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

taxud.c.1(2021)8775720 – EN

Brussels, 17 December 2021

VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1031

CONSULTATION
PROVIDED FOR UNDER DIRECTIVE 2006/112/EC

ORIGIN:	**Spain**
REFERENCE:	**Article 102**
SUBJECT:	**Reduced rate of VAT for supplies of electricity**

1. INTRODUCTION

Further to the consultation accomplished in July 2021[1], the Spanish authorities have submitted an urgent request for consultation to the VAT Committee pursuant to Article 102 of the VAT Directive[2] as regards their intention to prolong the application of a reduced rate of VAT to certain supplies of electricity. Spain seeks that prolongation as a response to the persistently high level of prices on the energy market in order to reduce electricity costs for domestic consumers as well as to ensure the energy supply to vulnerable consumers who are at risk of energy poverty.

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.

Spain requested to consult the VAT Committee on its intention to continue applying a reduced VAT rate of 10% to certain supplies, importations and intra-Community acquisitions of electricity. Spain currently applies this reduced rate as a temporary measure until 31 December 2021 after having consulted the VAT Committee in June/July 2021 and considers it necessary to prolong this measure in view of the continuing high energy prices and their negative impact on the financial situation of consumers. The transactions to which the reduced rate of VAT should continue to be applied remain unchanged and correspond to those already described in Working paper No 1017.

Spain reports that the application of the measure has so far resulted in a reduction of the electricity bill for Spanish consumers with a special positive impact on the most vulnerable ones and therefore intends to continue applying it as an extraordinary and temporary measure for an additional limited period of four months from 1 January 2022 until 30 April 2022.

Spain takes the view that the measure would continue not to result in a distortion of competition among Member States as the rules laid down in the VAT Directive for determining the place of supply of electricity ensure that the VAT is levied at the place where electricity is actually consumed. Spain also assures that the measure will not increase the risk of distortion of competition as all consumers fulfilling the conditions set out under point a) of the consultation request could potentially benefit from the reduction of VAT.

Spain estimates the impact on the VAT collection during the application of this measure to be EUR 459 million.

[1] This consultation was dealt with through a written procedure closed on 15 July 2021.

[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).

3. THE COMMISSION SERVICES' OPINION

The Commission services thank Spain for consulting the VAT Committee on its intention to continue applying the measure in question and assure their preparedness to assist Member States in mitigating the impact of the current energy crisis on the Union citizens.

The Spanish request comes following the Commission’s Communication on energy prices[3] 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. Spain’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 Spain (since the rate to be applied will be one of the currently applied reduced rates of 10%).

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

The Commission services share the view taken by Spain that a distortion of competition between Member States is unlikely given that, according to the VAT Directive as modified by Council Directive 2009/162/EU[4], the rules for determining the place of taxation of the supply of electricity ensure that VAT is levied at the place where the actual consumption takes place.

The Commission services have no further comments in addition to the ones made above and those provided in Working paper No 1017.

4. DELEGATIONS' OPINION

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

*

*   *

[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).

ANNEX

CONSULTATION OF THE KINGDOM OF SPAIN TO THE VAT COMMITTEE IN RESPECT OF THE EXTENSION OF THE OPTION ON ARTICLE 102 OF DIRECTIVE 2006/112/EC. ENQUIRY FOR LAUNCH OF WRITTEN PROCEDURE

As foreseen in article 102 of the Directive 2006/112/EC of the Council, of 28 November 2006, on the common system of value added tax (hereinafter, VAT Directive) the Kingdom of Spain formally communicated to the European Commission on 22nd June 2021 its intention to introduce in the national VAT legislation a provisional measure consisting of the application of a reduced rate of 10% to certain supplies of electricity.

The European Commission considered appropriate launching the written procedure on 25 June 2021, the same being finalised by 15 of July without remarks from the Member States. The Commission formally acknowledged the communication by 16 of July throughout the document WP1017.

Considering that the forward markets indicate that the situation of unusually high electricity prices will continue during the first four months of 2022 and with the aim of reducing the electricity bill of domestic consumers and guaranteeing its supply to vulnerable consumers at risk of energy poverty, it is necessary to temporarily extend the exceptional measures adopted in July 2021 until April 30, 2022.

In the awareness the communication made in July 2022 was referred to a measure of temporary character, with expiring effects by 31 of December 2021, Spain considers necessary the extension of such measure for 4 extra months from 1 January 2022.

By the time being this measure has resulted in a reduction of the electric bill for Spanish households' consumers with a special positive impact on the most vulnerable ones.

Therefore, the extension of this measure must be adopted with an urgent character, so the launch of the written procedure for the consultation of the VAT Committee seems to be the most appropriate mechanism.

Legal Background

Article 98 of the VAT Directive establishes that Member States may apply either one or two reduced rates. Reduced rates can only be applicable to the supply of goods and services in the categories described in the Annex III of the Directive.

Nevertheless, Article 102 of the VAT Directive establishes that, after consultation of the VAT Committee, each Member State may apply a reduced rate to the supply of natural gas, electricity, or district heating.

Object of the Measure

The Kingdom of Spain has the intention of extending the effects of the measure adopted in June 2022 for certain supplies of electricity applying a reduced VAT rate of 10 per cent to the same supplies from 1 January 2022 to 30 April 2022.

Thus, it is intended to extend with an exceptional and provisional character, and until 30 April 2022, the application of a VAT reduce rate of 10 per cent to the supply, importation, and intracommunity acquisition of electric energy, where the acquirer is any of the following:

a) a electricity supply contract holder where the contracted power (referred to the fixed component of power) is not higher than 10 KW, independently of the voltage level of the supply and the modality of contract, and when the arithmetic average price in the daily market corresponding to the last month prior to the last day of the invoicing period has exceeded the amount of 45 euros/MW.

b) a electricity supply contract holder who is beneficiary of the so-called "electricity social vouchers" and have been recognised as "severe vulnerable" or "severe vulnerable in risk of social exclusion" in conformity with Royal Decree 897/2017, of 6 of October, on the concept of vulnerable consumer, the social voucher and other protection measures for the domestic consumers of electric energy.

The European Court of Justice, on its sentence of 8 of May 2003, C-384/01, stated that the introduction and application of VAT reduced rates lower than the general rate can be admitted if it does not vulnerate the principle of neutral fiscality inherent to the VAT common system and which opposes that similar goods, in competence among them, are treated differently from the VAT point of view.

Considering that the supply of electricity is currently taxed in the place where the consumer effectively uses and consumes the electricity, there is no distortion of competition among Member States. On the other hand, even when some of the situation activating the measure will affect only consumers in situation of risk of social exclusion, any consumer can potentially benefit from the reduction of the rates in the case described in the above-mentioned letter a), whenever the conditions for its application concur, so no distortion of competition is to be found among consumers neither.

Furthermore, even when the reduction of the VAT rates for the natural gas is not at stake, we have to bear in mind that the natural gas network does not reach many points of the Spanish geography where the alternatives to electricity are the derivate products of petrol, which are never covered by Article 102 of the VAT Directive.

Additionally, the European Court of Justice in the case C-384/01 understood that a selective application of a reduced rate to certain supplies is coherent with the principle according to which exemptions or exceptions have to be interpreted restrictively.

It should be noted that the general measure will continue to be conditioned, during the new term of application, that the average monthly price of the wholesale market, during the month prior to the month of invoicing, has exceeded 45 euros/MW, always when the contracted power (the fixed component of power) is not higher than 10 Kw, in the same way it is currently applied.

Finally, the measure directly favour the implementation of the National Integrated Plan for Energy and Climate 2021-2030 (PNIEC, in its Spanish acronyms), which contemplates the commitment and contribution of the Kingdom of Spain to the international and European efforts for the adoption of measures for the decarbonisation of the energetic system and the encouraging and expansion of the renewables energies, since the measure favours the process of electrification of the economy as a the most efficient and effective mean for reducing the emissions connected to the energetic uses.

Period of application

The measure will be applicable from 1 January to 30 April 2022.

Impact of the measure in the VAT public revenues

It is expected that the impact in the VAT collection during its application, in the case the circumstances for the activation of the measure concur, will amount to 459 million euros.