



January 3, 2014

Energy Sector Extraordinary Contribution

The State Budget Law for 2014, in force as of January 1, 2014, approved the Energy Sector Extraordinary Contribution ("ESEC").

The *extraordinary* nature of the ESEC implies that this Contribution should only be levied in 2014 or, at least, the intention to maintain it in force within the Portuguese tax system for a very limited period in time.

The main features of the ESEC regime raise serious doubts as to this Contribution's compatibility with the general constitutional principles that govern the Portuguese tax system. Therefore, the ESEC regime will certainly be subject to a close scrutiny by its taxpayers and is likely to give rise to tax litigation.

Purpose

The legal regime of the ESEC was put forward as a financing mechanism to promote the systemic sustainability of the energy sector, through the setting up of an autonomous fund – Fundo para a Sustentabilidade Sistémica do Setor Energético (Fund for the Systemic Sustainability of the Energy Sector, "FSSSES") – to which the revenue obtained from the ESEC will be assigned.

The FSSSES's main objective is to contribute to the reduction of the tariff deficit as well as to finance the social and environmental policies of the energy sector. The FSSSES will be entitled to acquire from the regulated operators (or from any of its assignees) the tariff deficit credits and subsequently consider those extinguished in the terms and conditions to be established in the decree-law which shall set up the FSSSES.

Taxable basis

The ESEC is levied on the value of the taxpayers' assets that cumulatively involve:

- > tangible fixed assets;
- > intangible assets, except for elements of industrial property;
- > financial assets assigned to concessions or licensed activities.

With regard to regulated activities, the ESEC is levied on the higher of the value of the regulated assets (as recognised by the Energy Services' Regulator with reference to January 1, 2014) or the value of the above mentioned tangible, intangible and financial assets.

Taxable persons

The ESEC will be levied on taxpayers which are part of the national energy sector, with its fiscal address or head office, effective management or permanent establishment in the Portuguese territory which, on January 1, 2014, fall under one of the following situations:

- > holders of operation licenses for power plants (except those located in the Autonomous Regions of the Azores or Madeira);
- > holders of production licenses that have been considered to be in condition to be authorized to start operation (except those located in the Autonomous Regions of the Azores and Madeira);
- > concessionaires of activities of transport or distribution of electricity;
- > concessionaires of activities of transport, distribution or underground storage of natural gas;
- > holders of licenses for the local distribution of natural gas;
- > operators of crude oil refining and processing of petroleum products;
- > operators of storage, transport or distribution of crude oil and petroleum products;
- > wholesale traders of natural gas or crude oil and petroleum products;
- > wholesale electricity traders.

Exemptions

The following activities will be exempted from the ESEC:

- > the generation of electricity through power plants using renewable energy sources (except for hydroelectric plants with installed capacity equal to or exceeding 20 MW and cogeneration from using renewable energy sources);
- > the generation of electricity through cogeneration power plants with installed electric capacity below 20 MW;
- > the generation of electricity through cogeneration power plants which are covered by the new remuneration regime, except for power plants with an installed capacity exceeding 100 MW;
- > the generation of electricity through power plants with licenses granted under public tender procedures, provided that the respective producers are not in default of the obligations resulting from such procedures;
- > the generation of electricity through renewable energy sources of micro-production units;
- > the generation of electricity through renewable energy sources or the generation of electricity and heating on cogeneration by micro-production units;
- > the generation of electricity without power injection into the public grid;
- > the use of renewable energy sources for the generation of energy, with the exception of electricity;

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- > the operation of electric distribution networks exclusively in low voltage by small distributors;
- > assets relating to land forming part of the public water domain under concession agreements;
- > the production and trading of biofuels and bio liquids;
- > the retail sale of electricity, natural gas and petroleum products; and
- > taxpayers whose total balance, on December 31, 2013, is below € 1,500,000.

Rates

The Energy Sector Extraordinary Contribution rates will be as follows:

General taxpayers	<ul style="list-style-type: none"> > 0.85%
Electricity generated through combined cycle power plants	<ul style="list-style-type: none"> > 0.285% - for power plants with an annual equivalent use of installed capacity below 1500 hours; > 0.565% - for power plants with an annual equivalent use of installed capacity equal to or exceeding 1500 hours and below 3000 hours; > 0.85% - for power plants with an annual equivalent use of installed capacity equal to or exceeding 3000 hours. <p>For the purposes of the above ESEC rates, equivalent use of installed capacity, in hours, assessed for the power plant within the period between January 1 to December 15, 2014, is converted to the equivalent values in hours of annual use of installed capacity by multiplying the assessed value by 365 and then dividing it by 349.</p>
Refining activity crude oil	<ul style="list-style-type: none"> > 0.285% - for refineries which have a Refinery Operation Index below 0.00; > 0.565% - for refineries which have a Refinery Operation Index equal to or exceeding 0.00 and below 1.50; > 0.85% - for refineries which have a Refinery Operation Index equal to or exceeding 1.50. <p>For the purposes of the above ESEC rates, the Refinery Operation Index is calculated on the basis of the data verified between January 1 and December 15, 2014.</p>

The prohibition of cost pass-through and the non-deductibility of expenses

Under the ESEC regime, this Contribution cannot be, directly or indirectly, passed-through the Tariffs for the Use of the Transmission or Distribution Networks or of other regulated electric and natural gas assets, nor can it be considered for purposes of determining the respective capital cost.

In addition, the ESEC is not eligible as a deductible cost for the purposes of determining the Corporate Income Tax of the relevant taxable entity.

Assessment and payment

The ESEC is assessed and paid by the taxpayers, through an official model declaration, approved by an Order of the Minister of Finance, to be submitted by electronic data transmission until October 31, 2014, with the exception of (i) the generation of electricity through combined cycle power plants and (ii) refining crude oil activity, in which cases the declaration must to be submitted by electronic data transmission until December 20, 2014.

If the Contribution is not assessed within the above mentioned periods, the Tax Authorities may assess it on the basis of the information available.

In the event the ESEC is not paid within said periods, late payment interest will be applicable and the Tax Authorities may enforce the payment.

Revenue assignment and the creation of the FSSSES

According to the ESEC regime, the revenue from the ESEC will be assigned to the FSSSES, to be created by Decree-Law within 60 days after the entry into force of the 2014 State Budget (i.e. after January 1, 2014).

The FSSSES will have the nature of an autonomous fund, without legal personality and with administrative and financial autonomy.

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