

LEGAL ALERT

STATE BUDGET LAW FOR 2020 AND SUSPENSION OF PROCEDURE TO GRANT GRID CAPACITY TO SOLAR ENERGY PROJECTS

[Law no. 2/2020, of 31 March](#), which approved the State Budget for 2020, contains provisions that impact the energy sector, in particular the ones described below.

Additionally, the Portuguese Government announced, during the public presentation of the procedure to grant grid capacity to solar energy projects of 27 March, the suspension of such procedure for an undetermined period. Nonetheless, the main characteristics of the auctions have been disclosed and are briefly summarized below.

I. State Budget Law for 2020 – energy sector measures

a) Extraordinary Contribution for the Energy Sector (ECES)

Article 376 of the State Budget Law determines that the ECES regime, approved by article 228 of [Law no. 83-C/2013, of 31 December](#), as amended, shall apply in 2020 with a few amendments, such as the new wording approved for article 4 of the mentioned regime.

As such, the activity of electricity generation through power plants that use renewable resources and have an installed power lower than 20 MW are exempted from the extraordinary contribution on the energy sector (ECES). Such exemption will not apply to taxpayers that operate renewable energy power plants benefiting from guaranteed remuneration with a total of 60 MW.

The remaining exemptions (and corresponding exceptions), as approved by the [State Budget Law for 2019](#), will still apply in 2020.

Furthermore, pursuant to article 377, the Government is authorized to amend the ECES regime to: (i) reduce the ECES rates, having as limit the percentage corresponding to the reduction of the tariff debt as proposed by the national regulatory authority for energy (*Entidade Reguladora dos Serviços Energéticos*) for 2020; (ii) reduce the ECES rates applicable to the petroleum sector, considering the need to finance social and environmental policies within the energy sector and the existence of other measures that may substitute these revenues; (iii) review the rules regarding the taxable events in the supply sector of the Natural Gas National System, to allow the update of the economic value equivalent to the long term take-or-pay gas contracts, considering the information on their actual value; and (iv) establish a ECES exemption for power plants that use urban waste operated by waste management entities.

b) Costs with the natural gas social tariff

Pursuant to article 290 of the State Budget Law for 2020, the costs with the attribution of natural gas social tariff, under the terms of article 121 of [Law no. 7-A/2016, of 30 March](#), and [Order no. 3229/2017, of 18 April](#), are borne by the natural gas transmission and supply entities, according to the volume of gas supplied in the previous year.

c) Phasing out of end-user regulated tariffs

Article 292 establishes that, in 2020, the Government will extend the deadline to extinguish electricity end-user regulated tariffs for normal low voltage supply, which, pursuant to article 5 of [Ministerial Order no. 97/2015, of 30 March](#), as amended by [Ministerial Order no. 39/2017, of 26 January](#), and article 3(1) of [Ministerial Order no. 348/2017, of 14 November](#), was scheduled for 31 December 2020 and shall now be rescheduled for 31 December 2025.

d) Extension of social tariff

According to article 292, in 2020, the Government will extend the requirements to benefit from electricity and natural gas social tariff, in particular to include all unemployment situations.

e) IRS legislative authorization

The State Budget Law for 2020 authorizes the Government, through article 333, to create environmental deductions on the acquisition of renewable generation units for self-

consumption, as well as heat pumps of energy class A or higher, provided these are for personal use, to promote decentralized renewable energy generation and energy communities, as well as the use of more efficient equipment.

This shall allow the taxpayers to deduct an amount corresponding to part of the value of such acquisitions, according to the relevant invoices, up to a total maximum limit of EUR 1,000.

f) VAT legislative authorization

Pursuant to article 342, the Government is also authorized to create bands of electricity consumption based on the contracted power structure in the electric market and apply the rates established on paragraphs *a)* and *b)* of article 18(1) and on article 18(3) of the VAT Code.

The rates must be applied in a manner that reduces the costs associated with energy consumption, protects final consumptions and mitigates adverse environmental impacts in connection with excessive electricity consumption.

However, the execution of this measure is subject to the consultation of the VAT Committee, under the terms of article 102 of the [Council Directive 2006/112/EC, of 28 November 2006](#), on the common system of Value Added Tax.

g) Exemptions to petroleum and energy products in the Excise Taxes Code

Article 350 of the State Budget Law establishes that, during 2020, the Government will reevaluate the exemptions granted to the facilities included in the emissions trading system regime and in the Intensive Energy Consumption Management System under the terms of paragraph *f)* of article 89(1) of the Excise Taxes Code, as to progressively eliminate them.

h) Public Administration Energy Efficiency Programme

Pursuant to article 30, in 2020 the Government will promote the revision of Public Administration Energy Efficiency Programme – ECO.AP with the purposes of: *(i)* increase the European and national funds of this programme; *(ii)* review the energy services agreements for the Public Administration as to include products that are made possible by

the technological developments; and *(iii)* contemplate a study to equip the State's buildings with small photovoltaic electricity generation units.

II. Procedure to grant grid capacity to power plants using solar energy

According to the information disclosed during the public presentation of the procedure to grant capacity to be injected into the public service electric grid (RESP) to power plants that use solar energy, that took place on 27 March, this procedure shall proceed as follows:

- a) The total capacity to be granted in the context of the procedure is 700 MVA to install solar projects or solar projects with storage systems;
- b) The grid connection points will be located in Alentejo and Algarve;
- c) the procedure's documents will identify the maximum capacities associated with each batch in the auction and the minimum capacity is 10 MW for connection points of the National Distribution System and 50 MW for the ones of the National Transmission System;
- d) The total capacity of the initial intentions submitted by companies in a domain or group relation cannot exceed half of the capacity up for bid;
- e) The grid capacity reservation title will be granted by the relevant system operator, according to the award decision;
- f) Solar power plants that do not have storage systems may benefit from the following remuneration schemes:
 - i. guaranteed remuneration scheme, in which the applicant proposes a discount (expressed as a %) on the reference feed in tariff (expressed in €/MWh) that is set by the government for each auctioned batch; this scheme entails the sale of energy generated to the supplier of last resort against the payment of the feed-in tariff that results of the procedure and the producer cannot receive the revenues obtained with origin guarantees trade;
 - ii. general remuneration scheme, in which the applicant proposes the payment of a contribution, expressed in €/MWh to the National Electric System; during the operation stage, the energy is sold through organized markets and the producer may trade origin guarantees.
- g) Solar power plants with storage systems will benefit from a general remuneration scheme, accessible to applicants that propose a discount (expressed as a %) on a given value (expressed in €/MW/year) that will allow the calculation of the amount to be paid to the

producer; during the operation stage, the energy is sold through organized markets, the producer will be paid the amount that results from the procedure, provided an availability agreement is executed with the System's Global Manager and the amount to activate the insurance against Iberian market prices spikes; the producer may also trade origin guarantees and will be subject to requirements specific to the storage systems;

- h) The procedure will have three stages:
- i. qualification stage, conducted by the procedure's jury through electronic means, through the application website; during this stage the applicants submit the initial bidding intentions, the documents required by the procedure's documents and provide a bond of EUR 10,000 per MW;
 - ii. bidding stage, conducted by OMIP (Iberian Energy Market Operator), during which applicants submit their bids for each batch, and;
 - iii. award stage, conducted by the Directorate General for Energy and Geology, entailing the attribution of rights to the tenderers, as well as the provision of a bond in the amount of EUR 60,000 per MW and, if applicable, the incorporation of a special purpose vehicle that will hold all rights granted in the context of the procedure – after the issuance of the grid capacity reservation title, it cannot be transferred to another entity (and the generation license as well) until the issuance of the operation license.
- i) After the grid capacity reservation title is issued, the following deadlines shall apply and if not met, a percentage of the bond will be lost:
- i. six months to submit proof that the producer holds the right to use the property and can install and operate the power plant in such property, through either a sale and purchase agreement, a lease agreement, a surface right agreement or a promissory agreement with *erga omnes* effectiveness; failure to comply with such deadline shall determine the loss of 25% of the bond;
 - ii. 18 or 12 months to obtain the generation license, depending on whether the project is subject to an environmental impact or incidences assessment procedure or not; failure to comply with such deadline shall determine the loss of 25% of the bond;
 - iii. 24 or 18 months to obtain the municipality's licenses or authorizations, depending on whether the project is subject to an environmental impact or incidences assessment procedure or not; failure to comply with such deadline shall determine the loss of 15% of the bond;

- iv.* 36 or 30 months to obtain the operation license, depending on whether the project is subject to an environmental impact or incidences assessment procedure or not; failure to comply with such deadline shall determine the loss of 5% of the bond.

[Ricardo Andrade Amaro \[+ info\]](#)
[Catarina Brito Ferreira \[+ info\]](#)
[Francisco Mendes da Silva \[+ info\]](#)
[Joana Alves de Abreu \[+ info\]](#)

This publication is purely informational and is not meant to be a source of legal advice, nor does it contain a comprehensive review of all aspects of the law and practice referred to. The information contained herein refers to the date of first publication, readers being warned to take legal advice before applying it to specific issues or transactions. The contents of this publication may not be copied, disclosed or distributed in whole or in part without prior consent. For more information please contact us at com.pr@mlgts.pt.