Energy Overview

Its privileged geographical location and its high solar and wind resources (in addition to significant amounts of hydropower, biomass and geothermal energy resources) have enabled Spain to become one of the world's leading countries in the production of renewable energy.

In 2023, the installed capacity of renewable generation sources reached 61.3% of the total installed capacity. The generation from renewable sources reached 50.3%, corresponding the remaining generation mainly to nuclear plants, combined cycles and cogeneration facilities.

Following the International Energy Association, Spain is at the forefront of the energy transition due to its energy and climate change policies. The current Spanish framework for energy and climate is based on the 2050 objectives of national climate neutrality, 100% renewable energy in the electricity mix and 97% renewable energy in the total energy mix.

This framework is fully aligned with the EU's commitment to energy transition and climate neutrality.

Spain's tax policy has followed a double direction: on one side, certain tax incentives has been introduced to promote renewable energies; on the other side, the use of environmental taxation has increased with a significant focus on the energy sector (In some cases taxing renewable and non-renewable sources in the same way and even specifically taxing renewable technologies for their landscape impacts).

Tax Overview

Income obtained by companies that are resident in Spain is subject to corporate income tax. The tax regime applicable to entities investing in energy projects would, in principle, be the general regime provided for in the Corporate Income Tax Law.

Under the general corporate income tax regime, the tax base shall be calculated by adjusting, pursuant to the provisions established in the CIT Law through certain non-accounting adjustments, income per books (determined in accordance with the accounting rules). For these purposes:

- Expenses incurred in pursuing the activity (production of electrical energy through photovoltaic technology), such as the facility's operating expenses, the facility's maintenance expenses, management expenses, and other expenses necessary to engage in the activity are tax deductible.
- Depreciation of the facility will be tax deductible, provided that it relates to actual decline in value of the facility, according to certain methods. Free depreciation (100% depreciation in the first year) and accelerated depreciation is possible for certain investments that use renewable energies, electric vehicles and charging infrastructures for electrical vehicles.
- Interest expenses on debt financing are deductible up to the limit of 30% of EBITDA of the company.

In any event, net financial expenses would be deductible for the amount of €1 million. There are specialties in case of indebtedness for the acquisition of companies and for the deductibility of financial expenses derived from profit participating loans.

- Transfer pricing: companies should value at normal market value the transactions they perform with related persons or entities, as well as to keep available to the tax authorities the documentation supporting the nature, characteristics and valuation of those transactions, following the OECD TP Model.

This CIT tax rate is set as a general rule at 25%.

The provision of goods and services by traders and professionals is subject for VAT purposes, in line with the European Union Directive. Tax rate is set as a general rule at 21%.

Taxation of Energy Projects

Tax landscape for energy projects can be quite complex as several taxes at state, regional and municipal level are involved. The main issues to consider, depending on the different stages of the project, are the following:

Development phase (ready-to-build status)

Participation exemption (see disinvestment phase) should be carefully analysed when an entity developing an energy project is transferred before the construction phase starts. Special attention should also be paid on the valuation of the development services when rendered by a related entity (transfer pricing rules).

Construction phase

The municipal tax on erection and installation projects and construction work is levied on the actual and effective cost of the erection or installation projects or construction work (including, for instance, solar panels and wind turbines). The tax rate shall be fixed by each municipal government and may not exceed 4%. Municipal governments are entitled to establish a reduction of up to 95% of the tax due on systems for harnessing solar energy to produce heat or electricity and charging infrastructures for electrical vehicles.

Operation phase

The generation and feeding of electricity into the grid is subject to the Tax on the value of electricity generation, which is charged at a 7% rate on the total amount the taxpayer is entitled to receive for electricity generated and fed into the electricity system.

Electricity that is not fed into the transport or distribution network of the electricity grid, but directly supplied to the consumer, is subject to the Excise Tax on Electricity, which is typically paid by the supplier but charged to the consumer at a 5,11269632% rate.

The production of energy is also subject to the municipal Tax on Economic Activities (0,721215 euros per kW, multiplied by certain coefficients depending on the revenues of the producer and the location of the plant). Municipal councils may introduce a reduction of up to 50% of the tax charge for taxpayers that use or produce energy from facilities for the harnessing of renewable energy or cogeneration systems and charging infrastructures for electrical vehicles.

Properties used for the production of electrical energy are subject to to Real Estate Tax, as real estate with special characteristics. This classification implies the application of special rule to determine the tax base (cadastral value) and the tax rate. Municipal councils are entitled to introduce tax relief under certain conditions, mainly to promote renewable energy and charging infrastructures for electrical vehicles.

Attention should also be paid to state and regional taxes that are levied on specific technologies, such as wind parks and solar plants, hydropower plants, cogeneration plants and nuclear plants. Some of them has been confirmed by the European Court of Justice and the Spanish Constitutional Court.

Disinvestment

The transferor of a participation in a entity could benefit of a 95% participation exemption in its CIT when the following requisites are met:

- The direct or indirect participation percentage in the capital or equity of the entity is, at least 5 percent and this participation has been held on an uninterrupted basis during the year prior to the day on which it is transferred.
- In the case of participations in capital or the equity of entities non-resident in Spanish territory, such entity should has been subject to and not exempt from a foreign tax of an identical or analogous nature to the Spanish CIT at a nominal rate of at least 10 percent. This requirement shall be deemed to have been met when the transferred entity is resident in a country with which Spain has signed an agreement to avoid double international taxation that is applicable and contains a clause for the exchange of information.
- The transferred entity should carry out an economic activity.

The transfer of energy facilities or of companies owning energy facilities typically raise potential implications on VAT and Transfer tax, as these kinds of facilities and companies are classified as real estate and real estate companies for tax purposes. This classification could also impact on the taxation of capital gains obtained by non-residents and the application of the Tax Treaties to avoid double taxation.

Other Tax Issues To Be Considered

- In general, Spain does not offer tax credits for investments in renewable or clean energies, but a strong framework for the promotion of R&D (including innovation) is available. Specific tax credits and other incentives on environmental investments are provided for companies located in certain regions (such as Basque Country, Navarra or Canary Islands).
- Investment structure should be carefully analysed to evaluate the tax implications of the financing (deductibility of interest) and cash-flows to the investors (taxation of interest and dividends). Exemptions are available for EU investors, but challenges to entitlement for these exemptions have been raised when the beneficial owner is not resident in the EU.

Relevant Experience

The interdisciplinary background of our professionals enables us to provide broad and comprehensive advice in the energy sector, covering all angles of business law (corporate/commercial, regulatory compliance, environmental, tax, financial, among others). The close collaboration between our energy sector lawyers and G-advisory, Garrigues' consulting arm offering technical, economic and strategic advice on energy and ESG matters, means we are able to gain a broad-based understanding of the complexities of energy deals, giving us a unique market perspective. As a result, clients receive unparalleled service from a team that is not only highly respected in the sector but also participates in the largest, most significant and most complex deals. Our work in this sector includes:

- Ongoing tax advisory services to energy sector clients.
- Advise on structures for investment and financing of renewables projects.
- Advise on agreements to develop green hydrogen projects in Spain.
- Advise on investments to install, operate and maintain public networks of owned high-power electric vehicle charging points.
- Advise on self-consumption investments, power purchase agreements and battery storage projects.
- Advise on the acquisition, transfer and financing of energy facilities.
- Advise and litigation on environmental taxation.
- Advise on tax benefits related to R&D, environmental and energy investments.

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