

SB21

Portuguese State
budget 2021

Proposal

Snapshot
Energy

Abreu:advogados

1. Social tariff

The Government should maintain the existent rules for Social Tariff of natural gas. In the State Budget Law proposal for 2021 (“OE 2021”) it is again projected that the costs resulting from the application of the social tariff to customers be borne by natural gas transportation and marketing companies. The amount to be supported is determined in advance, in proportion to the volume of gas marketed in the previous year.

Although the criteria used is understandable, given the difficulty in determining the value in advance, its fairness rises some reservations. This criterion is likely to require adjustments at the end of the year, in accordance to the consumption profiles from 2021. It may also generate adaptation difficulties for companies in the sector, especially in a time of crisis, which probably will trigger an increase in the number of consumers accessing this Social Tariff.

2. Energy Sector Extraordinary Contribution

In 2021, there is no change to the (already ordinary) Extraordinary Contribution on Energy Sector (“ECES”), which survives since 2014. Thus, the general amount paid by companies in the electricity sector remains at 0.85% of the value of net assets recognized in the accounts of all entities comprising the national energy sector. The legislator has excluded specified cases from this contribution, such as electricity generated by natural gas combined cycle thermoelectric plants or crude oil refining activities.

However, the government concedes to probably alter the rules of the ECES. The criteria used for this change will be the sustained reduction of the tariff debt of the National Electric System and the implementation of alternative ways of financing for social and environmental policies in the energy sector.

The government also believes any change will always have the aim of making the tax system stable and predictable, as well as reducing the existent and future litigation against the ECES, which have multiplied since its introduction, in 2014.

3.

Electrical mobility and decarbonisation of the automotive sector

In the scope of electric mobility, the Government is proposing financial incentives and a change in the tax regime. In the first case, the State Budget for 2021 defines that the Environmental Fund will maintain the financing of the incentive to consume zero emission vehicles in 2021. It is understood that the 2020 conditions will be maintained in 2021 (see table below), with the exception of the broadening of the scope of support. The scope now covers two-wheeled motorcycles and bicycles (conventional or electric), electric mopeds that have European homologation and are subject to registration* and cargo bicycles. However, nothing prevents the Ministry of the Environment from changing the conditions of this support in the course of next year.

| | Natural Persons | Legal Persons |
|---|---|--|
| Light duty Passenger Vehicles | 3.000€ Limited to 1 incentive per candidate | 2.000€ Limited to 4 incentives per candidate |
| Light duty Commercial Vehicles | 3.000€ Limited to 1 incentive per candidate | 3.000€ Limited to 4 incentives per candidate |
| Bicycles, Motorcycles, Electric Mopeds and Cargo Bicycles | 50% up to a maximum of 350€ Limited to 1 incentive per candidate | 50% up to a maximum of 350€ Limited to 4 incentives per candidate |
| Conventional Bicycles | 10% up to a maximum of 100€ Limited to 1 incentive per candidate | |

*Those in the last category classified as enduro, trial or including a sidecar are to be excluded from the scope of application of this incentive.

3. **Electrical mobility and decarbonisation of the automotive sector**

With regard to tax measures to encourage the decarbonisation of the automobile sector, the government proposes the introduction in the Vehicle Tax Code of an environmental component of an exponential nature. This component will add to the component indexed to the cylinder capacity of vehicles already existing when calculating the average commercial depreciation of vehicles in the domestic market and the average remaining life of vehicles.

4. **Fiscal measures to support the Energy Transition**

As part of the Energy Transition, State Budget 2021 proposes two relevant measures: The first, of a positive nature, is the total exemption from the tax on advanced biofuels, which will now apply to gases of renewable origin, where green hydrogen is included.

For this exemption to be applicable, the before mentioned gases of renewable origin must be certified as Biofuel. However, under the existent legal regime, this certification can only be attributed to fuels produced from biomass and not to green hydrogen. We should, therefore, await an update of this legislation in the course of 2021.

4. Medidas fiscais de apoio à Transição Energética

Significant changes have also been approved in the rates of the Consumption Special Tax applicable to petroleum and energy products. These changes are applied to the Tax on Petroleum Products (“TPP”) and the addition of CO₂ emissions (ACO₂), in accordance with the table below. It should be noted that from the scope of these changes are expressly excluded biofuels, biomethane, green hydrogen and other renewable gases.

The Government also proposes that, when used in installations subjected to an agreement of rationalisation of energy consumption, coal and coke, petroleum coke, LPG and fuel oil with a sulphur content below or equal to 1%, their taxation should be increased by a 5% rate of the ACO₂ rate. This increase will be updated annually to 10 % in 2022; 30 % in 2023; 65 % in 2024 and; 100 % in 2025.

When these products are used in installations covered by the European Union Emissions Trading System (“EU ETS”), including those covered by the Optional Exclusion therein, the ACO₂ rate will not apply. This exclusion is justified by the fact that the value of the CO₂ to be emitted has been paid when the carbon allowances are purchased.

4. Medidas fiscais de apoio à Transição Energética

| Product | Use | Scope (functional or territorial) | Taxation – applicable rate 2021 | Evolution expected for subsequent years |
|---------------------------------------|---|--|--|--|
| Coal and coke | <ul style="list-style-type: none">• Generation of electricity• Cogeneration• City Gas | Main activity | <ul style="list-style-type: none">• 75% TPP• 75% ACO2 | 100% in 2022 |
| Fuel oil | <ul style="list-style-type: none">• Generation of electricity• CogenerationCity Gas | Portuguese Mainland | <ul style="list-style-type: none">• 50% TPP• 50% ACO2 | <ul style="list-style-type: none">• 75% in 2022• 100% in 2023 |
| Road Diesel, Dyed Diesel and Fuel Oil | <ul style="list-style-type: none">• Generation of electricity• CogenerationCity Gas | Autonomous Regions of Azores and Madeira | <ul style="list-style-type: none">• 25% TPP• 25% ACO2 | <ul style="list-style-type: none">• 37.5% in 2022• 50% in 2023• 75% in 2024• 100% in 2025 |
| LPG and Natural Gas | <ul style="list-style-type: none">• Generation of electricity• Cogeneration• City Gas | Portuguese Mainland | <ul style="list-style-type: none">• 20% TPP• 20% ACO2 | <ul style="list-style-type: none">• 30% in 2022• 40% in 2023• 50% in 2024 |

Note: this table does not exempt the consultation of the State Budget 2021 as soon as it is promulgated, as well as the applicable national and European Union legislation.

Finally, the additional TPP fee for petrol, road and dyed and market diesel will also remain in force during 2021.

Although these measures are in line with the trend already defined by the government in the National Energy and Climate Plan 2021-2030 ("NECP 2030"), there is still doubts as to how the so-called brown hydrogen, (i.e. hydrogen produced from non-renewable resources), will be treated fiscally. It neither seems to be covered by the biofuels tax exemption (where there is an absence of reasonable grounds to compare) nor in the scope of use used to define the tax regime under TPP and ACO2.