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Tax alert
Belgium

European Commission proposes revised Energy Taxation Directive

As part of the "Fit for 55" package, aimed at reducing greenhouse gas emissions in the EU by 55% by 2030, the European Commission on 14 July 2021 published its *Proposal for a council directive restructuring the Union framework for the taxation of energy products and electricity* (the Energy Taxation Directive or ETD). The key objectives of the proposed changes are to bring in effective environmental taxation of energy products and remove incentives for fossil fuel consumption throughout the EU.

The ETD in its present form no longer is aligned with EU climate and energy objectives and effectively favours fossil fuel use for reasons including highly divergent national rates of energy taxes in combination with a wide range of tax exemptions and reductions. The revised ETD aims to help achieve the Commission's objectives by ensuring that the taxation of motor and heating fuels better reflects the impact they have on the environment and on health, removing disadvantages for clean technologies, and introducing higher levels of taxation for inefficient and polluting fuels.

Energy products would additionally be affected by the proposed extension of the Emission Trading Scheme (ETS) to include emissions from maritime and road transport, and buildings. The alignment of the objectives of the revised ETD and the changes to the ETS may reinforce their effectiveness. The extension of the ETS is likely to result in additional costs for suppliers of energy products that may potentially be passed on to consumers.

Main changes to the ETD

The most significant change is that as from 2023, energy taxation would no longer be based on volume but on the energy content of the energy products and electricity (i.e., the net calorific value), coupled with their environmental performance. The proposed directive specifies minimum levels of taxation that member states should respect when adopting national duty rates, with tariffs expressed in Euro per gigajoule (EUR/GJ).

Different minimum levels of taxation are set out for motor fuels, heating fuels, and electricity. Member states should replicate the relationship between the minimum levels of taxation fixed in the ETD for the various energy sources and their use in domestic implementation (ranking according to their environmental performance). The revised ETD retains the possibility to apply exemptions and/or reductions in the level of taxation for specific reasons, such as energy efficiency and environmental protection objectives (e.g., electricity from renewable sources or renewable hydrogen), or for energy intensive businesses.

Taking into account recent and anticipated future developments, the revised ETD also includes new rules on the chargeability of certain energy products: hydrogen is taxable at the time of supply by the distributor (similar to natural gas and electricity) and electricity storage facilities and transformers of electricity may be considered as redistributors in order to avoid double taxation.

No specific rules are included on the chargeability of electricity used to charge electric vehicles, which means pragmatic solutions should be sought within the existing set of rules. The revised ETD also states explicitly that electricity should always be among the least taxed energy sources, notably in the transport sector. To further support the use of electric vehicles, the ETD includes a requirement for member states to endeavour to apply the same level of taxation to electricity used to charge electric vehicles as for heating purposes. The revised ETD, however, retains a minimum level of taxation applicable to electricity (0.15 EUR/GJ).

The revised ETD foresees that energy products and electricity supplied to aircraft (other than those used for cargo only flights) and maritime vessels (including fishing vessels) should be taxed, but provides for a transitional period of ten years during which a minimum zero tax rate may apply to sustainable alternative fuels and electricity.

Comments

If adopted, the changes to the ETD would enter into force as from 1 January 2023; however, the text is still in the proposal phase and must go through the EU's ordinary legislative procedure. Modifications could still be made by both the European Parliament and the Council of the European Union.

Once the text of the revised directive is agreed and adopted, the provisions of the directive will need to be observed by member states when transforming their excise and energy tax rules within the framework of the green transition. Businesses need to observe the development of national rules closely to integrate these into their own strategic decisions.

A change that would have a more direct effect is the proposed extension to the list of products falling under the Excise Movement Control System (EMCS). Economic operators currently not affected may be required to register for EMCS and ensure that they capture all the data needed to document the movement of such goods at every stage via the electronic Administrative Document (eAD).

Contacts

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