



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

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Brussels, 7 February 2022

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 1035**

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

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

## **1. INTRODUCTION**

The Belgian authorities have submitted an urgent request for consultation to the VAT Committee pursuant to Article 102 of the VAT Directive<sup>1</sup> as regards their intention to apply a reduced rate of VAT to certain supplies of electricity. Belgium seeks to apply that measure as a temporary response to the persistently high level of prices on the energy market in order to mitigate the corresponding financial consequences for private households.

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.

Belgium requested to consult the VAT Committee on its intention to apply a reduced VAT rate of 6% to certain supplies of electricity. Belgium justifies this step by the strong increase in energy prices, threatening to significantly erode the financial strength of households, thereby undermining the current economic recovery. Belgium points out that more and more households cannot pay their electricity bills, or can barely pay them, even though an extended social tariff is applied to almost 20% of the population, which will be extended. The Belgian authorities see the risk that the current situation could also jeopardise confidence in and support for the necessary energy transition.

Belgium explains that it has adopted a package of support measures to help Belgian households cope with the significant increases in energy prices, one of which is to temporarily lower the current standard VAT rate applicable to supplies of electricity to the existing reduced VAT rate of 6%. In order to immediately provide households with the necessary financial support, Belgium intends to apply the reduced VAT rate as a temporary measure from 1 March 2022 until 30 June 2022.

Belgium intends to apply the reduced rate of VAT only to supplies of electricity to private households, which is assumed to be the case where the clients have communicated their intention to the energy supplier to buy electricity for domestic consumption. Belgium explains that it intends to apply this distinction based on whether or not customers have communicated to the supplier their company number assigned by the Crossroads Bank for Enterprises of the Federal Public Service Economy.

Belgium did not provide any information on the budgetary impact of the measure subject to this consultation.

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<sup>1</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).

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

The Commission services thank Belgium for consulting the VAT Committee on its intention to apply 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 Belgian request comes following the Commission's Communication on energy prices<sup>2</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. Belgium'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 Belgium (since the rate to be applied will be one of the currently applied reduced rates of 6%).

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

In particular, the Commission services see no significant risk of a distortion of competition between Member States given that, according to the VAT Directive as modified by Council Directive 2009/162/EU<sup>3</sup>, 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. Moreover, the Commission services see no reason to doubt that the criterion for distinction between the beneficiaries of the measure as envisaged by Belgium can be considered appropriate in this context.

The Commission services invite Belgium to indicate the budgetary impact of this temporary measure.

### **4. DELEGATIONS' OPINION**

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

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<sup>2</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>3</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).

**CONSULTATION BY THE KINGDOM OF BELGIUM PURSUANT TO  
ARTICLE 102 OF DIRECTIVE 2006/112/EC**

Belgium hereby submits a consultation to the VAT Committee as required by Article 102 of Directive 2006/112/EC (hereafter: VAT directive), in relation to the **introduction of the reduced VAT rate of 6% on certain supplies of electricity.**

**Legal background**

Articles 98 and 99 of the VAT directive determine that Member States may fix either one or two reduced VAT rates as a percentage of the taxable amount, which may not be less than 5%. Moreover Member States may only apply these reduced VAT rates to supplies of goods or services in the categories set out in Annex III.

Notwithstanding that the supply of electricity is not set out in the abovementioned Annex III, **article 102 of the VAT directive** allows Member States to apply a reduced VAT rate to the supply of natural gas, **electricity** or district heating, **after consultation of the VAT Committee.**

**Object of the consultation**

The Kingdom of Belgium has the intention to temporarily subject certain supplies of electricity to the existing reduced VAT rate of 6%.

- Scope

The reduced VAT rate of 6% will only apply to the supply of electricity in the context of a contract whereby, for its conclusion, the customer-natural person has not provided an enterprise number.

These contracts are generally referred to as "residential" or "non-professional" contracts under which the customer-natural person presents himself as a customer who buys his electricity in principle for domestic consumption. It appears that customers-natural persons can enter into either a residential or a professional contract depending on their needs. The fact that one or the other contract is concluded has certain consequences, in particular with regard to the consumer price charged and the applicable contractual conditions.

In order to distinguish between these different types of contract, the energy suppliers (and the electricity suppliers in particular) base this distinction on whether or not the customer communicates his enterprise number assigned by the Crossroads Bank for Enterprises of the Federal Public Service Economy in order to conclude the contract. This simple and binary criterion has therefore been directly adopted as the distinguishing criterion for this VAT rate reduction in order to offer full legal certainty to both the electricity suppliers and their customers.

The reduced VAT rate of 6 pct. applies to all components of the energy bill on which VAT is levied (i.e. to the full taxable amount as referred to in Article 26 of the Belgian VAT Code).

- Period of application

This intended addition to the application of the reduced VAT rate of 6% will be applicable for a period of four months, **as a of the 1<sup>st</sup> of March 2022 until the 30<sup>th</sup> of June 2022.**