

The CJEU to rule on the Spanish tax on electricity production

The European Court of Justice is expected to issue a final decision before the year-end on the pending cases regarding the Spanish tax on electricity production, which could have an impact in the industry of EUR 10 million.



The Spanish Tax on the Value of Electricity Generation has been controversial since its introduction in 2012 to tax the production and incorporation of electricity. Nowadays the journey of the Spanish Tax on the Value of Electricity Generation (hereinafter "IVPEE" by its Spanish acronym) seems to be coming to an end according to the recent news coming from the Court of Justice of the European Union ("CJEU"), which indicate that there will be a decision before the end of the year. In this sense, the Court is likely to rule about the preliminary ruling made at the request of the High Court of Justice of the Autonomous Community of Valencia, which questioned the compatibility of the IVPEE with the legal system of the European Union.

The IVPEE is applied throughout the Spanish territory and is levied on the generation of electricity and feeding of electricity into the grid, particularly affecting those who obtain their electricity from renewable sources. The

constitutionality of this tax has already been questioned several times and it was even suspended for a period of six months between 2018 and 2019. Nevertheless, the Spanish Tax Authorities have continued to collect EUR 1,500 million per year since 2013. Because of these substantial amounts, the potential invalidation of the IVPEE could have severe consequences for the Spanish electricity industry, as a consequence of the avalanche of individual claims and reimbursements, and also considering their already weakened situation.

It is important to highlight that the decision of the CJEU would have an impact on all the open cases concerning this tax, and not only on those cases brought before the CJEU by the claimants. This was also the case of the CJEU's decisions some years ago on the controversial abusive mortgage clauses (known as the "Floor Clauses"). Although a favourable decision is expected, the final ruling could take different paths, including the limitation of the effects of the invalidation of the tax. In any case, we will have to be very careful on the conclusion of the Court of Justice of the European Union and the consequences of its implementation.

Our recommendation for clients who have been subject to this tax is to challenge their IVPEE tax returns before the CJEU issues a decision, in order to be able to recover the amounts already paid in the event the CJEU rules in favour of the nullity of this tax.

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