

Third Workshop on Value added tax on transactions in network energy and meeting of the Project Group

Energy Community Secretariat, Am Hof 4, 6th floor, 1010 Vienna
Date and time: 29 October 2019 from 10:00 to 15:00 hrs

The third workshop on Value added tax on transactions in network energy and the second meeting of the Project Group on VAT harmonization in the energy sector of DG TAXUD.

Ad 1. Technical assistance programme FISCALIS

After welcome and introduction into the subject by ECS Director, Mr. Janez Kopac, the representative of EC- DG TAXUD, Mr Carlos Justizia-Diaz presented envisaged Commission's support to harmonization of VAT laws and regimes across Energy Community with those applied in the EU.

As a first concrete measure aimed at supporting harmonization, Mr. Justizia-Diaz confirmed that the core provisions for cross border transactions in network energy from the VAT Directive (Directive 112/2006/EC on common system of value added tax, as amended), as identified in the Secretariat's report for each Contracting Party, shall be put forward in the agendas of forthcoming subcommittees meetings.

Specifically, the progress in electricity related VAT rules will be put on the agenda of the Subcommittee meeting next month with Montenegro and North Macedonia, with Georgia. The same issue will be raised at the subcommittee meetings with Moldova and Ukraine.

As agreed at the second workshop, DG TAXUD selected VAT experts to be engaged through FISCALIS programme to assist Energy Community in overcoming identified obstacles for harmonization.

Mr. Justizia-Diaz presented the experts assigned to the Project Group via FISCALIS and the outcome of the first meeting of the Project Group on 19 September 2019 in Brussels.

The designated experts Ms. Jasmina Szdova, Mr. Joachim Plis and Mr. Marcelino Caverro Ovejero presented their specific competences and area of expertise that can be utilized for the purpose of the Energy Community harmonization needs.

Ad. 2 VAT related developments in the Energy Community

The Energy Community Secretariat presented the status of harmonization with identified key provisions. No progress was made in terms of transposition in last 6 months, since the previous Enc VAT meeting.

The national VAT experts presented their position and identified preferred methods of assistance and support.

Albania (Ms. Enkelada Pipa) clarified the remaining harmonization concerns and emphasized need for capacity building to develop implementing acts for VAT charging in expected market liberalization. Specific topic of interest is applicable VAT and VAT rate on network losses.

In Bosnia and Herzegovina (Mr. Jasmin Slijivic), a working version of the text of the VAT law (or a pre-draft) has been prepared, where all key provisions from VAT Directive will have been transposed. The text has been sent to the competent committees of the parliaments of Bosnia and Herzegovina entities for consultation, after which it will be discussed again at Governing Board of Administration for Indirect Taxation. The review to confirm that would be welcome, as well as capacity building for practical implementation. The specific topic of interest is taxation of ancillary services. The representative of the system operator NOSBiH (Mr. Josip Dolic) emphasized the need to clarify transaction from VAT point of view, as well as to confirm compliance of draft Law with relevant provisions of VAT Directive. The instructions will be useful to implement new Law.

Georgia (Ms. Manana Teteloshvili) reported that new VAT Law has been drafted in September 2019 and its thorough review for compliance with required provisions on energy market will be urgently needed, in particular clear definition of energy products and what products are VAT exempted. This draft shall be submitted to ECS and Fiscalis team for review.

The Secretariat provided technical assistance to Montenegro in order to solve an urgent issue of double taxation of services provided by SEE CAO, but it has not been adopted yet. On behalf of Montenegro, experts from system operator (CGES) and from auction office SEE CAO participated to convey the concerns of key stakeholders in the electricity market. They consulted with designated experts from the Ministry of finance and indicated the need to have clear instructions to apply new VAT regime, in particular introduction of reverse charging in electricity trading, such as guidelines and rulebooks.

North Macedonia (Ms. Elena Stojmanovska Torteska) has made no significant progress, although all missing provisions are identified and a working group was established to facilitate identification and drafting of legislative adaptations, The support is expected more in practical implementation, such as drafting interpretations, instructions, procedures and reporting forms for VAT claims. In particular, the matters of interest include the institute of tax representative, the role of intermediaries, procedural aspects of handling the customs declaration and tax return, billing, taxation of services, and tax base in the balancing market.

Representatives of the system operator EMS, Serbia (Ms. Jelena Pejovic) underlined the matter of VAT on trading in guarantees of origin, as well as reconciliation between due dates for custom duty and VAT.

Nominated contact from Moldova, Mr. Dorel Noroc, from Serbia (Ms. Vesna Sandic) and from Ukraine (Ms. Maryna Nelina) did not attend. Kosovo* also did not participate in the meeting because designated contact persons not in office any more. Authorities notified that new contact person would be designated to represent Kosovo* in the Project Group.

Ad 3. Technical assistance project

Mr. Carlos Justizia Diaz advised that consultations on draft VAT Law go via EU Delegation in the respective CP, currently addressing Bosnia and Herzegovina and Georgia, and partly Montenegro. Other CPs are invited to start work on amending the current VAT legislation, following the proposed list of relevant provisions for harmonization. Designated Fiscalis expert shall be available for any consultations in that process. He also reiterated that the VAT on transaction in energy market will be put forward as a matter of priority in the annotated agendas of the subcommittee meetings (under Stabilization and Association Agreement - SAA and Partnership and cooperation agreement - PCA) with CPs.

The indicated individual projects are not concluded at the meeting and national authorities and stakeholders are invited to nominate an issue of relevance for them to be considered by the Project Group.

The participants agreed on the indicated multi-beneficiary and joint projects to be realized via workshops, study visits and drafting instructions, interpretations, forms and templates, guidelines and best practice recommendations.

The participants agreed that the experts and officials from interested stakeholders should be included in the work of the Project group to indicate any matter of concern to be timely elaborated.

Detailed work plan and task assignments

- The tasks on individual assistance following tasks of common interest are identified:
 - a) The individual assistance will be provided to review the draft legislation to the Contracting Parties, Bosnia and Herzegovina, Montenegro, Georgia. Other Contracting Parties, first of all North Macedonia, shall consult the Project Group as soon as VAT Law amendments are drafted.
 - b) National contact persons shall send the draft legal act to the Project Group via EU Delegation and keep the Secretariat informed of the progress and communication.
 - c) The contact persons from Contracting Parties shall communicate to the Secretariat and DG TAXUD draft legislation, in particular provisions relevant for the energy market in order to make sure that the Fiscalis experts review the drafts and provide their assessment of compliance before their adoption. The draft legislation, or as minimum the provisions relevant for the transactions in cross border market in network energy shall be provided in English.
 - d) Contact persons and other interested stakeholder are invited to communicate to the Project Group via Secretariat any other legislative act that may be relevant in this process.
 - e) DG TAXUD shall propose to DG NEAR to put forward the VAT on energy based transactions as a matter of priority for the pending sub-committee meetings with EnC CPs (Candidate and potential candidates from WB and Eastern Partnership countries) under the framework of neighbourhood policy instruments.

- The joint projects assigned to Fiscalis experts to elaborate and to develop position on VAT applicability include the transactions related to:
 - a) *Access to PX and market coupling*
 - b) *Provision of balancing service (balancing capacity and balancing energy)*
 - c) *Common capacity allocation procedure / Operation of CAO SEE*
 - d) *Inter TSO compensation*
 - e) *Access of eligible customers to a foreign supplier.*

To facilitate the understanding of the processes and, the contact person shall fill in the questionnaire prepared by the Secretariat describing the currently applicable VAT regime for transactions in cross border trade in electricity and provision of balancing services and submit to the Fiscalis experts via Secretariat, by the end of October.

- The Fiscalis experts shall elaborate applicability of VAT on specific transactions and relations, including the review of best practices, in the following issues:
 - Electricity at zero price / at negative prices / in kind payment
 - Prosumers, net billing and net metering for home installations
 - Relations in citizens' energy communities
 - Flexibility services
 - Emission trading and carbon pricing
 - Trade in green certificates/ certificate of origin
 - other

These elaborations shall serve as basis for Secretariat to develop Policy Guidelines for the Energy Community.

- Contact persons and interested stakeholders are invited to nominate other topics as well as questions related to the items listed above, preferably by end December 2019. They are also invited to suggest the preferred format of assistance.
- DG TAXUD took note of the logistics and administrative issues in the preparation of the meeting. The Secretariat and DG TAXUD shall take utmost effort to ensure that contact persons from all Contracting Parties, as well other interested stakeholders take active part in the activities of the Project Group.