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Parliament Expected to Approve 'Robin Hood Tax' on Oil Companies

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COUNTRY DIGEST

Parliament Expected to Approve 'Robin Hood Tax' on Oil Companies

Portugal's parliament is poised to approve a controversial ''Robin Hood tax'' on oil companies, despite several unresolved constitutional issues that later may be used to challenge the legislation. If approved, the legislation would have retroactive effect from January 1, 2008. (For prior coverage, see *Tax Notes Int'l*, July 21, 2008, p. 236, *Doc 2008-15191*, or *2008 WTD 134-4*.)

According to the tax bill, oil companies — whose profits reportedly have climbed sharply with the spike in fuel prices — not only would have to adopt the first-in, first-out or the weighted average price method to calculate the cost of fuel materials, but also would have to pay a 25 percent final tax rate on the positive difference between the current cost accounting value (generally last-in, first-out) and the cost accounting value calculated adopting FIFO.

Revenue from the proposed tax would be channeled into aid programs for low-income households hit by increased food and energy prices.

Oil companies have denounced the measure as ''punitive,'' and EU Tax Commissioner László Kovács said the tax ''is not appropriate for curbing oil prices.'' However, this kind of tax appears to be a European trend, albeit inspired by U.S. legislation enacted by the state of Texas in 1993 to ensure equitable school financing. In Italy, for example, Prime Minister Silvio Berlusconi's government has already approved a similar tax to be included in the budget plan.

On the legal side, Portugal's current draft raises several constitutional questions. First, the wording of the tax provisions is imprecise. Second, the tax might be found to be discriminatory because it would be levied exclusively on oil companies. Third, the bill would prohibit oil companies from passing the higher tax cost on to consumers by increasing fuel prices, which could be considered an illegitimate restriction and interference with the management of the oil companies. According to the draft bill, the Portuguese Competition Authority would appraise fuel price variations to enforce the restriction, although no clear guidelines have been provided for that oversight.

Real Estate Tax Breaks

The Robin Hood tax is part of a package that also would reduce the municipal real estate tax (IMI) and extend the current IMI exemptions for residential real estate. The six-year exemption would be extended to eight years for transfers of properties with a value up to €157,500, and the three-year exemption would be extended to four years for properties with a value up to €236,250.

The bill also would increase the amount that can be elected for deductible expenses, including interest paid to banks. Under the legislation, lower-income families could claim household expenses of up to: 50 percent more (for families with an annual income of less than €4,639); 20 percent more (for families with an annual income of less than €7,017); and 10 percent more (for families with an annual income of less than €17,401).

The goal of these measures is to minimize the effect of consecutive European Central Bank interest rate increases, which have hit European working families hard.

Conclusion

The tax on oil companies is part of a larger effort to compensate families and help restore a lifestyle strained by soaring fuel prices, while also providing a useful extra source of income for the government.

However, a better alternative may be to use the extra income to subsidize research and development on renewable energy sources and other long-term projects, as Kovács pointed out.

The bill is still under consideration, and minor changes may be made. Nevertheless, with the governing center-left Socialist Party holding an overall majority, parliamentary approval is expected in the next few days. Only time will tell whether the unresolved constitutional issues may be used to challenge the constitutionality of the law. ◆

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