

The background of the slide is a dark blue image of the Earth from space, with glowing blue energy lines or fiber optic cables crisscrossing the globe, symbolizing energy trading and connectivity.

## ***Value added taxes in energy trading***

Obstacles to cross border trade

Mumovic Milka

## **Treaty establishing the Energy Community:**

*“Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.” (Article 41)*

*“The Energy Community may take measures with the aim of creating a single market without internal frontiers for Network Energy, whereas these measures shall not apply to fiscal measures.” (Article 42)*

**Therefore, the objective of the Treaty to create a single market may not be used or interpreted as an instrument affecting the capacity of Contracting Party to define and collect taxes on its territory.**



## ***Meeting of the Central and South-Eastern European Connectivity (CESEC) High Level Group in Sofia on 29 June 2018***

### ***Conclusions***

***[11]. Asks the European Commission and the Energy Community Secretariat to investigate bottlenecks in market reform and integration in the CESEC region related to non-matching VAT and public procurement regimes, and to propose solutions to the next High-Level Group meeting***

*(7) The common system of VAT should, even if rates and exemptions are not fully harmonised, result in neutrality in competition, such that similar goods and services bear the same tax burden, whatever the length of the production and distribution chain.*

*VAT on sold electricity*

*(19) Electricity and gas are treated as goods for VAT purposes. It is, however, particularly difficult to determine the place of supply. In order to avoid double taxation or non taxation and to attain a genuine internal market free of barriers linked to the VAT regime, **the place of supply of gas through the natural gas distribution system, or of electricity, before the goods reach the final stage of consumption, should therefore be the place where the customer has established his business.***

*The supply of electricity and gas at the final stage, that is to say, from traders and distributors **to the final consumer**, should be taxed at the place where the customer **actually uses and consumes the goods.***

***Directive 2006/112***



## **Issue No 1. Transactions dealing in electricity as good, import and export of electricity**

- Trade on power exchange and PX coupling
- Provision of balancing services across borders
- Retail supply of electricity by non-resident suppliers

## **Issue No 2. supply of services related to cross border trade of electricity (transactions dealing in services related to transport of electricity, including hosting cross border flows.**

## Only when VAT rules are not harmonized!

- *Chargeable event (the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled)*
- *Taxable person (person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity)*
- *Place of taxable transaction (general and special rules)*

*And:*

- *Exemption of importation*
- *Reverse charging*
- *Taxable dealer*
- *Tax representative*

***Different VAT regimes are creating obstacles for trade in energy in the EnC countries.***

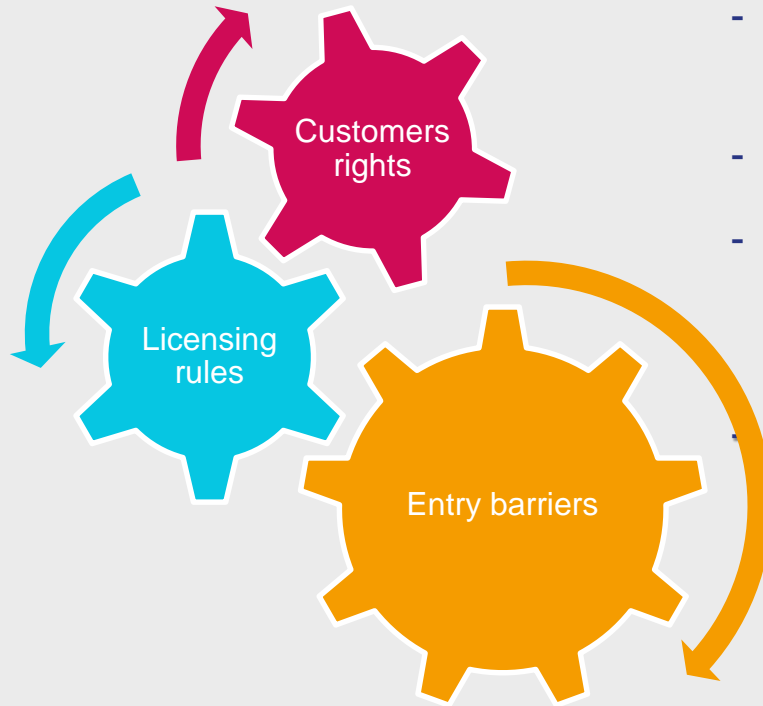
- ***supply of goods***
  - Domestic supplies, Cross border supplies
  - Organized market
  
- ***supply of services***
  - Access to network, Use of network
  - Other services

***Different tax obligations may lead to different playing field for market participants.***

***Non-harmonized rules lead to double taxation or non taxation***

- ⇒ ***Distorting competition***
- ⇒ ***Hinder competition and new entries (Suppliers will not enter a market where competition have a hidden advantage)***
- ⇒ ***Lost public revenue from tax fraud scheme (VAT lost due to tax fraud may amount to 40 mil. EUR p.a.)***  
(Assuming the value of transaction in wholesale electricity market of minimum 10 bill. EUR, and assuming the share of VAT fraud at the same level of 0,04% total transaction as in EU MSs)

***Tax evasions and fraud undermine market confidence.***



- *Harmonize market design and licensing regime - mutual recognition (Art 34 of EnC Treaty)*
- *Remove barriers to trade*
- *Ensure access to supplier regardless of the CP where the supplier is registered (Art 3.4 of Directive 2009/72)*

## **Preconditions**

- **compliance with market and balancing rules**
- In EnC – compatibility with fiscal rules (primarily VAT)



# Supply by non resident supplier – status in

CP	Taxation rules		Wholesale supply (trade)		Retail supply	
	B2B	B2C	License required	Domestic seat required	License required	Domestic seat required
Albania	RCM	FR	✓	✓	✓	✓
BiH	FR	FR	✓	✓	✓	✓
Georgia	PE	PE	✓	✓	✓	✓
Kosovo*	RCM	FR	✓	No	✓	✓
FYR Macedonia	RCM	PE	✓	✓	✓	✓
Moldova	PE	PE	✓	✓	✓	✓
Montenegro	FR	FR	No	No	✓	✓
Serbia	RCM	FR	✓	No	✓	✓
Ukraine	PE	PE	✓	✓	✓	✓

<b>RCM</b>	REVERSE CHARGE MECHANISM	<b>PE</b>	PERMANENT ESTABLISHMENT REQUIRED
<b>FR</b>	FISCAL REPRESENTATIVE	<b>NPE</b>	PERMANENT ESTABLISHMENT NOT REQUIRED

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**Study on examining the implementation of EU acquis on Value Added Tax in the Energy Community legal order**

EIHP  
August 2017

August 2017: Study on examining the implementation of EU acquis on Value Added Tax in the Energy Community legal order

### First Workshop on value added tax 26 April 2017- Conclusions

*The Secretariat in cooperation with the nominated national experts shall work out the details of the proposed recommendations for harmonization, taking into account both optimum and minimum requirements for harmonization. The ultimate objective is to remove VAT related obstacles for energy trading across the border within the integrated market by elimination of possibility for non-taxation or double taxation and to timely prepare legal, administrative and institutional framework to prevent and combat tax fraud in energy trading.*

*The harmonization of VAT legislation will be based on the EU Directives, taking into account specifics of the fiscal system of the Contracting Parties and available institutional framework, the feasibility and implementability of the proposed solutions.*

*For better understanding of energy trading and services related to network energy by the national VAT authorities, the Secretariat is invited to prepare, in cooperation with TSOs, the list of services related to network energy in order to harmonize the definition and taxation of these services.*

*The participants agreed that the national experts for VAT had to cooperate closely with experts for energy markets in their respective jurisdiction. In addition, in order to properly reflect specifics of national energy markets and applicable VAT, a cooperation within the Energy Community should be maintained.*

*The nominated national VAT experts should meet again to exchange views and to achieve common understanding during the preparation of the proposal to the EnC institutions*

## *Where are the differences?*

Taxable person

Place of taxable transaction

Person liable to pay tax

Place of Supply of services

Place of Supply of goods

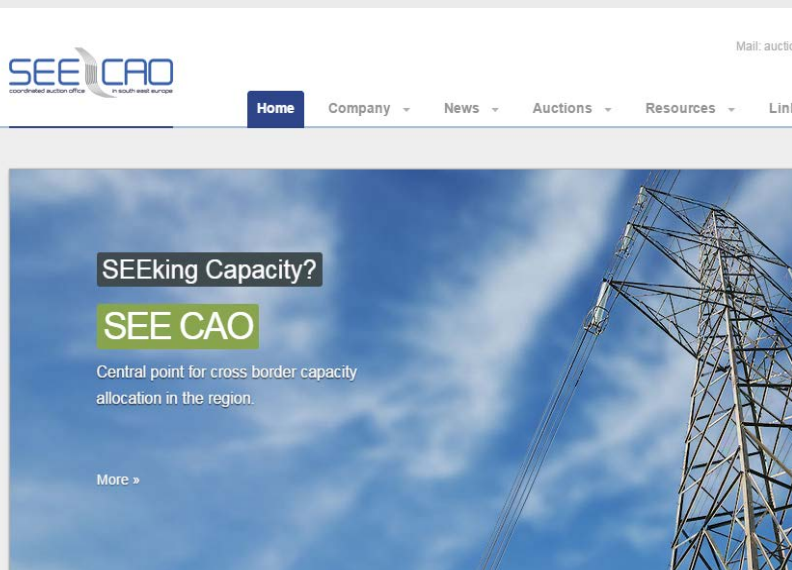
Reverse charges

## Specific consideration



Transactions related to electricity between entities from different Contracting Parties and between Contracting Parties and EU Member States that have predominantly different taxation system can lead to negative effects such as **distortion of competition** and negative implications on the Contracting Party/EU Member States budgets resulting from **tax evasion or tax fraud**.

- **Access to PX and market coupling**
- **Access of eligible customers to a foreign supplier**
- **Provision of balancing service**
- **Inter TSO compensation**
- **Common capacity allocation procedure / Operation of CAO SEE**
  - **Sales in kind, at zero, at negative prices**



Coordinated Auction Office in South East Europe was established on March 27, 2014 with the representatives from 7 SEE TSOs.

## Auction results

Daily Monthly Yearly

No data to display

## News

 December 15, 2014 Preliminary Results of Auctions for January 2015  
SEE CAO announces to all Auction Participants the Monthly auctions for January 2015 that are published on DAMAS Auction Platform. Contestation is Tuesday, 16th of December, 2014.

**Market operators:** the need to harmonize applicable rules on value added tax as a precondition for smooth cross border trade and to avoid tax evasion or double taxation on services related to hosting cross border flows.

## Cross border capacity allocation

- **Bilateral**
- **Coordinated (CAO, JAO)**

**Fee for operation of CAO - classification of service** ✓

**Distribution of revenues from allocation of interconnection capacities to capacity owners** ✓

## ***Article 44***

The place of supply of services to a taxable person acting as such shall be the place where that person has established his business.

However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located.

In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.

## ***Directive 2006/112***

***Provision of services between EU MS and Contracting Parties - Policy guidelines***

***No confusion or conflicting interpretations as to the place of transaction:***

***The place of supply, before the goods reach the final stage of consumption, should be the place where the customer has established his business.***

***The supply of electricity at the final stage from traders and distributors to the final consumers should be taxed at the place where the customer actually uses and consumes the goods.***

***Trade in power exchange ?***

***Taxable dealer?***

Electricity at zero price

Electricity at negative prices

***Participation of foreign suppliers – supplies from abroad***

***Reverse charge mechanism***

***International reverse charging (mandatory for XB supplies in EU***

***All contracts – billing without VAT, payment upon input VAT claim***

***In EnC - import / export taxation rules***

***All contracts - billing without VAT, payment upon importation***

***Domestic reverse charging - DOMESTIC reverse charge mechanism for an effective prevention of VAT fraud in energy trading***



- **Take VAT fraud seriously:**
  - Be constantly cautious.
  - Alert the relevant authorities, if suspicions arise.
  - Keep raising awareness on the danger energy markets are exposed to.
  
- An International Reverse Charge Mechanism like the EU system can avoid non-taxation, double taxation and related discussions = highly effective system.
  
- A concerted **Domestic Reverse Charge Mechanism** can pull the carpet under the fraudsters' feet.
  
- Other points to ease trading in energy:
  - Assurance that special energy taxes are not applicable in case of solely wholesale trading activities (no consumption)
  - No registration obligations or tax declaration obligations in case of using an international reverse charge mechanism.
  - ....

***Use of interconnection capacity and related charges are subject to VAT in case of congestion. In jurisdiction where in case of congestion, place of taxable transaction is determined in the place where service provider has its seat, it may pose obstacle to trade because VAT may also be due in the place where customer has its seat.***

## ***Solution:***

***For service of **providing access to interconnection capacity**, the place of taxable transaction shall be the place where the customer has established his business or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides.***

***Note: Non-taxable person cannot bid in auction for interconnection capacity.***

# *Provision of balancing services*

## ***Market operators: regional balancing ?***

*When a system operator procures **balancing capacity** (i.e. reserve capacity), it purchase service and therefore, the transaction should be taxable at the place of system operator, regardless if it is procured from domestic or foreign provider.*

*When a system operator procures **balancing energy**, the underlying transaction is supply of goods, business to business (B2B), with the assumption that each TSO is a taxable person. The place of supply shall be deemed to be the place where that taxable dealer has established his business.*

*(For the purpose of identification, TSO is considered a taxable person; because it will not consume the balancing energy, but re-sell it at the same price to all unbalanced responsible parties.)*

## *Retail supply*

All customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Contracting Party in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules.

***Supplier established and registered outside the Contracting Party is authorized to supply domestic customers, as long as these customers may be considered as taxable persons, i.e. holding relevant VAT identification.***

***- Institute of tax representative***



# Minimum requirements for harmonization

- ❑ Uniform treatment of electricity and natural gas as goods in the VAT legislation (tangible asset);
- ❑ ***The place of supply of goods is the place where the customer is located (in the case of gas through the natural gas distribution system, or of electricity).***
- ❑ Definition of the place of supply of natural gas through the distribution system, or of electricity, to a taxable dealer (business to business [B2B] transaction), as the place where that taxable dealer has established his business, or has a fixed establishment for which the goods are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides;
- ❑ Definition that the supply of electricity at the final stage from traders and distributors to the final consumers should be taxed at the place where the customer actually uses and consumes the goods (business to customer [B2C] transaction);
- ❑ Definition of place of supply of services to a taxable person as a place where taxable person has established his business, or has a fixed establishment for which the services are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides
- ❑ The place of supply of services to a non-taxable person shall be the place where the supplier has established his business.

## *Minimum requirements for harmonization*

- ❑ Recognizing the subject of a taxable dealer in the VAT Law provisions on supply of gas and electricity;
- ❑ VAT exemption on exportation of electricity (natural gas) through a system or any network connected to such a system (or fed in from a vessel transporting gas into a natural gas system or from any upstream pipeline network) with the right to VAT deduction.
- ❑ VAT exemption on the importation of electricity (natural gas) through a system or any network connected to such a system (or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline network);
- ❑ VAT shall be refunded to taxable persons who are not established within the territory of the CP.
- ❑ The VAT law shall define requirements for VAT refund, the institute of the Fiscal Representative or direct Tax Registration.

## *Solution in harmonization*

***Different VAT rules and lack of coordination and harmonization in the pending process of market opening increase the risk of tax frauds in cross border trade, of double taxation or non taxation of cross border services and will likely prove detrimental for emerging competitive markets of the Energy Community.***

**Harmonization of rules within the Energy Community using EU experience and practice to remove barriers and fight tax evasion will contribute to successful integration of internal market within Energy Community.**



- 1. Preparation of amendments of VAT legislation and its adoption**
- 2. Implementation, harmonization and coordination**
- 3. Monitoring and consulting (VAT expert group)**

*Coordination of the efforts among Contacting parties is the key priority in order to avoid double-taxation or non-taxation in the Contacting parties. In the coordination activities the Commission support is of key importance.*

***Involving EU VAT expertise from the Commission service (DG TAXUD) in the activities on coordination, consultations, education, experience sharing within the VAT expert group is decisive for guiding the implementation process in the right direction.***



The background is a satellite-style image of the Earth at night, showing city lights. Overlaid on this are numerous glowing blue lines that represent energy transmission paths, connecting various points across the globe.

## *Questions*

[www.energy-community.org](http://www.energy-community.org)