MACEDO VITORINO

TAX I ENERGY

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THE PORTUGUESE WINDFALL PROFITS' TAX ON FOSSIL ENERGY COMPANIES

The new windfall profits' tax will result in a 33% surplus to corporate income tax on all profits exceeding 20% of the last four years' average for all crude oil, natural gas, coal, and refineries established in Portugal.

The current energy crisis has set the background for the introduction of a new tax policy both at EU level and at EU Members States, arguably to fight high energy prices on most vulnerable families and companies and the ongoing inflationary cycle. In this framework, Portugal has enacted a new contribution to certain companies' surplus profits: the so-called windfall profits' tax. This new contribution has its origins in the Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, including a mandatory temporary solidarity contribution aimed at taxing surplus profits of companies and permanent establishments in the European Union **("EU")** operating in the crude petroleum, natural gas, coal, and refinery sector and on food retailers; as their profits in 2022 were not profits these companies would or could be expected to have under regular circumstances.

On 31 December 2022, Law 24-B/2022, of 30 December (the "**CST Law**") established two solidarity contributions taxing surplus profits: (i) the Energy Temporary Solidarity Contribution on energy companies and (ii) the Food Distribution Temporary Solidarity Contribution on food retailers. Both contributions are temporary and only applicable to profits considered to be extraordinary in the tax periods (for corporate income tax purposes) starting in the years 2022 and 2023.

In the next lines, you will find some detail on the scope, taxable subject, taxable amount, and revenue allocation of the Portuguese Energy Temporary Solidarity Contribution ("**CST Energia**"), where the CST Law implements Chapter III of Council Regulation (EU) 2022/1854 on the measure concerning the crude petroleum, natural gas, coal, and refinery sectors.

1. Who pays for the new CST Energia?

The CST Law, in its article 2 (that follows closely art. 1 of Council Regulation (EU) 2022/1854), establishes that CST Energia applies to resident corporate taxpayers whose main activity is commercial, industrial, or agricultural and non-resident corporate taxpayers with a permanent establishment in Portugal, that (in both cases) operate in the crude oil, natural gas, coal and refinery sectors.

Article 2/1/b of CST Law defines taxpayers operating in the crude oil, natural gas, coal, and refinery sectors as those with at least 37.5% of their turnover deriving from extraction, mining, petroleum refining, or coking plant sectors, as per Regulation (EC) 1893/2006 of the European Parliament and of the Council.

CONTACTS

JOÃO MACEDO VITORINO
JVITORINO@MACEDOVITORINO.COM

FREDERICO VIDIGAL
FVIDIGAL@MACEDOVITORINO.COM

MANUEL TOLEDO
MTOLEDO@MACEDOVITORINO.COM

The above excludes companies operating renewable electricity production plants in Portugal from the scope of the CST Energia.

2. On which surplus profits falls CST Energia?

Surplus Profits are the taxable profits that are above a 20% increase of the average of the taxable profits in the four fiscal years starting on or after 1 January 2018. In such cases, a rate of 33 % will apply. When the average of the taxable profits is negative, it is equal to zero and the energy temporary solidarity contribution is levied on the total taxable profits.

3. How and when is CST Energy paid?

The CST Energia must be paid through an official model declaration (to be approved by the member of the government responsible for finance). This declaration must be electronically sent to the Tax Administration before the 20th of the 9th month following the end date of the tax period to which it relates. Taxpayers must pay this contribution on an individual and autonomous basis, even when the Special Taxation Regime of Company Groups, provided by the Corporate Income Tax Code, is applicable.

4. Where to go the revenues from CST Energia?

The Portuguese government does not yet know to how much they will amount, but, as expressed in the Council Regulation (EU) 2022/1854 and in the CST Law, revenues from CST Energia will be allocated to:

(1) Financial support measures to final energy consumers, especially vulnerable families;

(2) Financial support measures to help reduce energy consumption; such as through demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, promoting investments by final energy customers into renewables, structural energy efficiency investments or other decarbonization technologies;

(3) Financial support measures to support companies in energy-intensive industries, if they are made conditional upon investments into renewable energies, energy efficiency, or other decarbonization technologies; and

(4) Financial support measures to develop energy autonomy, in particular investments in line with the REPowerEU objectives.

How and when will that happen? Nobody knows yet as the CST Law does not add any clarity to this.