



To: Dmytro Razumkov
Chairman of the Verkhovna Rada of Ukraine

Denys Shmyhal
Prime Minister of Ukraine

Copy: Andriy Gerus
Chairman of the Verkhovna Rada Committee on Energy, Housing and Utilities Services

Danylo Hetmantsev
Chairman of the Verkhovna Rada Committee on Finance, Tax and Customs Policy

Serhiy Marchenko
Minister of Finance of Ukraine

From: European-Ukrainian Energy Agency (EUEA), Ukrainian Association of Renewable Energy (UARE), Ukrainian Wind Energy Association (UWEA)

Date: April 30, 2021

Subject: regarding the possible changes in the Tax Code of Ukraine on the introduction of excise tax on the sale of electricity produced from renewable energy sources

Dear Mr. Razumkov and Mr. Shmyhal,

On behalf of the European-Ukrainian Energy Agency (EUEA), the Ukrainian Wind Energy Association (UWEA) and the Ukrainian Renewable Energy Association (UARE), which unite the large number of national Ukrainian and international investors in the renewable energy sector in Ukraine, we express our deep respect and address you with the following.

As it became known from mass-media¹, the Ministry of Finance of Ukraine is preparing a draft law with a package of amendments to the Tax Code of Ukraine, which is planned to be approved at meeting of the Cabinet of Ministers of Ukraine and submitted to the Verkhovna Rada of Ukraine for the further consideration and adoption. Among other changes, the introduction of an excise tax on the sale of electricity produced from renewable energy sources (RES) was announced. A wide range of excise tax rates is currently being discussed, ranging from 3.2% to 40%. However, as stated in the reports, the exact amount of the tax is still being discussed.

¹ <https://www.epravda.com.ua/publications/2021/04/22/673237/>

Such information is of concern to members of our associations - national and international investors, as the announced changes in the tax regime for transactions for the sale of electricity produced from renewable energy sources, would contradict the guarantees provided by the Government of Ukraine on June 10, 2020 during the signing of the Memorandum of Understanding on the settlement of problematic issues in the field of renewable energy in Ukraine (hereinafter - the Memorandum) and which were confirmed by the Verkhovna Rada of Ukraine by adopting the Law of Ukraine "On Amendments to Some Laws of Ukraine" of July 21, 2020 № 810-IX (hereinafter - the Law № 810-IX).

Thus, in accordance with part eight of Article 9-4 of the Law of Ukraine "On Alternative Energy Sources", the state guarantees **that for business entities for which the "green" tariff is set or will be set in accordance with part three of this article, the legislation of Ukraine in force on the day of entry into force of the Law of Ukraine "On Amendments to Certain Laws" will apply throughout the term of the "green" tariff Ukraine on improving the conditions for supporting the production of electricity from alternative energy sources**", in addition to legislation that reduces or abolishes taxes or fees, weakens the regulation of economic activity, simplifies procedures of state supervision (control) in the field of economic activity, mitigates liability or another way improves the situation of business entities, which should be applied from the date of entry into force of such legislation. The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Conditions for Supporting the Production of Electricity from Alternative Energy Sources" was adopted on July 21, 2020 under № 810-IX and entered into force on August 1, 2020.

As of August 1, 2020, in accordance with provision 213.2.8 of paragraph 213.2 of Article 213 of the Tax Code of Ukraine, the sale of electricity produced from renewable energy sources refers to transactions that are not subject to excise tax.

The adoption of the proposed initiatives by the Verkhovna Rada of Ukraine will change the legislation in force on the day of entry into force of Law IX 810-IX and will violate the state guarantee provided in Article 9-4 of the Law of Ukraine "On Alternative Energy Sources". These changes will worsen the regulatory environment for electricity producers from renewable energy sources, as they increase the amount of tax liabilities that must be paid by such producers in the sale of electricity, and the actual withdrawal of part of their income. Moreover, the introduction of a new excise tax is a de facto reduction of the "green" tariff by an additional 3.2 - 40% for existing stations, as this tax will be paid by producers, which contradicts the provisions of the Memorandum, which clearly set limits for reducing "green" tariffs - 7.5% for electricity production from wind and 10% and 15% for electricity production from solar radiation depending on the installed capacity. At the same time, the proposed changes do not provide for any mechanism to compensate producers for the administration and payment of excise duty, which effectively deprives investors of legal investment rights (in terms of non-receipt of expected income) and depending on the amount of excise duty may have signs of partial expropriation of their assets.

Such actions by the state will show disregard for both the current legislation and the obligations to investors, which were made by the current Government and the current Verkhovna Rada of Ukraine less than a year ago. We would like to remind you that the state bodies of Ukraine continue to violate the provisions of the Memorandum, in particular regarding the repayment of the Guaranteed Buyer's debt to electricity producers from RES and ensuring 100% of the current payment. The introduction of an excise tax on electricity produced from RES de facto worsens the conditions for the economic activity of producers and grossly

violates the rights of investors in relevant projects that have already invested heavily and are delaying active action to apply to courts, including international investment arbitration, only in view of the trust in public authorities in terms of fulfilling their full obligations. Moreover, such initiative will cause irreparable damage to the investment climate in Ukraine and make it impossible to attract funds for new energy and environmental projects.

We hope that taking into account all these initiatives, the Government of Ukraine and the Verkhovna Rada of Ukraine will think over all the risks of such decisions regarding the image of Ukraine as a stable partner and investment-attractive country.

Respectfully,

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