

## Legislative initiatives for 01-15 March 2021 impacting RES producers

Verkhovna Rada of Ukraine, adopted laws

On 02 March 2021, there was adopted the Law on Amendments to Section XX “Transitional Provisions” of the Tax Code of Ukraine. The law was adopted to implement the Law “On state support of investment projects with significant investments in Ukraine” (the so-called “law on investment nannies”) and provides, temporarily, until 01 January 2035:

- exemption from value added tax for importing of new equipment and its components into the customs territory by the investor for implementation of an investment project with significant investments;
- exemption from corporate income tax on the profits of the enterprise - investor with significant investments for five consecutive years, starting from the first day of the first month of the calendar quarter specified by the taxpayer in the application for the right to apply such an exemption;
- granting the right to local governments to set rates of land tax and rent fee for state and communal lands in the amount less than that set in the respective territory, exemption from land tax payment.

Such preferential treatment can be used by the investor only within the scope of state support of the investment project, the amount of which is determined in accordance with the Law “On state support to investment projects with significant investments in Ukraine” and is recorded in the investment agreement. Upon reaching the set amount of state support, application of such preferential treatment by the investor is terminated.

The law is submitted to the President of Ukraine for signing.

The Verkhovna Rada of Ukraine, registered draft laws

02 March 2021, there was registered the draft Law with No. 5183 on Amendments to certain legislative acts of Ukraine on the settlement of certain issues of connection to engineering networks. The draft Law provides for changes to a number of laws with the following objectives:

- set a unified procedure for connection to all types of engineering networks and uniform approaches to estimate the connection fee (within one territorial community a single price is set for the service of connection to engineering networks of a certain type);
- ensure an inventory of current engineering networks and drafting of technical documentation on land management (concerning the protected areas) as it will allow to register the protected areas in the State Land Cadastre, adjust them

according to special land management documentation depending on terrain, technology of engineering networks, etc.;

- detail the requirements for planning documentation that will display information about engineering networks in the State Land Cadastre, the National Geoportal, the Unified State Electronic System in the field of construction, urban cadastre;
- cancel “technical conditions” as initial data for designing with simultaneous obligation to record information on available capacity (prospects for its increase) and the distance and route to the capacity location in the urban cadastre, State Register of Construction Activity, National Geoportal.

The draft law (if adopted) may affect activity of investors implementing or planning to implement new RES projects.

On 05 March 2021, a draft law with No. 5208 was registered on introduction of amendments and alterations to some laws of Ukraine on measures to strengthen Ukraine's energy independence. The draft Law provides for the following:

Introduction of amendments to the Law of Ukraine “On the National Energy and Utilities Regulatory Commission, Law of Ukraine “On the Electricity Market” in terms of the following:

- entities regulated by the NEURC (entities in the electricity market, natural gas market which are engaged in the transportation of oil, petroleum products and other substances, in the utilities segment) are obliged to notify the Regulator of the conclusion of credit agreements by them or their affiliates with business entities established in the aggressor state or with parties affiliated with such business entities. The Regulator shall publish information on its own website;
- the power of the NEURC to limit the available capacity of interstate crossings with the aggressor state is renewed until 31 December 2021 (introduction of an import ban);
- urgently (within 24 hours), the Ministry of Energy shall notify the Cabinet of Ministers of Ukraine, the National Security and Defense Council, the Security Service of Ukraine, the National Energy and Utilities Regulatory Commission, the Antimonopoly Committee of Ukraine, the Ministry of Economy, TSO about decrease in the level of fuel reserves below the approved volumes. At the same time, there are proposals for elimination of negative circumstances.

Final provisions of the draft law contain instructions to the Cabinet of Ministers to implement the following within 3 months:

- to introduce special duties on anthracite, bituminous coal, coking coal and other coal, motor gasolines, heavy distillates (gas oils), liquefied gases and hydrocarbon gases originating from the aggressor state;
- to draft and submit to the VRU a draft law on the allocation of funds from the above special duty to the special fund of the State Budget of Ukraine with further financing of TSO expenditures for PSO to increase RES share and/or TSO’s fee for the service to ensure the generating capacity development;

- to submit to the VRU a report with information on goods on which the Cabinet of Ministers of Ukraine will impose a special duty and to provide a justification for cases when such special duty shall not be imposed. In addition, it is necessary to provide information about the share of goods proposed to be subject to a special duty under this law in the total annual consumption of relevant goods, annually starting from 2014.

On 09 March 2021, a draft Resolution with No. 5223 was registered on support for business entities using alternative energy sources.

According to the draft Resolution, within three months the Cabinet of Ministers of Ukraine together with the ministries shall draft and submit to the Verkhovna Rada of Ukraine a program and action plan to support business entities using renewable energy sources providing for reimbursement of the cost of RES facilities connection, tax benefits and other mechanisms to increase the number of RES entities.

12 March 2021, there were registered the draft Laws with No. 5227 and No. 5228 on amendments to the Tax Code and certain legislative acts of Ukraine concerning development of energy crops cultivation.

The draft laws provide for the following:

- simplification of the procedure for allocating agricultural land plots of state and communal ownership for energy crops cultivation;
- minimum term for land lease shall be not less than 20 years;
- maximum amount of land rent shall not exceed 5% of the normative monetary valuation of the land plot;
- provision of other types of state support for the cultivation of energy crops in the manner prescribed by the Cabinet of Ministers of Ukraine.

15 March 2021, there was registered the draft Law with No. 5248 on Amendments to certain legislative acts of Ukraine. The draft law proposes separate amendments to the Land and Civil Codes of Ukraine, the Laws of Ukraine “On Land Lease”, “On State Registration of Proprietary Rights to Real Property and Their Encumbrances” and provides for the following:

- simultaneous transfer of the right to the land plot or its separate share with the transfer of the rights to the real estate object, unfinished construction located on it;
- specifies features of registration actions for the transfer of land property rights (a separate share in the joint title) in case of acquisition of ownership of real estate, unfinished construction.

The draft law (if adopted) may affect activity of investors implementing or planning to implement new RES projects.

#### Made decisions

On 10 March 2021, by order No. 180-r Baker Tilly Ukraine LLC was appointed to provide services for the statutory audit of the financial statements of the State Enterprise “Market Operator” for 2020.

On 10 March 2021, by order No. 179-r Baker Tilly Ukraine LLC was appointed to provide services for the statutory audit of the financial statements of the State Enterprise “Guaranteed Buyer” for 2020 and 2021.

On 03 March 2021, the Resolution No. 177 supplemented the list of institutions performing the function of an authorized bank in the electricity market with the Joint-Stock Company “State Export-Import Bank of Ukraine”.

### The National Energy and Utilities Regulatory Commission

#### Made decisions

At the meeting held on 10 March 2021, the NEURC adopted the Resolution No. 390 “On provision of information on bilateral contracts concluded between entities that are part of one vertically integrated entity or are mutually affiliated”. The resolution defines the form of submission by producers, suppliers, traders of information on concluded bilateral agreements (subject, electricity price and/or procedure for its calculation (setting), electricity volume and hourly electricity sales schedule, terms and electricity delivery procedure).

This requirement applies to market participants that enter into bilateral agreements and are part of one vertically integrated entity or are mutually affiliated.

This obligation follows from the requirements of the Law of Ukraine No. 832-IX of 01 September 2020 and the Resolution of the NEURC of 03 February 2021 No. 144 (see monitoring for 01-15 February 2021). According to these regulations, related parties are not allowed to purchase or sell electricity under bilateral contracts in the amount of more than 50% of the monthly volume of their own electricity production.

This decision applies to RES producers who carry out or intend to carry out activity in the market independently (not within the balancing group of the Guaranteed Buyer).