

# Energy Spain Newsflash

## 1. ENERGY COMMUNITIES

### **Regulatory bases for the granting of aid to the incentives programme for singular pilot projects of energy communities**

The Ministry for Ecological Transition and Demographic Challenge (**MITERD**) has agreed to submit to public consultation (*audiencia pública*) the Draft Order approving the regulatory bases for the granting of aid to the programme of incentives for singular pilot projects for energy communities.

The purpose of the aid is to strengthen the support system for stakeholders interested in the incorporation and development of energy communities, within the framework of the Recovery, Transformation and Resilience Plan (**PRTR**). This aid aims at contributing to a fair and inclusive decarbonisation that promotes the creation of green infrastructures and the participation in this decarbonisation of stakeholders that have not traditionally been involved in the energy sector such as consumers or local entities.

According to the Draft Order, any legal entity, public or private, that has its corporate address for tax purposes in Spain may be beneficiary of the aid, which will be compatible with other public aid or subsidies provided that (i) they are not co-financed with European funds; and (ii) the total incentives received do not exceed the total cost of the project.

The content of the Draft Order can be accessed [here](#).

## 2. RENEWABLE HYDROGEN

### **Regulatory bases for the granting of aid corresponding to the Incentive Programme for Pioneering and Singular Renewable Hydrogen Projects**

**MITERD** has agreed to submit to public consultation (*audiencia e información pública*) the Draft Ministerial Order approving the regulatory bases for the granting of aid corresponding to the Incentive Programme for Pioneering and Singular Renewable Hydrogen Projects within the framework of the PRTR.

The purpose of the Draft Ministerial Order is to establish the regulatory bases for the selection and awarding, on a competitive basis, of the aid corresponding to the incentive programme for pioneering and singular renewable hydrogen projects.

Eligible projects are integrated projects that combine the production, distribution and use of hydrogen in the same territorial location enabling the replacement of grey hydrogen with renewable hydrogen on industrial sites that are already hydrogen consumers.

The content of the Draft Ministerial Order can be accessed [here](#).

### **Regulatory bases for the granting of aid corresponding to the Incentive Program for the Innovative Value Chain and Knowledge of renewable hydrogen**

**MITERD** has agreed to submit to public consultation (*audiencia e información pública*) the Draft Ministerial Order approving the regulatory bases for the granting of aid corresponding to the Incentive Programme for the Innovative and Knowledge-based Renewable Hydrogen Value Chain within the framework of the PRTR.

The purpose of the Draft Ministerial Order is to set out the regulatory bases for the selection and awarding of aid, on a competitive basis, corresponding to the four Support Programmes for Renewable Hydrogen Industrial Value Chain:

- (i) Capacities, technological advances and implementation of test and/or manufacturing lines;
- (ii) Design, demonstration and validation of hydrogen-powered mobility;
- (iii) Large-scale electrolysis demonstrators - innovative renewable hydrogen production projects;
- (iv) Basic fundamental research challenges, innovative pilot projects and in key enabling technologies trainings.

The content of the Draft Ministerial Order can be accessed [here](#).

## **3. E- MOBILITY**

### **Prohibition of exclusivity clauses for to the provision of electric vehicle charging services in exclusive supply contracts**

On 24 November 2021, Royal Decree-law 27/2021, of 23 November, extending certain economic measures to support the recovery (**RDL 27/2021**) was published in the Spanish Official Gazette (**BOE**).

RDL 27/2021 amends Act 34/1998, of 7 October, on hydrocarbons sector, to introduce the prohibition of including exclusivity clauses for the provision of electric recharging services to vehicles in exclusive supply contracts between operators and owners of vehicle supply facilities, aiming at facilitating the installation of charging points by the latter, either by themselves or through third parties other than the relevant oil operator.

The content of the Royal Decree-law can be accessed [here](#).

## 4. NATIONAL MEASURES RELATING TO THE ELECTRICITY SECTOR

### Self-consumption Roadmap (*Hoja de ruta del autoconsumo*)

**MITERD** has agreed to submit the Self-consumption Draft Roadmap to public consultation (*consulta pública*).

This Roadmap highlights the challenges and opportunities for self-consumption -considered as one of the main drivers for the achievement of the renewable energy targets set in the National Integrated Energy and Climate Plan 2021-2030 (**PNIEC**)- and sets out a framework for the fulfilment of the sector's development potential, providing a series of measures aimed at promoting it within the energy transition as defined in measure 1.4 of the PNIEC.

The Roadmap's main lines of action provide for (i) establishing the potential for self-consumption penetration by type of consumer, (ii) developing instruments to promote joint self-consumption (*autoconsumo colectivo*) or (iii) easing the implementation of self-consumption applications in certain sectors such as industry or services, as well as in the public sector, among others.

The content of the Draft Roadmap can be accessed [here](#).

### Rules of operation of the daily and intraday electricity markets: pre-payment mechanism

On 11 November, the National Commission of Markets and Competition, approved the Resolution modifying the operating rules for the daily and intraday electricity market for the introduction of a pre-payment mechanism prior to the issuance of the weekly debit note.

This Resolution amends rule no. 55.5 in order to allow purchasing agents to make a partial or total pre-payments when they become buyers, releasing them from such payment obligations before the due date of the invoices and therefore reducing the amount of guarantees required.

The Resolution was published in the BOE on 15 November 2021. Click [here](#) to access to its content.

## 5. NATIONAL MEASURES RELATING TO THE HYDROCARBON SECTOR

### Modification of the formula for the compensatory payment to be made by agents obliged to prove compliance with the sale or consumption targets of biofuel for transport purposes.

On 16 November 2021, **MITERD** submitted to public consultation (*audiencia e información pública*) the Draft Resolution of the Energy Secretary of State updating  $\alpha$  and  $\beta$  values of the formulas set out in paragraphs 1 and 2 of section 11 of Order ITC/2877/2008, of 9 October, which sets out a mechanism to promote the use of biofuels and other renewable fuels for transport purposes.

These compensatory payments are due to such entities obliged to accredit compliance with the targets for the sale or consumption of biofuel for transport purposes that do not obtain enough certificates to accredit compliance with their obligations. Revenues generated by such compensatory payments will be distributed among those parties with excess certificates.

The content of the Draft Resolution can be accessed [here](#).

## 6. EUROPEAN-LEVEL MEASURES

On 15 November 2021, the **European Commission** passed the Commission Delegated Regulation (EU) 2021/2003, of 6 August 2021, supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing the Union renewable development platform (**URDP**).

This Regulation establishes the **URDP**, which aims to facilitate statistical transfers between Member States and the achievement of the EU target of 32 per cent gross final consumption of energy obtained from renewable sources by 2030. For these purposes, statistical transfers shall consist in the transfer of the statistical value, without the need for physical transfers, of a given quantity of energy obtained from renewable sources from one Member State that has exceeded or is expected to exceed its renewable energy targets to another Member State that has not met or is expected not to meet its renewable energy target, in return for a price.

The Commission Delegated Regulation (EU) 2021/2003 was published in the Official Journal of the European Union and came into force on 20 November 2021. Click [here](#) to access to its content.

## 7. THE TAX CORNER

**The Spanish Tax Authorities understand that the transfer of SPVs with photovoltaic projects at RtB status by a holding entity limits the latter's right to deduct input VAT.**

A recent binding ruling (**V1354-21**) of the Spanish General Directorate of Taxes (**SGDT**) has stated that the right to recover input VAT of a Spanish holding entity (**HoldCo**) selling special purpose subsidiaries (**SPVs**) and which is devoted to the photovoltaic energy activity (i.e., focused on finding locations, developing and management of the projects, obtaining the permits and licenses, etc.) will be limited.

As a general rule, the right of a company to deduct and recover input VAT borne on its acquisitions of services and goods depends on the VATable activities performed by such company vis-à-vis its clients. As a result, a company carrying on 100% VATable activities with its clients will have the right to fully deduct and recover input VAT charged by its suppliers and providers. As opposed, a company carrying out 100% of VAT exempt activities (e.g., a bank, insurance company, health or educational entities) will have no right to recover any input VAT. In case of entities performing VATable and exempt activities, its right to recover VAT will be proportional to the weight of its VATable activities as compared with its full activity.

The transfer of SPVs is a VAT exempt activity which the **SGDT** understand that is directly linked to the business of HoldCo, not consisting in a mere financial activity (as HoldCo's activity is the development of photovoltaic projects, it directly participates in the SPVs business providing services to its subsidiaries and HoldCo's goal is to obtain continuous income through the sale of the SPVs). As a consequence, the transfer of the SPVs by HoldCo cannot be deemed an ancillary activity (which will not have an impact in the right to deduct input VAT). As a result HoldCo's right to recover input VAT borne in its activity (charged by suppliers) will be proportionally limited to the weight that the capital gain arising from the transfer of the SPVs represents over HoldCo's total turnover.

This criteria will have a clear impact in structures where it is expected that a Spanish HoldCo transfers SPVs developing photovoltaic plants (or any other energy project), as most of the income obtained by the holding entity will come from the sale of the subsidiaries, which entails that the right of the holding company to deduct and recover input VAT borne in its activity will be very limited. That will have an impact in the business plan of this projects which will need to be considered in detail.

Click [here](#) to access to the content of the ruling.

**Registration of photovoltaic plants for Local Trade Tax (*Impuesto sobre Actividades Económicas*) is not necessary before the production of energy starts, benefiting from a two years exemption since then.**

Photovoltaic plants in Spain, such as any other business, are subject to a local tax levied by Municipalities which is called the Local Trade Tax (*Impuesto sobre Actividades Económicas* or **IAE**), being the taxpayers obliged to register for the purposes of paying such tax. However, there is an exemption during the first two years since the commencement of the economic activity.

The **SGDT** has clarified that such registration is not necessary before the production of energy effectively starts as all the previous preparatory activities, including the construction of the plant, will not entail the start of the business activity. This means, in practice, that the 2 year exemption can be deferred and the company will not pay IAE until the first two years since the start of the production of energy have elapsed.

Moreover, the **SGDT** has confirmed that all the preparatory activities as well as the construction, are not deemed an independent economic activity subject to taxation under IAE (as they are not provided to third parties but are preparatory steps to build the plant and start the production of energy) and thus, photovoltaic plants are not required to be registered for IAE purposes under any other epigraph other than the production of energy (and, as mentioned, only once the production of energy effectively starts).

In our experience, companies developing photovoltaic projects are sometimes following a more prudent approach, registering for IAE since the commencement of the construction phase (or even before) and sometimes in several epigraphs which do not entail a business activity vis-à-vis third parties. Therefore, this administrative criteria can entail tax savings for development photovoltaic plants (and any other energy projects).

Click [here](#) to access to the content of the ruling.

## Key Contacts

We bring together lawyers of the highest calibre with the technical knowledge, industry experience and regional know-how to provide the incisive advice our clients need.



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