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To all
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Circular
No. 29/2023

Bolzano, 12 July 2023

Subject: Renewable energy – reporting of production figures and grounds for exemption to the GSE; first deadline 28 July 2023

As a reminder: by Art. 15-bis of Law Decree No. 4/2022 (ratified by Conversion Law No. 25/2022) a set of rules was introduced last year which was highly controversial from the outset, under which, in the case of installations for the production of renewable energy (above all photovoltaic installations, wind power and hydroelectric power) with a capacity of more than 20 KW, the excess profits in the period between 1 February 2022 and 31 December 2022 may be skimmed off by the GSE, namely to the extent that a fixed reference price (in South Tyrol 58 Euro per MWh) has been exceeded. In this connection we also refer to our Circular No. 30/2022, in which we sought to explain the legal position at that time. By the Budget Law for 2023 this skimming-off of profits was extended until 30 June 2023, whereby, for the purpose of calculating the excess profit, reference is made with effect from 1 December 2022 to the upper limit of 180 Euro/MWh set by the EU. The GSE was entrusted with laying down the necessary implementing provisions. On 23 June 2023 the GSE has now issued these long overdue implementing provisions. In them, reference is once again made to the relevant exemptions and to the fact that the levy is to be paid on the basis of actual production.

At present the position is that, last year, on the basis of its (estimated) production figures, the GSE first reclaimed the excess profits for the months of February to July, whereas from August

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onwards (in the case of sale directly to the GSE) only a reduced price was paid out. Where the energy was sold to third parties, by contrast, the excess profit was invoiced directly by the GSE, first for the months of February to August 2022 and then also for September 2022, using a questionable method, whereas any settlement for the following months is still outstanding, especially since the measure has in the meantime become the subject of countless court proceedings, the outcome of which is difficult to foresee today.

Nevertheless, the GSE is now requesting, by way of dedicated reports,
- first, the indication of any grounds which might give exemption from the excess profits levy,
- and furthermore the indication of the actual production figures, namely once for the period February to December 2022 and then for the period January to June 2023.

For this reason, here first of all is another list of the cases in which exemption from the excess profits tax applies by operation of law:
1. the supply of members' electricity by historic cooperatives;
2. the obligation to pay free-of-charge electricity to the Province of Bolzano in the case of hydroelectric power plants with an average annual nominal capacity of more than 220 kW;
3. the sale of electricity to a trader under fixed-price contracts concluded, for the period February - December 2022, before 27.01.2022 and, for the period January - June 2023, before 5 August 2022;
4. the feed-in of electricity attributable to a storage system;
5. the production of electricity fed in by sections of the installation which have undergone renewal or capacity-increase measures ("interventi di rifacimento o potenziamento"). The sections must have been put into operation before 1 January 2010 and must not be subsidised under the so-called "conto energia";
6. the production of electricity fed in by sections of the installation which have undergone capacity-increase measures ("interventi di potenziamento"). The sections must have been put into operation after 31.12.2009 (installations subsidised by "Conto Energia" tariffs not linked to market prices remain excluded).

Where such a ground for exclusion exists, two new separate notifications to the GSE are now required:
- a first notification for the exemption in the period February 2022 to December 2022, to be submitted by 28 July 2023, and
- a second report for the exemption in the period January 2023 to June 2023, to be submitted by

31 August 2023.

At the same time, the actual production figures are also to be verified, since it is clarified that the calculation of the levy will be made on the basis of final production (and not on the basis of the advance payments), and accordingly a report is in any event necessary by 28 July 2023 or by 31 August 2023 respectively in order to communicate the actual production in the two reference periods. Incidentally, the report for the previous year is to be made also where no report, or an incorrect report, was submitted last year (original due date 10 August 2022).

The reporting forms can be retrieved and submitted via the “EP” (Extra Profitti) service, which is available in the customer area of the GSE portal. For technical support you may contact the GSE directly, which can be reached at the following contact details:
Freephone number: 800.16.16.16 (key 2), or GSE portal: via the support function and selection of the “Extra Profitti” service.

Whether the levy is ultimately due or not will certainly at some point be clarified by the courts; as matters stand today, however, we recommend that any grounds for exemption and also the actual production figures for the periods indicated be communicated, because: if a ground for exemption exists, the matter is concluded with the report; should no exemption be available and should the courts at some point confirm the lawfulness of the levy, it is in our view advantageous if the levy is then payable at least on the basis of actual production and not on the basis of some estimates by the GSE.

Yours sincerely
Josef Vieider