

# THE PORTUGUESE CLAWBACK TAX ON RENEWABLE ELECTRICITY IS BACK

*After a suspension period resulting in the deferral of the Spanish energy tax until the end of 2023 and, following its phased return in 2024, the disputed Portuguese clawback mechanism returns, with new advance payment amounts to be applied in 2024.*

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Order 3034/2024, published on 21 March, was one of the last directives of the former Portuguese Government Energy Secretary of State which restored the clawback tax on the electricity produced in Portugal, setting new amounts for the advance payment by the producers to the TSO, applicable as from 1 January, 2024.

The new advance payments, in a phased system following the return points of the Spanish energy tax, are now as follows:

- First quarter: 2.16 €/MWh, per unit of energy injected into the public service electricity grid;
- Second quarter of 2024: 3.24 €/MWh, per unit of energy injected into the public service electricity grid; and
- Third and fourth quarters: 4.31 €/MWh, per unit of energy injected into the public service electricity grid.

Although, contrarily from the Spanish energy tax, where the taxable amount is the income generated in the sale of electricity, under the Portuguese clawback mechanism created in 2013 by Decree-Law no. 74/2013, allegedly to correct distortions in the price of electricity on the Iberian wholesale electricity market (it never took into consideration other long time existing tax distortions, such as the different VAT rates in Portugal and Spain, as it should have if we admit the mechanism would react to different taxation regimes), the Portuguese producers are taxed per unit of energy injected into the public service electricity grid.

This difference will have a substantial negative impact on Portuguese producers, as the number of daily hours where the price of electricity in the Iberian market is close to zero, zero or even negative, is alarmingly increasing. Plus, as electricity prices continue to decrease to unthinkable values: in week 14 this year, the electricity average price in Portugal has reached €3,97MWh – a figure close to the amount of the clawback payment per MWh established for the second quarter of 2024.

So, instead of correcting a hypothetical market distortion, the Portuguese clawback tax may well develop a cause of market distortion between Portugal and Spain and become another disincentive for investors to participate in the Portuguese renewables market.

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