



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

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Brussels, 12 January 2022

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 1032**

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

**ORIGIN: Romania**  
**REFERENCE: Article 102**  
**SUBJECT: Reduced rate of VAT for supplies of district heating**

## **1. INTRODUCTION**

Further to the consultation made in 2017<sup>1</sup>, the Romanian authorities have submitted a request for consultation to the VAT Committee pursuant to Article 102 of the VAT Directive<sup>2</sup> as regards their intention to temporarily extend the scope of customers who can benefit from district heating supplied at the reduced VAT rate of 5%. Romania would like to expand the scope of beneficiaries for this measure in order to respond to the high energy prices and their negative impact on households and businesses, following the COVID-19 pandemic that has affected the economic sectors of all countries.

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.

Romania explains that it will continue applying the measure that was subject to the consultation in 2017, covering the application of a reduced VAT rate of 5% to the supply of district heating to the population, which is understood to be private household customers<sup>3</sup>.

Romania requested to consult the VAT Committee on its intention to temporarily expand the scope of beneficiaries beyond private households in order to include the following types of customers during the cold season starting from 1 January 2022 until 31 March 2022:

- public and private hospitals,
- public and private educational units,
- non-governmental organisations regulated by law,
- religious units,
- accredited public and private social service providers.

The supply of district heating to all other customers will continue being subject to the Romanian standard VAT rate of 19%.

When initially introducing the measure, Romania explained that it would result in an estimated negative budgetary impact of RON 282.3 million (0.04% of GDP) for 2017<sup>4</sup>.

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<sup>1</sup> This consultation was first dealt with through a written procedure based on Working paper No 927, which was closed on 22 September 2017, and accomplished during the 109<sup>th</sup> meeting of the VAT Committee on 1 December 2017 (see Working paper No 937).

<sup>2</sup> 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).

<sup>3</sup> Law no. 196/2021 adopted by the Romanian Parliament in July 2021

<sup>4</sup> See Working paper No 927

Romania did not provide any information on the budgetary impact due to the modification of the scope of beneficiaries subject to this consultation.

### **3. THE COMMISSION SERVICES' OPINION**

The Commission services thank Romania for consulting the VAT Committee on its intention to expand the scope of beneficiaries during the cold season and assure their preparedness to assist Member States in mitigating the impact of the current energy crisis on the Union citizens.

The Romanian request comes following the Commission's Communication on energy prices<sup>5</sup> 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. Romania'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 Romania (since the rate to be applied will be one of the currently applied reduced rates of 5%).

The Commission services particularly assume 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<sup>6</sup>, the rules for determining the place of taxation of the supply of district heating ensure that VAT is levied at the place where the actual consumption takes place.

Based on the information provided by Romania, the Commission services have no reason to consider that the intended modification of the scope of beneficiaries of the measure does not comply with the requirements of Article 102 of the VAT Directive. In fact, the application of the measure to a higher number of eligible customers beyond private households results in fewer cases of potential mixed use, for which an appropriate allocation mechanism would be necessary.

However, given that the scope of beneficiaries will once again be limited to private household customers only after 31 March 2022, the Commission services would like to recall the comments made in Working papers No 927 and 937 and - if not already done - recommend Romania to put in place an appropriate mechanism to ensure that district heating, used for private consumption, can be taxed at a reduced rate in all cases, and equally that district heating used in the context of a professional activity is taxed at the standard rate.

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<sup>5</sup> 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).

<sup>6</sup> 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).

Romania is thus invited to reflect on how it intends to distinguish between private and professional consumption in the case of mixed use of district heating.

The Commission services invite Romania to indicate the budgetary impact of the broadened scope of beneficiaries as done for the initial scope when the measure was introduced as from 1 January 2018.

The Commission services have no further comments in addition to the ones made above and those provided in Working papers No 927 and 937.

**4. DELEGATIONS' OPINION**

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

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**Application to the VAT Committee about the consultation regarding the application of the optional provision referred to in Article 102 of Council Directive 2006/112/EC on the common system of value added tax**

The Romanian Ministry of Finance according to Article 102 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax would like to inform the VAT Committee about extending the scope of the category of beneficiaries that may apply a reduced VAT rate of 5% to the supply of district heating.

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

On 31 May 2017 Romania submitted a consultation to the VAT Committee in accordance with Article 102 of the VAT Directive, in view of applying a 5% VAT rate to "the supply of thermal energy to the population", which was taxed at the standard VAT rate of 19%.

In accordance to that consultation, the reduced VAT rate of 5% was to be applied only for the supply of district heating to the population (namely the household consumers), while for the supply of district heating to other types of consumers, the standard VAT rate of 19% was to be applied.

Following the application that Romania has submitted, in July 2021, the Romanian Parliament adopted Law no. 196/2021 bringing amendments to the Romanian Fiscal Code, so that a reduced VAT rate of 5% will be applied only for the supply of district heating to the population, and no other categories of beneficiaries, starting January 2022.

Furthermore, the scope of the category of beneficiaries has been expanded. The Romanian Fiscal Code has recently been amended so that the reduced VAT rate of 5% will be applied for the supply of district heating during the cold season (starting the 1<sup>st</sup> of November until the 31<sup>st</sup> of March, next year) to the following categories of consumers: population, public and private hospitals, public and private educational units, non-governmental organizations regulated by law, religious units, accredited public and private social service providers, starting the 1<sup>st</sup> of January 2022.

The measure was considered necessary, as most of the Member States have already announced measures to address the current situation facing the actual high energy prices and the negative impact on households and businesses, following the pandemic situation which has affected the economic sector all over the countries.

Therefore, Romania would like to inform the VAT Committee about extending the scope of the category of beneficiaries that may apply a reduced VAT rate of 5% to the supply of district heating, starting the 1<sup>st</sup> of January 2022.