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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1030**

**CONSULTATION
PROVIDED FOR UNDER DIRECTIVE 2006/112/EC**

ORIGIN:	Poland
REFERENCE:	Article 102
SUBJECT:	Reduced rate of VAT for supplies of electricity and district heating

1. INTRODUCTION

Further to the consultation made on natural gas¹, the Polish authorities have submitted an urgent request for consultation to the VAT Committee pursuant to Article 102 of the VAT Directive² concerning the intended application of reduced rates of VAT as regards supplies of electricity and district heating, which aims at protecting final consumers and businesses from increasing costs stemming from the current crisis at the energy market.

The text of the consultation is annexed to this document.

2. SUBJECT MATTER

Pursuant to Article 102 of the VAT Directive, Member States may, after consultation of the VAT Committee, apply a reduced rate of VAT to the supply of natural gas, electricity or district heating.

Poland requested to consult the VAT Committee on its intention to lower the VAT applied to the supply of electricity and district heating from the currently applied standard rate of 23% to a reduced rate of 5% or 8% according to the Polish VAT Act. Poland justifies this step by being faced with a constant and rapid increase of energy costs because of the extraordinary global energy crisis, combined with a higher demand for electricity stemming from a higher consumption that is enforced by energy transition and digital transformation, particularly stoked by the COVID-19 pandemic. Poland also sees the current winter as a reason for also covering district heating by this measure.

Poland aims to implement reduced VAT rates to the supply of electricity and district heating as a temporary counter-measure to the heated energy market for a limited period of 3 months starting from 1 January 2022 with an option of subsequent time-limited (e.g. 3-months) prolongations if required by the market situation. Since the overall objective of these measures is to limit the impact of increasing energy costs for both final consumers and businesses, particularly SMEs, Poland intends to apply the reduced rates of VAT equally to B2B and B2C transactions. Thus, all customers would benefit from this measure, which targets domestic consumers, public institutions and businesses.

Poland takes the view that the intended measures would not result in a distortion of competition on the EU energy market as the rules laid down in the VAT Directive for determining the place of supply of electricity and heating energy ensure that the VAT is levied at the place where electricity and heating energy are actually consumed. Poland also assures that the measure will not breach the principle of neutrality nor increase the risk of distortion of competition, as all private and business consumption of electricity and district heating will be subject to the same reduced rates.

Poland estimates the revenue impact of the measures concerning the supply of electricity to be approximately PLN 0.96 billion (8% VAT rate) or PLN 1.2 billion (5% VAT rate)

¹ This consultation was dealt with during the 119th meeting of the VAT Committee.

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

and that concerning the supply of district heating to be approximately PLN 0.5 billion (8% VAT rate) or PLN 0.6 billion (5% VAT rate).

3. THE COMMISSION SERVICES' OPINION

The Commission services thank Poland for consulting the VAT Committee on its draft legislation and assure their preparedness to assist Member States in mitigating the impact of the current energy crisis on the Union citizens.

Poland's request comes following the Commission's Communication on energy prices³ adopted on 13 October 2021, which aims to enact and support appropriate measures to mitigate the impact of the current energy price rises. In that Communication, it is pointed out that Member States may decide - as part of the toolbox at their immediate disposal - to apply reduced VAT rates on energy products (natural gas, electricity or district heating), provided they respect the minima laid down in the VAT Directive and consult the VAT Committee. Poland's intended measure is aligned with that toolbox, given that the temporary VAT reduction suggested respects the minimum of 5% as well as the VAT rate structure in Poland (since the rate to be applied will be one of the currently applied reduced rates of 5% and 8%).

Moreover, based on the information provided by Poland, the Commission services have no reason to consider that the intended measure does not comply with the requirements of Article 102 of the VAT Directive.

The Commission services share the view taken by Poland that a distortion of competition between Member States is unlikely given that, according to the VAT Directive as modified by Council Directive 2009/162/EU⁴, the rules for determining the place of taxation of electricity and heating determine that VAT is levied at the place where the actual consumption takes place.

Although the VAT rate has less impact on businesses due to their right to deduct, the Commission services share Poland's view that the intended application without differentiation by beneficiary is less likely to be abused and thus less likely to entail distortions of competition or to compromise the principle of fiscal neutrality.

The Commission services have no further comments in addition to the ones made above.

4. DELEGATIONS' OPINION

Delegations, in particular Poland, are invited to give their opinion on this matter.

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³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - *Tackling rising energy prices: a toolbox for action and support* (COM(2021) 660 final).

⁴ Council Directive 2009/162/EU of 22 December 2009 amending various provisions of Directive 2006/112/EC on the common system of value added tax (OJ L 10, 15.1.2010, p. 14).

Consultation of the Republic of Poland with the VAT Committee (Article 102 of the VAT Directive – reduced VAT rate on supplies of electricity and district heating)

At the beginning, we would like to take this opportunity to thank the European Commission for accelerated procedure offered by the Commission to consult application of reduced VAT rates to goods foreseen in Article 102 of the VAT Directive. We have participated in that consultancy process by applying reduced rate on natural gas. However, constant and rapid increase in energy costs made an urgent request for consultation regarding reduced VAT rates on supplies of electricity and district heating.

In accordance with Article 102 of the VAT Directive Member States may apply reduced VAT rates to the supply of natural gas, electricity or district heating (provided that no risk of distortion of competition thereby arises), as long as they respect the minima laid down in the VAT Directive and in accordance with their national VAT legislation, provided that they consult the VAT Committee.

Considering the pressing need to counteract the substantial rise in energy prices in PL, **Poland would like to consult the VAT Committee pursuant to Article 102 of the VAT Directive lowering VAT rates on electricity and district heating.** Please find below an outline of the application of the VAT reduced rate to the supply of electricity and district heating in Poland.

Poland, similarly to many other countries in the UE, is currently facing a constant and rapid increase of energy costs, in particular as to electricity and district heating prices. This constitutes a significant financial burden especially for households (but also for market players), facing prospects of higher bills at a time when many of them have been weakened by loss of income from the COVID-19 pandemic. This can weigh on the recovery and its fairness and inclusiveness. Not to mention about the risks undermining confidence and support in the energy transition, which are particularly vulnerable to rising costs associated with the energy transformation.

Poland is working on measures to address the immediate impact of current prices increases and to reduce the costs associated with energy price increases in order to protect final consumers and businesses (especially the SMEs).

In Poland the supplies of electricity and district heating are subject to the standard VAT rate of 23%. Due to the growing demand for electricity, caused by the increased expenditure related to the energy transition and the digital transformation (accelerated by the COVID-19 pandemic), including the increased utilisation of computer hardware, mobile devices and Internet by households due to the widespread of remote (online) forms of working caused by the pandemic, Poland is planning to apply a reduced VAT rates (5% or 8%, according to the polish VAT Act) to supplies of electricity and district heating. Heating purposes remain equally important, especially in view of the forthcoming winter. Those measures will be temporary and it is currently envisaged that both will be implemented for 3 months (i.e. as of 1 January 2022 until 31 March 2022) with an option of further temporary prolongations for strictly defined short periods (e.g. 3 months) if necessary, depending on the energy market situation.

It is estimated that the revenue impact following the implementation of the abovementioned temporary measure concerning electricity would amount to approximately – PLN 0.96 bn (8% VAT rate) or PLN 1.2 bn (5% VAT rate). The calculation was made on the basis of data prepared by Polish Central Statistical Office concerning consumption of the households and intermediate consumption in 2018, as a minus margin between VAT amount for standard VAT rate and reduced VAT rate¹.

It is estimated that the revenue impact following the implementation of the abovementioned temporary measure concerning district heating would amount to approximately - PLN 0.5 bn (8% VAT rate) or PLN 0.6 bn (5% VAT rate). The calculation was made on the basis of data prepared by Polish Central Statistical Office concerning consumption of the households and intermediate consumption in 2018², as a minus margin between VAT amount for standard VAT rate and reduced VAT rate³.

The above measures would not result in a distortion of competition on the EU energy market as the rules laid down in the VAT Directive for determining the place of supply of electricity and heating energy ensure that the VAT is levied at the place where electricity and heating energy are actually consumed.

Our aim is to tax all private households and businesses consumption of electricity and district heating at reduced VAT rate. Therefore, reduced rates will apply equally to all entities. Electricity and district heating rates for a private entities would not be cheaper than for professional ones. Because of that there will not arise a situation where, for instance, a customer uses electricity and district heating in his home for a mixed business (home office) and private use, taxed at reduced rate, while fully professional entity (stationary work in office) pays standard VAT rate for the same electricity and district heating. This targeted measures will not breach the principle of neutrality nor increase the risk of distortion of competition, as all private and business consumption of electricity and district heating will be subject to the same reduced rates. This will ensure that businesses will not be deprived from their right to deduct VAT, which could be the case if the professional consumption was subject to a different VAT rates than the B2C supplies of electricity and district heating.

It will be assured that all customers, whereby customers are domestic consumers, public institutions or businesses, would benefit from the proposed measures.

In our opinion, possibility of quick adoption of reduced VAT rates on energy products by Member States in the middle of extraordinary energy crisis resulting in increasing prices of energy, may increase the credibility of UE's steps taken to mitigate that crisis. It can also influence (in some way) public support for future increase in VAT rates due to current proposal of VAT rates reform (sunset clause for fossil fuels) as well as future changes in excise duty (currently discussed ETD Directive) due to implementation of the goals of

¹ To demonstrate calculation in conditions of 2022 the data has been valorised using the relevant indices /data source: "VAT-based own resource statement for the year 2020"/.

² It was used the Classification of Individual Consumption According to Purpose (COICOP), items: 437-Water vapour, hot water and air and 503-Real estate services, taking into account the relevant share of district heating inside them.

³ To demonstrate calculation in conditions of 2022 the data has been valorised using the relevant indices /data source: "VAT-based own resource statement for the year 2020"/.

Green Deal and Fit for 55 package. In the aftermath, citizens, especially low-income households, will be sure that, in the event of an emergency, the state will not hesitate to use the available instruments to mitigate sudden price increases.

Also, we would like to underline, that hereby consulted issue is very important due to political reasons in Poland. Prime Minister of the Polish Government has made a public commitment about quick reduction of VAT rates on electricity and district heating (as a part of the emergency program - “anti-inflation shield”) pointing out that, according to the UE law, introduction of such a change to national legislation requires approval at the EU level. Because of that, it is very important for us to be able to efficiently process the notification of the VAT Committee, which would also show the effectiveness of cooperation between PL and the EC and other MS in crisis situations.

Given that we intend to introduce the application of the reduced rates described above as soon as possible (if it would be possible - as from 1 January 2022), we would appreciate preparing by the Commission’s Services a Working Paper and further proceeding of our submission through the written⁴ consultation path with the VAT Committee within the shortest possible time.

⁴ Article 8 in the VAT Committee’s Rules of Procedure.
