

Tax Measures for Tackling the Increasing Energy Prices in Europe: *An update from Austria, Bulgaria, Germany, Poland, Sweden, and the United Kingdom*

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In the wake of the energy crisis, the European Union and national governments have implemented various fiscal measures to relieve the strain on economies and help EU industries and citizens deal with rising energy prices. Tax is one of the most effective short-term solutions to level the playing-field whenever energy prices soar.

By the end of 2022, the EU had introduced several temporary measures such as a "solidarity contribution" levied on the "surplus taxable profits" of companies in the oil, gas, coal, and refinery sectors; as well as a revenue cap on companies generating low-cost electricity from wind, solar, and nuclear sources. In the sections below, we delve deeper into some Member States' national implementation of the EU measures, other national tax mechanisms, and also the measures adopted in the UK.

Austria

1.1 Windfall tax and revenue cap on inframarginal electricity and gas producers

On 18 December 2022, the National Council approved the Federal Act on the Energy Crisis Contribution for Electricity Producers ("EKBSG") and the Federal Act on the Energy Crisis Contribution for Fossil Energy Producers ("EKBFG"), which established two measures: a revenue cap for electricity producers and a profit cap for oil and gas businesses.

The energy crisis contribution for electricity amounts to 90% of the monthly surplus revenue from the sale of electricity between 1 December 2022 to 31 December 2023. The surplus revenue is calculated by the positive difference between market revenue per MWh of electricity and the upper limit of market revenue (EUR 140.00) per MWh of electricity.

If the profits of oil, coal and natural gas companies amount to 20% above the average of the previous four years in the second half of, respectively, 2022 and 2023, then profits will be skimmed-off at 40% retroactively between 1 July 2022 and 31 December 2023 due to the energy crisis contribution for fossil energy producers. With both the EKBSG and EKBFG, the tax burden can be reduced by making investments in beneficial assets.

1.2 Energy taxation measures and other measures to compensate end-consumers for high energy prices

In July 2022, the Austrian parliament passed the Corporate Energy Cost Subsidies Act ("UEZG") to provide relief to energy-intensive businesses. Energy-intensive commercial and non-profit businesses are eligible for funding, and the subsidy covers 02-09/2022 (EKZ I), 10-12/2022 (EKZ I Q4) and the year 2023 (EKZ II).

To reduce the cost burden due to increased electricity costs in Austrian households, the Energy Cost Compensation Act 2022 (Energiekostenausgleichsgesetz 2022) was published in April 2022. This Act granted a EUR 150.00 voucher to individuals who were obliged to pay electricity fees based on an electricity supply contract at their main residence within the period of 15 March until 30 June 2022.

The Electricity Cost Subsidy Act (Stromkostenzuschussgesetz) was published in October 2022, to ensure an affordable supply of electricity for a basic quota ("electric cost subsidy") and to provide additional support for low-income households ("grid cost subsidy"). The beneficiaries of the electric cost subsidy are individuals who are obliged to pay electricity fees based on an electricity supply contract for one household. If the actual consumption in one period is lower than the basic quote (2.900 kWh), then the electricity is capped at the actual consumption. A subsidy of 75% for system usage fees charged by the grid operator, will be provided to low-income households, who are beneficiaries of the grid cost subsidy.

1.3 VAT measures

The sources of energy supply (fuel and power) are charged at the standard 20% VAT rate. Currently, no temporary reduction of VAT is planned. The introduction of a "zero tax" rate on the purchase and installation of photovoltaic systems is under discussion.

Bulgaria

2.1 Windfall tax and revenue cap on inframarginal electricity and gas producers

- » A cap on the market revenues of electricity producers

Electricity producers and electricity traders must pay a targeted contribution on their market revenues that exceed certain mandatory caps that are determined depending on the sources of electricity generation. The targeted contribution will be paid for supplies made between 1 December 2022 and 30 June 2023. The contributions are paid into a dedicated "Electric Energy System Security" Fund and are treated as deductible expenses for tax purposes.

- » Temporary solidarity contribution

EU companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors must pay a temporary solidarity contribution on their surplus profits. The rate of the solidarity contribution is 33% and it is calculated on the taxable profits in FY 2022 and FY 2023 that exceed a 20% increase of the average of the taxable profits in the fiscal years 2018, 2019, 2020 and 2021.

2.2 Energy taxation measures and other measures to compensate end-consumers for high energy prices

- » A cap on the market revenues of electricity producers

The funds from the targeted contributions by electricity producers and electricity traders are used to compensate non-household final electricity consumers for the high electricity prices through their electricity suppliers.

- » Zero excise on LPG, natural gas and electricity

From 9 July 2022 to 30 June 2025, excise tax has been abolished for the following products:

- › LPG and natural gas used as motor fuels;
- › Heat energy;
- › Energy products used for the combined production of heat energy and electricity;
- › Electricity under code CN 2716 produced from the following renewable sources:
 - » Solar, wind, wave, tidal or geothermal power;
 - » Hydroelectric power;
 - » Biomass or biomass-based products;
 - » Methane emitted from abandoned coal mines;
 - » Fuel cells.

2.3 VAT measures

A reduced VAT rate of 9% applies from 9 July 2022 to 1 July 2023 to the supplies of central heating and natural gas.



Germany

3.1 Windfall tax and revenue cap on inframarginal electricity producers

To reduce energy prices, the German federal government planned to partially eliminate the "unexpected profits" of electricity producers by introducing revenue and price caps for inframarginal electricity producers.

The German relief package describes the introduction of revenue and price caps as a "quasi-reversal" of the EEG surcharge (the German Renewable Energy Sources Act). The existing accounts for this surcharge, which was permanently abolished in July 2022, could be used for this system. The implementation of the revenue cap and the "electricity price brake" is expected to benefit small and medium-sized enterprises, but also large enterprises, as they receive financial support (i.e. state aid) concerning the price paid for so-called "basic consumption".

The elimination of "extraordinary profits" will also allow for a reduction of costs through redistribution. Therefore, the increase in the electricity grid fees has been averted since 1 January 2023.

3.2 Reliefs on the energy price for end customers

Since 1 January 2023, the regulations for the so-called "price brakes" for gas, heat and electricity have been in force. The legislator issued two separate acts: the Electricity Price

Brake Act (Strompreisbremsegesetz) and the Gas and Heat Price Brake Act (Gas- und Wärmepreisbremsengesetz).

Here, subsidies are provided in the form of monthly credits from the supplier. The credit is for the difference between the legally-capped price for a so-called base quota - the so-called "reference price" - and the agreed high price: a gross reference price of 12 cents/kWh has been set for natural gas and 9.5 cents/kWh for district heating for a basic quota of 80% of historical consumption.

Under the gas price brake, customers with gas consumption of less than 1.5 million kWh per year, as well as care, research and educational institutions, are to receive a cap on the gross gas price at 12 cents/kWh for 80% of consumption; for district heating, the guaranteed gross price is 9.5 cents. Industry is to pay only 7 cents/kWh for 70% of its natural gas consumption and 7.5 cents/kWh for 80% of its heat consumption, and 9 cents/kWh for steam.

For electricity, the price cap differentiates between households/commercials (up to 30,000 kWh annual consumption) and larger companies. So: (i) for consumers up to an annual electricity consumption of 30,000 kWh, the reference electricity price will be capped at 40 cents/kWh including regulated price components (grid charges, taxes, levies, etc.), for a "relief quota" of 80% of the consumption in 2021, or a consumption forecast by the grid operator, if applicable; and (ii) for consumers above 30,000 kWh, the electricity price is capped at 13 cents/kWh for a relief quota of 80%, i.e. grid charges, taxes, levies and surcharges remain unaffected in this target group. Only grid purchases of electricity and natural gas are eligible, regardless of whether the company purchases from a supplier or buys energy on its own on the wholesale market.

For the remaining 20% or 30% of consumption, the (expensive) contract price must be paid in each case. This is intended to create an incentive for efforts by households and companies to save energy.

The price brakes are initially set to expire at the end of 2023. The price brakes legislation permits the German government to extend the measures by decree until April 2024. In addition, the government is to examine by the end of 2023 whether an extension beyond this date is possible.

Based on the EU's Temporary Crisis Framework for state aid, this legislation has set maximum limits for the relief via a highly differentiated system. For certain energy-intensive companies, the maximum amount of relief is €150 million per year. The relief from the electricity and gas price brakes as well as from all network connection points of all affiliated companies are to be added together. If the amount is exceeded, then a case-by-case review by the EU Commission is envisaged. In the case of relief of up to €50 million, companies must submit a plan of how they intend to increase their efforts to improve energy efficiency and use renewable energies.

In addition, there are limits on the amount of relief for large consumers depending on the level of so-called "crisis-related additional energy costs" and the EBITDA development in the comparison of 2021 to 2023. Companies that receive more than € 2 million are subject to a "job retention obligation" until 30 April 2025 for 90% of their jobs (i.e. full-time equivalents).

There is still no specific tax rule concerning benefits paid under the price break laws. It remains to be seen whether the relief provided will be taxable from 1 January 2023.

3.3 Energy taxation measures and other measures to compensate end-consumers for high energy prices

Regarding electricity taxation, energy-intensive enterprises will be granted support against price increases until 31 December 2023, with the help of the so-called "peak compensation for electricity" (§ 10 StromStG) and energy taxes (§ 55 EnergieStG). However, this assistance is dependent on the company reducing its energy consumption. Under the 3rd relief package, no further increase of CO₂ prices in the context of the national emissions trading scheme is planned until 1 January 2024.

3.4 VAT measures

An additional measure is that gas suppliers will charge a reduced VAT rate of 7% instead of 19% until the end of March 2024. The aim is to target and support companies that are fundamentally viable and capable of surviving in the long term even in the current market scenario.

Poland

4.1 Windfall tax and revenue cap on inframarginal electricity and gas producers

» Electricity

In November 2022, the Act of 27 October 2022 came into force concerning emergency measures to reduce electricity prices and give support for certain recipients in 2023. It has introduced a tax on excess profits that will be paid by electricity producers and electricity providers (called "eligible entities") to a dedicated fund account. These obligations are to be performed in the period from 1 December 2022 to 31 December 2023. This levy will be calculated depending on electricity generation technology.

A maximum price per megawatt hour is PLN 693 net for households or PLN 785 net for other entities. The indicated price cap is applied for listed consumers, including micro, small and medium-sized enterprises ("SMEs"). To be charged the maximum price, consumers have been obliged to submit a statement to an electricity provider by 30 November 2022 or 31 December 2023 (depending on the entity) confirming that the requirements to apply the price cap have been met.

The eligible entities will be directly affected by the freezing of electricity prices. Therefore, they will be compensated for their losses on a monthly basis. The compensation will constitute the tax revenue from the sale of electricity.

» Gas

In December 2022, the Act of 15 December 2022 concerning the maximum price of gaseous fuels, came into force, and it has introduced another windfall profits levy for 2023. It applies from 1 January 2023 to 31 December 2023, and concerns the so-called " Price Difference Payout Fund", which will be paid by natural gas providers. These, in turn, are to apply a price

of no more than PLN 200.17 per megawatt hour in sales to eligible entities, including households, schools, housing communities, etc. The maximum price of gaseous fuels does not apply to SMEs (from 8 April 2023 with an exception for bakeries after meeting certain conditions). Moreover, households using liquefied LPG gas for heating purposes were entitled in 2022 to a supplement of PLN 500.

4.2 Energy taxation measures and other measures to compensate end-consumers for high energy prices

Excise duties on electricity, some engine fuels, and light heating oil until the end of 2022 have been reduced to the EU minimum.

The Act of 7 October 2022 on special solutions for the protection of electricity consumers in 2023 concerning the situation on the electricity market guarantees the maintenance of electricity prices in 2023 for households at the level of prices applying since 1 January 2022 for the consumption, in general, of up to 2 megawatt hours of electricity in 2023. Moreover, households using electricity for heating purposes are entitled to an electricity supplement, in general, of PLN 1,000.

The Act of 27 October 2022 also provides an incentive for electricity savings by offering a 10% discount in 2024 for eligible customers, who will keep their electricity consumption in 2023 at a level not exceeding 90% of the average annual electricity consumption in the period 2018-2022. The amount of the discount is equivalent to 10% of the total amount of electricity sales incurred by the eligible customer in 2023.

4.3 VAT measures

Until the end of 2022, reduced VAT rates on electricity (reduced from 23% to a 5% VAT rate) or natural gas (reduced from 23% to a 0% VAT rate) were applied. The measures outlined above should allow energy prices to remain in 2023 on the same level as in 2022.

Sweden

5.1 Windfall tax and revenue cap on inframarginal electricity and gas producers

» Electricity

On 22 February 2023, the Swedish government introduced a new temporary tax on excess electricity revenues in 2023 (Swedish: "överintäkter"; further called "excess revenues") to tackle the energy crisis and soaring prices on the market.

This temporary tax is in line with the EU's Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices, and the new tax targets electricity producers with revenues exceeding 1.957 SEK per megawatt/hour. The excess revenues are taxed at a rate of 90% of the tax base, during the period between March-June 2023.

The electricity producers affected are those who produce electricity in Sweden from the following sources:

- › wind energy
- › solar thermal energy
- › photovoltaic energy
- › geothermal energy
- › waste
- › nuclear energy
- › brown coal
- › crude petroleum products
- › peat
- › hydropower without water storage
- › solid or gaseous biomass fuels that are not biomethane

Exceptions exist for certain electricity producers who produce electricity under specific circumstances.

» **Fossil fuels**

Since 1 January 2023, a temporary tax on windfall profits for companies in the fossil fuel sector has been introduced. The law applies to Swedish companies and foreign companies with a permanent establishment in Sweden whose net turnover in the tax year 2023 is at least 75% attributable to activities in the fossil fuel sector. The temporary tax is levied on the part of the companies' taxable surplus in 2023 that exceeds 120% of the average taxable profit for the years 2018-2021. The temporary tax amounts to 33% and is levied in addition to the ordinary corporate tax of 20.6 %.

Companies who can be assumed to be liable for tax under the temporary law are obliged, upon request, to provide the Swedish Tax Agency with information that the Agency needs to assess the tax liability.

5.2 Energy taxation measures and other measures to compensate end-consumers for high energy prices.

» **Electricity**

Electricity support

Sweden has introduced electricity support for both households and companies. Sweden is divided into 4 electricity zones. The electricity support for households concerns all zones and for companies it is only paid out in zones 3 and 4, which concern the middle and south of Sweden.

Households

From February 2023 onwards, the Swedish Social Insurance Agency has paid out the electricity support for households. The remuneration related to electricity paid from 1 October 2021 to 30 November 2022 will only be paid out to households in electricity zones 3 and 4 whose names were listed on the electricity bill on 17 November 2022. The

remuneration for this period amounts to 0.79 SEK per kilowatt hour consumed in electricity zone 4 and 0.50 SEK per kilowatt hour consumed in electricity zone 3.

Households in all sectors will receive electricity support for 80% of the electricity consumed during November-December 2022 under 18,000-kilowatt hours. The remuneration is as follows:

- › 1.29 SEK per kilowatt hour in electricity zone 4;
- › 1.26 SEK per kilowatt hour in electricity zone 3;
- › 0.90 SEK per kilowatt hour in electricity zones 1 and 2.

Companies

The electricity support for companies has not yet been paid out yet. However, starting from May 30, 2023, businesses can apply for electricity support through the Swedish Tax Agency's e-services. Companies and organisations in electricity sector 4 will receive 0.79 SEK per kilowatt hour consumed and in electricity zone 3 it is 0.50 SEK per kilowatt hour consumed. The amount of electricity support is determined by electricity consumption during the period from 1 October 2021 to 30 September 2022. A company or organisation can receive a maximum of 20 million SEK. If the company or organisation is part of a company group, then the entire group can receive a maximum of 20 million SEK.

Tax reduction on "computer halls" (datorhallar) abolished

Since 2017, Sweden has applied a tax reduction in energy tax for the electric consumption in computer halls. The tax reduction amounts to a rate of 0.06 SEK per kilowatt hour instead of 0.39 SEK per kilowatt hour. In light of the energy crisis, the tax reduction will be abolished from 1 July 2023 as an incentive for computer halls to work towards energy-efficient consumption. A lower tax rate of 0.294 SEK will continue to apply in some northern parts of Sweden.

Temporary tax exemption

The Swedish government will temporarily remove tax benefits for employees when charging cars, motorcycles, mopeds, bicycles, or light trucks at the workplace. The temporary regulation will be in effect as from 1 July 2023 and is to expire in 2026.

» Gas

The energy tax on petrol and diesel has been temporarily reduced for three years due to the soaring fuel prices. The reduction is approximately 0.80 SEK per litre based on the tax rates that would have been applied on 1 January 2023 with the current indexation rules.

5.3 VAT measures

No VAT measures have been implemented.

United Kingdom

6.1 Windfall tax and revenue cap on inframarginal electricity producers

The Energy Profits Levy ("EPL") was introduced in the UK on 26 May 2022 and will remain in place until 31 March 2028. From 1 January 2023, the EPL is charged on the profits of oil and gas producers at a rate of 35%, in addition to the permanent 40% tax rate, resulting in a combined headline tax rate of 75%.

From 1 January 2023 the investment allowance is reduced from 80% to 29%, which, due to the increase in the rate of the EPL, broadly maintains the existing cash value of the allowance. To recognise that the oil and gas sector is investing in decarbonisation, expenditure on qualifying decarbonisation will continue to qualify for the investment allowance at 80%, which results in tax relief of £109.25 for every £100 of qualifying expenditure incurred.

A new Energy Generator Levy ("EGL") consisting of a temporary 45% tax levied on 'extraordinary returns' from low carbon UK electricity generation has been introduced from 1 January 2023 to 31 March 2028. The levy applies to companies or groups of companies generating more than 50 GWh of electricity per annum and applies only to exceptional receipts exceeding £10 million per annum.

6.2 Energy taxation measures and other measures to compensate end-consumers for high energy prices

The Energy Bill Relief Scheme ("EBRS") was effective between 1 October 2022 and 31 March 2023 and provided a temporary discount on gas and electricity unit prices for businesses, charities and public sector organisations. The reduction to bills for eligible non-domestic customers was applied by suppliers with the government compensating suppliers for the reduction in wholesale gas and electricity unit prices that the suppliers were passing onto non-domestic customers. The level of support for each organisation varied depending upon the type and date of their energy supply contracts.

The Energy Bills Discount Scheme ("EBDS") announced on 9 January 2023 has replaced the EBRS from 1 April 2023. The EBDS is available to certain eligible businesses and other non-domestic energy users satisfying conditions and provides a discount on energy bills for a 12 month period from April 2023 to March 2024. The relative discount available is significantly reduced from those available under the EBRS and companies are encouraged to 'shop around' the market to find the best price deals.

The maximum discount of £19.61 per megawatt hour (MWh) for electricity will be applied if wholesale prices are above a price threshold of £302 per MWh. The maximum discount for gas is £6.97 per MWh with a price threshold of £107 per MWh. The actual amount paid to a business depends upon the terms and conditions of the contracts between the business and their electricity and gas suppliers.

On a similar basis to the EBRS, where applicable the baseline discount is applied automatically by the supplier.

A higher level of support may be available to specific energy intensive businesses known as Energy and Trade Intensive Industries ("ETIIs"). An application must be made to receive this additional discount. The production of cosmetics is not included on this list.

Additionally, the Heat Network discount provides support to heat networks with domestic end consumers. Applications must be made to benefit from this relief.

As with the EBRS, the UK government will compensate suppliers for the reduction in unit prices being passed on to non-domestic customers.

The Climate Change Levy ("CCL") is a charge on business customers in the industrial, commercial, agricultural, and public services sectors on gas, electricity and solid fuel usage. Its aims to encourage businesses to be more energy efficient in their operations. The CCL is charged at the main rate to all businesses or at the Carbon Price Support Rate for electricity power generators or operators of combined heat and power stations.

Through entering into a Climate Change Agreement ("CCA"), businesses can make significant reductions to the amount of CCL charged by making improvements to their energy efficiency and average energy consumption. The CCA has been extended for a further two years, ending on 31 March 2025. It is open to new entrants in currently eligible sectors. The rate of the buy-out price has increased to £25/tCO₂e.

6.3 VAT measures

VAT measures

Supplies of fuel and power are charged at the standard 20% rate of VAT unless eligible for the reduced rate of 5% for qualifying use (such as for domestic use, charity non-business use, and where small (*de minimis*) quantities of use are for a non-qualifying/business use).

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