



MIYAGI PREFECTURE'S “NEW RENEWABLE ENERGY TAX”

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Miyagi Prefecture's New Tax Regime

- Miyagi Prefecture's prefectural assembly passed the “Renewable Energy Community Coexistence Promotion Tax Ordinance” (再生可能エネルギー地域共生促進税条例) on July 4, 2023
- The governor promulgated the ordinance on July 11, 2023.
- Expected to become effective as early as April, 2024, subject to a consent by Minister of Internal Affairs and Communications (MIC Minister; 総務大臣).



Who will be affected?

It will impose taxes on owners of "Solar," "Wind" or "Biomass" facilities that are installed through development of forest areas exceeding 0.5 hectares.

In Miyagi Prefecture, about 57% of the prefectural land is said to be forested.



What is the intention?

- "Maximize the introduction of renewable energy and protect the environment at the same time" (再生可能エネルギーの最大限導入と環境保全の両立)
- "Restrain the implementation of projects involving large-scale forest development and guide them to suitable sites" (大規模な森林開発を伴う事業の実施を抑制し、適地への誘導を図る)

How big is the tax?

Tax base (課税標準) is the power generation capacity (発電能力) (kW) of the power plant:

- 620 yen per kW for solar power
- 2,470 yen per kW for wind power
- 1,050 yen per kW for biomass

For FIT-approved solar and wind power, depending on the applicable FIT price:

- a maximum of 2,640 yen per kW for solar power
- a maximum of 4,760 yen per kW for wind power

Tax rate was decided to be equivalent to about 20% of operating income (営業利益).



Grandfather Clause

Projects that have already **started construction** (工事に着手) or **initiated development activities** (開発行為に着手) before the effective date are not subject to taxation.



Current Status

- The ordinance is now waiting for the **consent by Minister of Internal Affairs and Communications (総務大臣)**.
- MIC Minister is required to **listen to the opinion of Local Public Finance Council (地方財政審議会)**.
- Council discussed this ordinance on July 21 and 28, 2023.
- At the meeting held on July 28, 2023, the Council decided to confirm the prefectural government's position on the purpose and objectives of the new tax as well as its conception of taxable objects (新税の趣旨・目的や課税客体の考え方等).

Tax Exemption

- i. Projects based on a local decarbonization promotion project plan (地域脱炭素促進事業計画) under the **Global Warming Act** (温対法)
- ii. Projects based on a facility development plan (の設備整備計画) under the **Agriculture REA** (農山漁村再エネ法)

Agriculture REA: Act on Promoting the Generation of Renewable Energy Electricity Harmonized with Sound Development of Agriculture, Forestry and Fisheries (Act No. 81 of 2013)
- iii. Projects **certified by the mayor** of the municipality and **approved by the governor** as equivalent thereto (**Equivalent Project**) (これらに準ずるものとして市町村長が認め、知事が認定した事業計画に基づくもの)



Do you remember Mimasaka City's "Panel Tax" Ordinance?

- Caught our attention in 2021-2022
- “Mimasaka City Commercial Panel Tax Ordinance” has not been granted consent by the MIC Minister to date
- After several meetings, the Local Public Finance Council deemed it necessary to hold further discussions between Mimasaka City and Major Tax Payer (特定納税義務者; large taxpayers who is expected to pay more than one-tenth of the total)



Difference with Mimasaka City's "Panel Tax" that caught our attention in 2021-2022

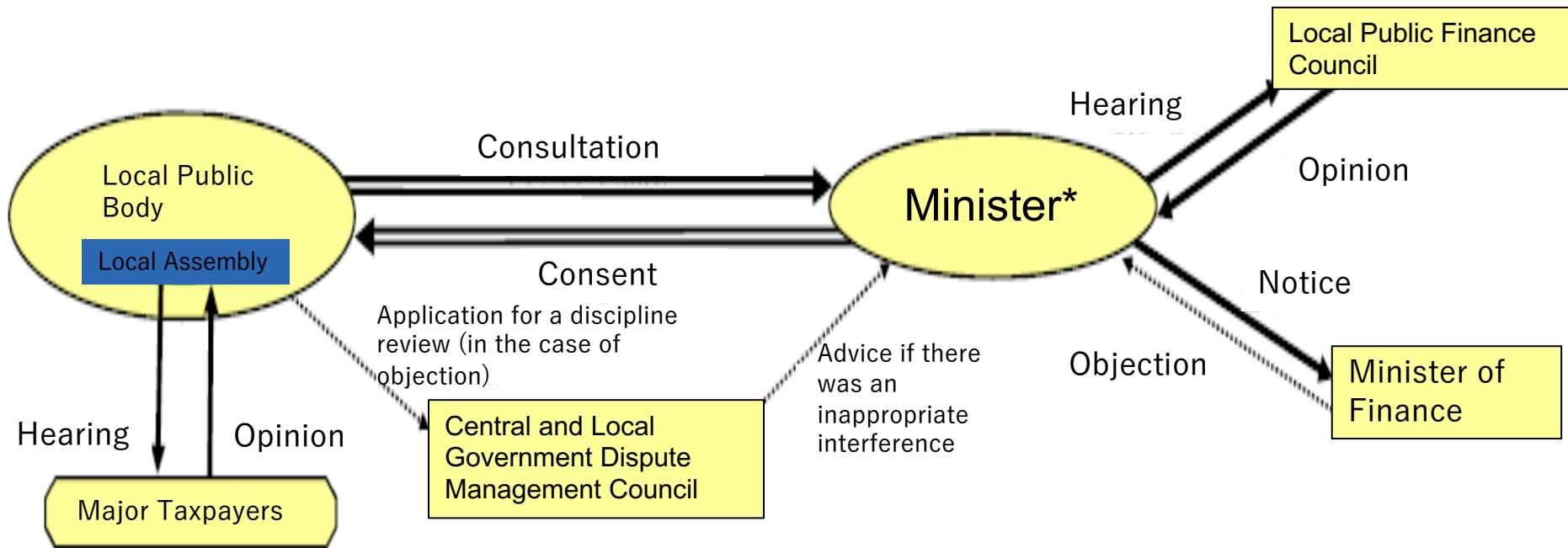
- "City" and "Prefecture"

Prefecture is much bigger. Ex) Miyagi prefecture alone contains 35 cities/towns/villages

- No "Major Tax Payer" in Miyagi's case
- Legal structure that is easily understood by public (i.e., a mechanism to exempt taxation for projects that have been agreed upon with the local community.)

Steps for the “New Renewable Energy Tax” to become effective

* Minister of Internal Affairs and Communications



(From a material prepared by the Ministry of Internal Affairs and Communications, translated and altered by Orrick)



Minister's Consent

MIC Minister must grant a consent **unless** there is one of the following reasons (Article 733 of Local Tax Act):

1. the **tax basis is the same** as that of the national tax or other local taxes (**= duplicative taxation**) and the burden on residents (taxpayers) is **significantly excessive**;
2. the tax imposes a serious obstacle for the commerce of goods across prefectures and cities; or
3. the tax is otherwise not appropriate in light of **national economic policies**.

Other possible discussions around the new tax:

- Whether it is consistent with Local Tax Law (地方税法)
- Principles of Fairness, Neutrality, and Simplicity (公平・中立・簡素) ("why only renewable energy projects?" What about other energy projects? What about other non-energy projects?)
- Reasonableness of choice of tax means (「税を手段とすることがふさわしい」、「税以外により適切な手段がない」といえるか。)
- There must be a fiscal demand that requires that tax revenue (その税収入を必要とする財政需要があること)

Other hurdles

- Whether it is consistent with Local Tax Law (地方税法)
- Principles of Fairness, Neutrality, and Simplicity (公平・中立・簡素) ("why only renewable energy projects?" What about other energy projects? What about other non-energy projects?)
- Reasonableness of choice of tax means (「税を手段とすることがふさわしい」、「税以外により適切な手段がない」といえるか。)
- There must be a fiscal demand that requires that tax revenue (その税収入を確保できる税源があること、その税収入を必要とする財政需要があること)



Does this spread to other prefectures?

- Aomori Prefecture announced on September 12, 2023 about its plan to establish **a new ordinance** and **a new tax regime** with the aim of both promoting renewable energy and protecting the natural environment.



Summary of the Aomori Prefecture's Governor's press conference:

- Offshore wind power will be exempted
- Whether or not to follow Miyagi Prefecture's new tax regime is undecided.
- Possibility of taxing existing renewable energy facilities as well.
- Try to introduce the new tax during FY2023.



Thank you!

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