

December 18 2023

# Taxation of energy producers' excess profits

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On 20 September 2023, the Hellenic Council of State (ie, Greece's Supreme Administrative Court), heard the cases brought before it by renewable energy systems (RES) producers against the minister for environment and energy and the Hellenic Republic regarding the issue of taxation of their "excess" profits.

These RES producers appear to have been treated like regular electricity producers, upon which a 90% incidental capital contribution on their gross profit margin was imposed, not taking into consideration (according to the claimants) the inherent differences between these markets.

Several RES producers (including Heron II Viotias SA, MYTILINEOS SA and Korinthos Power SA) filed petitions for judicial review (annulment) before the Council of State, concerning the methodology used for the taxation of their excess profits. The producers claimed that the methodology used by RAEWW (Regulatory Authority for Energy, Waste and Water), later adopted by the Ministry for Environment, was incorrect as it concluded that the tax imposed on the excess profits should be based on the comparison between the profits achieved in 2022 and those achieved in 2021.

According to the producers, the main problem with the methodology is the year used as a basis for the comparison (ie, 2021) since it constituted the first year of the target model operation, a year during which the market was trying to adapt to the new mechanism. They further claimed that the methodology includes aspects which contradict certain provisions of EU Regulation 2022/1854 on an emergency intervention to address high energy prices.

Contrary to the methodology in question, they claimed that a more comprehensive assessment could be achieved by the examination of profits over a more extended period of time and that the natural gas units had to be excluded from the methodology for those hours, during which the prices are set. According to them, the natural gas units do not generate excess profits, since their operational costs increase steadily due to the fuel they use. Thus, they could generate increased profits, only when the prices are set by the imports, (ie, when a neighbouring market is more expensive than the Greek one). The Council of State is anticipated to render its decision within the following months.

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