which may be reduced or eliminated under applicable double tax treaties or the EU Parent Subsidiary Directive, as the case may be.
- Thin capitalization rules apply on exceeding borrowing costs, which may be deductible only up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to the amount of €3.000.000 per year.
- Transfer pricing rules apply in respect of related party transactions.

Taxation of Energy Projects

Greek energy projects are mostly carried out through the establishment of Greek SPVs, which usually take the form of limited liability companies (such as Anonimi Eteria ("AE"), which is an equivalent of a Societe Anonyme, or Eteria Periorismenis Efthinis ("EPE"), which is a Limited Liability Company, or the Idiotiki Kefaleouhiki Eteria ("IKE"), which is the equivalent of a Private Company).

Financing may be performed through debt or equity.

As regards debt financing, stamp duty is triggered on debt financing, which is in principle applicable at the rate of 2,4%.

As regards equity financing, capital concentration tax at a rate of 0,2% (plus 0,1% duty in favor of the Hellenic Competition Committee in case of AE companies) is due on share capital increases; while the said tax is not due upon the establishment of a company, to the extent contributed as initial capital.

Tax depreciation on assets is mandatory for the company and should be performed on an annual basis, not being subject to further transfer among tax periods. Tax depreciation rates do not follow accounting rules (Greek GAAP or the IFRS which are equally applicable by entities established in Greece) and are set specifically into tax legislation. As the categorization of assets for depreciation purposes is not exhaustive, each entity should decide on the classification of an asset based on its use, purpose and special characteristics.

The issue of the classification of the assets of solar and wind farms, although not binding, has been subject to various rulings, according to which the depreciation rate to be used for said assets should be 4%, as applicable on special non-building facilities. Enterprises are not obliged though to classify their total assets as "non-building facilities", but they may classify them into a different category based on the relevant purchase invoice, their real use and their substantial characteristics.

A critical issue related to tax depreciation rules for renewable energy sources (RES) projects is also the treatment of development fees, which mainly consist of fees paid to developers for bringing a project to the agreed level of maturity (usually the ready-to-build status), as well as necessary actions (e.g., securing land rights, project design and layout, technical studies, communications/filings with authorities etc.) in view of the issuance of the required regulatory permits and licenses. The part of the consideration paid for development services, could affect the overall income tax liability depending on whether relevant cost has to be expensed, whereby a tax loss will arise in early years of development and prior to operations, or capitalized and depreciated for tax purposes, in line also with the treatment to be followed for similar expenses accounting wise (opex vs capex) per Greek GAAP or IFRS rules. No specific rules or guidelines are in place, so the issue should be further assessed on a case-by-case basis.

Other Tax Issues To Be Considered

Legislation affecting energy projects is rather complex and fragmented and there is no single legislative act regulating uniformly taxation of said projects. Certain tax aspects are set forth below that need to be taken into consideration on a case by case basis

- Various charges or duties may be applicable to energy projects depending on the type of project (e.g. photovoltaic projects, wind farms) or the identity of the taxpayer (e.g. producer).
- The structure to be elected (e.g., Greek SPV holding the projects or foreign entity) may trigger diverse tax implications depending on the transaction (e.g., withholding taxes on dividend distributions, interest payment, transfer of assets vs transfer of shares, permanent establishment considerations, exit taxation).
- VAT considerations may be triggered in Greece if the place of supply of services is located in Greece. For instance, services for the installation of photovoltaic/wind parks could qualify as a supply of services connected with immovable property, whereby Greek VAT will be triggered and potential VAT registration formalities may arise.
- The transfer of ownership of real estate property situated in Greece, the establishment and/or transfer of real rights, trigger real estate transfer tax (RETT) at the rate of 3% on the taxable value of the real estate property which is surcharged with a 3% municipality tax, resulting thus at a total rate of 3.09%, payable by the purchaser.
- Companies and all types of entities (irrespective of whether they are domestic or not and have legal personality or not) holding Greek real estate property located in Greece are subject to an annual special real estate tax at the rate of 15% on the taxable value of the real estate property.
- Overall, as regards energy projects specific attention should be drawn on the one hand to the investment structure to be opted by each group and on the other hand to the tax considerations that may be triggered depending on the case-by-case analysis so as to accurately design the financial modeling.

Relevant Experience

Our tax practice group has extensive experience in the energy sector and has been involved in many of the M&A - Energy projects in a multitude of tax aspects, ranging from structuring investments and financing, to drafting tax clauses and dealing with specialized tax matters of the industry, performing tax due diligence for acquisitions on the buy side or vendors' tax due diligence on the sell side, for companies of the sector. We also have a strong track record in day-to-day corporate tax compliance and accounting support to the industry.

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ZEPOS & YANNOPOULOS

Most recent key assignments of our team over the last two years include assistance to the following:

- **Global leading group in solar power:** Tax advice to a Global leading group in solar power for acquisitions and operations in Greece, including, among others, the structing of investments in Greece, industry specific aspects including deductibility of depreciations, substation costs direct and indirect tax treatment, VAT and stamp duty issues as well as tax advisory support on restructuring (demergers, conversions etc) and refinancing projects.
- **One of the more established Spanish RES groups:** Assisting one of the more established Spanish RES groups, active in building and operating hydroelectric power plants, wind farms and solar photovoltaic plants, with structuring its investment in Greece, including support in areas of financing, profit distribution, VAT treatment of development fees etc.
- **One of the largest developers of onshore wind power in Europe:** On-going support for the acquisition of numerous projects by Swedish Group which is one of the largest developers of onshore wind power in Europe, covering tax and accounting due diligence of SPVs and holding entities and support on the drafting, review and negotiation of tax & accounting tax clauses of transactional documents.
- **Leading multinational players:** Tax and accounting support to other leading multinational players for their RES investments in Greece (wind farms and photovoltaic plants) for the whole spectrum of services provided above. Handling of tax audits as regards VAT refund claims and other tax issues of project SPVs and development entities.

Indicatively, below you may find a list of some of the clients we assist in tax related energy projects:

- Aquila Capital Management GmbH
- Ecoener Group
- Emergya Wind Technologies
- OX2 Group
- European Energy A/S

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