

# *Workshop on Value added tax on transactions in network energy*

---

*Energy Community Secretariat, Am Hof 4, 6<sup>th</sup> floor, 1010 Vienna  
Date and time: 25 March 2019 from 10:00 to 14:00 hrs*

## **1. State of play**

---

The representatives of EC, DG TAXUD, Mr Carlos Justizia –Díaz and Tobias Roecker presented European Commission's view on the importance of the proper implementation of the VAT rules in the energy sector is important for the EU Commission, the specific commitments of the Contracting Parties under respective Stabilization and Association Agreements (SSA) or Association Agreements (SA) and cooperation format in the Eastern Partnership.

DG TAXUD proposed tools through which the VAT harmonisation process can be facilitated in the Energy Community Contracting Parties. The relevant Subcommittee meetings under the EU accession process, organised by DG NEAR can be used to prioritise the transposition and implementation of the key provisions from EU acquis on VAT.

DG TAXUD shall inform the Subcommittees for trade, industry, customs and taxes of the ongoing activities and the need to bring the provisions of national VAT laws related to energy markets in conformity with the Directive 2006/112/EC (amended), in particular definition of the place of supply, to avoid non taxation, double taxation and to ensure level playing field for market participants in integrated energy markets. The conclusions of this Subcommittee should recommend the obligation of the country to inform of the achieved progress in transposition of VAT rules relevant for energy market integration. The Subcommittees for Environment, Energy and Transport should also take note of this matter, as a precondition for a competitive integrated market.

In addition, in consultations with DG ENER and DG TAXUD, the country-specific energy-related aspects of compliances with EU VAT legislation to be further addressed.

In addition, the Fiscalis 2020 programme was presented as a legal instrument that can be used to provide assistance (study visits, meetings, workshops etc.) to candidates and potential candidates for EU accession. Subsequently, the EC - DG TAXUD offered the assistance from Fiscalis programme for well-defined projects related to taxation in energy sector.

The participants were informed of the time schedule . The deadline for submission of expression of interest is 30 April 2019 under Fiscalis 2020. The Participants are invited to notify interested competent experts of the invitations for expression of interest in Fiscalis . (The "Call for nominations to set up a project group on VAT harmonization in the energy sector in cooperation with the Energy Community" is attached.)

By the end of May 2019 the experts will be selected. The areas where technical assistance will be needed have to be agreed by then, to ensure the adequate expertise from the Fiscalis pool of experts.

In order to make most use from Fiscalis, participants concluded that commitments of each Contracting Party have to be assessed, the status of transposition and compliance of national rules with EU acquis reviewed and update before finalization of the terms of reference for specific technical assistance projects.

Building on the findings from the Study from 2017, the Secretariat made an update of the status per CP in October 2018. The Secretariat shall share the drafted updated assessment for each Contracting Party with the nominated contact persons, as well as to TSOs and market operators, for their review and comments. The members of PHLD shall be in copy.

The nominated contact points will communicate and coordinate their activities with relevant stakeholders in their respective Contracting Parties.

## **2. Network of experts**

---

The Secretariat will update the list of the designated national experts, which will act as official contact persons and cooperate with the Energy Community Secretariat and other contact persons on the implementation of the work plan, agreed at the meeting.

The Secretariat shall contact national authorities of those CP which did not respond to the invitation for the workshop.

In addition to VAT experts, the network of experts shall be extended to include representatives from interested transmission system operators and market operators, in particular operators of organized market, as well as of the trader' community (e.g. EFET to be considered).

The Secretariat shall contact system operators and market operators in the Energy Community to inform them of the VAT related activities and invite them to take part and provide their proposals for issues requiring the specific technical assistance.

The Secretariat shall keep informed all participants and stakeholders and contact them during the preparation of terms of references.

The national experts in consultation with relevant stakeholders (system operators, market operators and traders) will identify their priorities and indicate the problems.

Experts from DG TAXUD shall be copied throughout the process in all correspondence.

### **3. Technical assistance projects**

---

The objective of the assistance is to assist implementation, harmonization and coordination of rules and procedures applicable for cross border transactions in electricity.

The participants agreed that mere transposition of the VAT Directive does not require substantial assistance, because the key provisions are identified. If technical assistance for transposition in primary legislation is still needed, the national expert will submit the request specifying scope of work, format and procedure of assistance and deliverables no later than end May 2019.

It was further agreed that minimum of transposition includes, in addition to mandatory provisions, the definition of tax representative and domestic reverse charging and quick reaction mechanism.

As regards the specifics transactions in the electricity sector, the following issues are emphasized:

- **Access to PX and market coupling**
- **Access of eligible customers to a foreign supplier**
- **Provision of balancing service**
- **Common capacity allocation procedure / Operation of CAO SEE**
- **Inter TSO compensation**
- **Treatment of specific sales and relations:**

Electricity at zero price / at negative prices / in kind payment

Net metering for home installations

Relations in energy communities

.... . [to be added]

The objective of the technical assistance is to develop interpretations and instructions for tax authorities and market players on the approach and treatment of these specific issues.

Recalling the general time schedule, before 30 May 2019 the beneficiaries from the Energy Community shall identify technical assistance projects under Fiscalis.

The stakeholders in the energy sector are invited to nominate other topics which require interpretation from the taxation point of view.

It is further agreed that the stakeholders in the energy sector shall define the underlying process in order to clearly define the matter to be interpreted in a harmonized manner by tax authorities or subject to technical assistance project. To facilitate this process, the Secretariat shall send to the nominated experts the questionnaire with basic information on the processes in the energy sector and applicable VAT on underlying transactions.

The Beneficiaries, with the support of the Secretariat will prepare the terms of reference, with detailed description of the service, format and procedure for implementation, time schedule and deliverables. The Beneficiaries may be individual stakeholders or Contracting Parties, group of Contracting Parties or Energy Community as a whole. From September 2019 TA projects have to be defined to start implementation.

