BUSINESSEUROPE

THE DIRECTOR GENERAL

Ms Elizabeth Svantesson
Minister for Finance of Sweden
and President of the Economic and Financial Affairs Council
Herkulesgatan 17
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1 March 2023

Dear Minister,

An administrative framework for component taxation in the Energy Tax Directive

BusinessEurope continues to support the EU's Green Deal objectives as a growth strategy to reach climate neutrality as well as the recast of a common EU framework for the taxation of energy products to preserve and improve the functioning of the EU energy market and to contribute to the EU's ambitions in this field.

In order to promote the uptake of electricity and alternative energy products, such as renewable hydrogen, synthetic fuels and advanced biofuels and biogas, it is key that Member States reach agreement on a revised Energy Tax Directive (ETD) that incentivises the production and use of low carbon and renewable energy products in line with the EU's Green Deal objectives.

In this respect, we support the component-based taxation approach proposed in Article 2(6) of the ETD recast. Under this provision, Member States are allowed to tax different components of an energy product separately, based on the applicable minimum rates and independently from the CN code under which the product falls as a whole. We believe that this approach is likely to incentivise the production of low carbon and renewable energy products thereby helping to address the current climate crisis but also to develop a more diverse, resilient and cost-efficient energy supply in the medium and long term.

It is clear that Member States may find it difficult to implement a component taxation framework in a harmonised manner and will require flexibility in how they structure taxes of different components of energy products. However, businesses will require guidance on the appropriate assessment and tax reporting methodology to be adopted for blended energy components.

Therefore, in order to aid the technical discussions that are underway, we are pleased to put forward four methodologies that Member States might adopt, individually or combined, all of which could be a means to achieve a robust system of component taxation envisaged in Article 2(6) that prevents tax fraud and that improves legal certainty whilst reaching the EU's climate aims. In respect of all these methodologies, we encourage the use of digital and online processes to calculate the real volumes of different components as this makes it easier and more efficient for businesses to determine their tax liabilities correctly:

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1. A prepaid assessment method

Customs issue a prepayment assessment based on an energy taxpayer's prior year data. This can be subject to adjustments upon provision of evidence, for example based on higher bio quota obligations. The taxpayer pays one twelfth of the prepayment assessment during the calendar year and files a final energy tax declaration in the following year based on the tax paid and deliveries of blended components (for example based on a mass balance). The actual energy tax liability would then be settled with the final declaration.

2. A monthly tax declaration method

The taxpayer files a monthly tax declaration based on the actual volumes of products that are sold tax paid. Components of biofuels and biogas would be calculated as an estimate of volumes in prior periods (monthly or annual). The taxpayer files a final energy tax declaration in the following year that calculates the concrete volumes of blended components purchased in the previous year (for example based on a mass balance). The actual energy tax liability would then be settled with the final declaration.

3. Categorization of a variety of energy products based on CN codes

Customs define different CN code categories for a variety of products depending on the percentage of bio components that are blended. The tax treatment would be based on the respective category of the product. There is no limit to the number of categories that may be in place. For example:

- Category 1 with the highest energy tax rate for a fossil fuel with a content of 0% - 20% of bio components
- Category 2 with a lower energy tax rate than category 1 for a fossil fuel with a content of 21% - 40% of bio components
- Category 3 with a lower energy tax rate than category 2 for a fossil fuel with a content of 41% - 60% of bio components
- Category 4 with a lower energy tax rate than category 3 for a fossil fuel with a content of 60% - 80% of bio components
- Category 5 with a 0% tax rate for a fossil fuel with a content of 80% - 100% of bio components

Certain bio components could be counted twice or even more. The taxpayer must prove that enough bio components have been blended to fulfil the criteria of the category declared in the monthly energy tax declaration.
This option could be easier to handle from an administrative perspective and may work in those Member States which do not work with mass balancing to prove the components of the final blend.

4. Adopting the Union Database methodology as set out in the Renewable Energy Directive

Member States could adopt the methodology in the Union Database set out in the Renewable Energy Directive II (set out in Article 28(2) of Directive (EU) 2018/2001 – RED II and currently subject to negotiations on RED III) which is designed to support the verification and certification of renewable energy production, in order to issue renewable energy certificates.
This approach would apply mainly to renewable and low carbon energy products (for example, sustainable biogas and biofuels) and would allow the tracing of liquid and gaseous renewable fuels and recycled carbon fuels as well as their lifecycle greenhouse gas emissions and to allow Member States to tax blended fuels by component.
Under the planned revision of RED, the Union Database will extend the tracing of liquid and gaseous renewable fuels and recycled carbon fuels as well as their lifecycle greenhouse gas emissions from the transport sector to all other end-use sectors in which such fuels are consumed. Once RED III is implemented, the Union Database will cover usage by industrial customers as well as households. Economic operators in both cases will be allowed to prove the renewable part of the gas/fuel consumption to the final consumer. This will make a vital contribution to the comprehensive monitoring of the production and consumption of those fuels, mitigating risks of double-counting or irregularities along the supply chains covered by the Union database.
On this basis, we believe that if the methodology in the Union Database is extended to the component-based approach proposed under the ETD, it would provide businesses with a clear framework that provides guidance for tracing the different components in energy products which can be used for tax assessment purposes. This approach is also expected to have an immediate impact on decarbonizing road transport and the other sectors that will be in scope of RED in the future.

As negotiations enter a decisive phase, we hope that the methodologies presented above are considered and adopted by Member States in order to achieve a practical and reasonable component taxation approach that incentivizes an increased share of renewables in the energy mix and meets enhanced energy efficiency targets through integrated energy systems.

We remain at your disposal should you wish to discuss any aspects of this letter in more detail.

Yours sincerely,

Markus J. Beyrer

cc Commissioner Paolo Gentiloni
cc Gerassimos Thomas, Director General, DG TAXUD
cc Vicente Hurtado Roa, Head of Unit C2, DG