



European Commission /
Taxation and Customs Union

EXCISE SEMINAR FOR CROATIA AND TURKEY

Energy taxation

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Unit Excise Duties and Transport, Environment and Energy Taxes





INTRODUCTION



Basic EU legislation concerning taxation of energy products

- Council Directive 92/12/EEC of 25/02/1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.
- Council Directive 2003/96/EC of 27/10/2003 restructuring the Community framework for the taxation of energy products and electricity.
- Council directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene.



Objectives of directive 2003/96 on energy taxation

- Energy prices are key elements of Community energy, transport and environment policies.
- The proper functioning of the internal market and the achievement of the objectives of other Communities policies...
- ...require minimum levels of taxation to be laid down at Community level for most energy products.
- All competing products have to be covered by the legislation.



Subsidiarity and proportionality

- Fiscal arrangements made in connection with the implementation of the Community framework for the taxation of energy products and electricity are a matter for each Member State to decide.
- Member States should be given the flexibility necessary to define and implement policies appropriate to their national circumstances.
- In order to implement the Directive, the Commission is assisted by the **Committee on Excise Duties**.



Part I: OBLIGATIONS under Directive 2003/96



Scope of Directive 2003/96/EC (I)

Article 1: Member States shall impose taxation on energy products and electricity in accordance with this Directive.

Article 2(1), 2(2), 2(3): The main products that are taxed are:

Mineral oils,

Solid fuels: coal, coke, lignite,

Natural gas,

Electricity,

Alcohols, if they are intended for use as heating fuel or motor fuel,

Animal or vegetable oils, if they are intended for use as heating fuel or motor fuel.



Scope of Directive 2003/96/EC (II)

- When intended for use, offered for sale or used as motor fuel or heating fuel, **energy products other than** those for which a level of taxation is specified in this Directive shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.
- Any product intended for use, offered for sale or used as **motor fuel**, or as an additive or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.
- Any other hydrocarbon, except for peat, intended for use, offered for sale or used for **heating purposes** shall be taxed at the rate for the equivalent energy product.



Out of the scope of Directive 2003/96/EC

Article 2(4): This Directive shall not apply to :

Output taxation of heat and the taxation of fuel wood and wood charcoal,

The following uses of energy products and electricity:

- (a): energy products used for purposes other than as motor fuels or as heating fuels,
- (b): dual use of energy products,
- (c): electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes,
- (d): electricity, when it accounts for more than 50 % of the cost of the product,
- (e): mineralogical processes.



Out of the scope of Directive 2003/96/EC

Article 14 (1): Member States shall exempt the following from taxation:

energy products and electricity **used to produce electricity** (but may be taxed above minimum levels for environmental reasons),

energy products supplied for use as **fuel for the purpose of air navigation** other than in private pleasure-flying,

energy products supplied for use as **fuel for the purposes of navigation within Community waters** other than private pleasure craft.

Article 14 (2): For the last two indents, the exemptions may be: limited to international and intra-Community transport, waived where a Member State has concluded a bilateral agreement with another Member State



Minimum levels of taxation

Article 4:

The levels of taxation which Member States shall apply to energy products and electricity may not be less than the **minimum levels** of taxation prescribed by this Directive.

'Level of taxation' is the total charge levied in respect of all indirect taxes (except VAT) calculated on the quantity of energy products and electricity at the time of release for consumption.



Different taxation according to different uses

- Minimum levels are set per product and use:
 - Motor fuel,
 - Motor fuel for certain industrial and commercial purposes,
 - Energy products used as heating fuel.



Minimum levels of taxation applicable to motor fuels

In euro per 1000l or kg or gigajoule GCV	1 January 2004	1 January 2010
Leaded petrol	421	421
Unleaded petrol	359	359
Gas oil	302	330
Kerosene	302	330
LPG	125	125
Natural gas	2,6	2,6



Minimum levels of taxation applicable to motor fuels used for the purpose set out in Article 8(2)

Gas oil in euro per 1000 l	21
Kerosene in euro per 1000 l	21
LPG in euro per 1000 kg	41
Natural gas in euro per Gigajoule gross calorific value	0,3



Minimum levels of taxation applicable to heating fuels and electricity

In euro per 1000l or kg or gigajoule GCV	Business use	Non-business use
Gas oil	21	21
Heavy fuel oil	15	15
Kerosene	0	0
LPG	0	0
Natural gas	0,15	0,3
Coal and coke	0,15	0,3
Electricity	0,5	1,0



Part II: FLEXIBILITY OFFERED BY THE DIRECTIVE (optional provisions)



Optional provisions of the Energy Tax Directive

- Optional provisions of the Directive allow Member States to deviate from some of the basic rules of the Directive. Optional provisions introduce flexibility into the Community energy tax framework.
- Reasons for flexibility:
 - Environmental and energy policy considerations (vs. needs of the internal market);
 - Other policy considerations;
 - Competitiveness constraints (tax treatment of business use).
- The flexibility must be seen against the background of the objectives of the Directive itself:
 - Flexibility above the minima;
 - Flexibility below the minima.



Optional provisions of the Directive

- Member States are free to use them under the conditions set by the Directive;
- On fiscal grounds, no approval from the Commission or from the Council necessary provided that Member States respect the conditions set by the Directive;
- Such fiscal measures might constitute State aid – in such case they must be authorised in advance by the Commission pursuant to the State aid provisions of the Treaty.



Tax differentiation above the minima (Article 5)

- Tax differentiation above the applicable minimum levels of taxation (provided it is compatible with Community law) can be introduced in the following cases:
 - When differentiated rates are directly linked to product quality;
 - For the following uses: local public passenger transport (incl. taxis), waste collection vehicles, armed forces and public administration, disabled people, ambulances;
 - When the differentiated rates depend on quantitative consumption levels for electricity and energy products used for heating purposes;
 - Between business and non-business use, for energy products used for heating purposes and for electricity.



Tax differentiation below the minima

- Article 15: Tax reduction/full tax exemption applicable to certain products and uses, in particular:
 - electricity of “green” origin;
 - electricity from highly efficient combined heat and power generation;
 - energy products used in combined heat and power production;
 - navigation in inland waterways;
 - natural gas.
- Article 16: Tax reduction/full tax exemption applicable to energy products of certain origin (biofuels).



Article 16

- Member States may apply an exemption or reduced rate of taxation to taxable products if they are made of or contain certain products of bio origin. Under certain conditions:
 - The tax incentives can only apply to those products listed in Article 16(1) of the Directive.
 - The tax reduction can only cover the difference between the higher production costs of biofuels and the production costs of an equivalent fossil fuel.
 - For blends, the tax reduction can only apply to the bio-component of the mixture, and must therefore be adjusted to its volume in the final mixture.



Public transport

- The Directive contains several options for such purpose, that reflect the environmental aspects of each means of transport (and therefore allow different range of flexibility):
 - Article 5 local public passenger transport
 - Article 15(1)(e) rail, metro, tram and trolley bus
 - Article 7(2) coaches



Tax treatment of business/commercial use (overview, part 1)

- Article 2(4) excludes non-fuel uses of energy products and electricity and certain industrial uses from the scope of the Directive;
- The Directive sets lower minimum levels of taxation for business use (motor fuels used for the purposes set in Article 8, electricity, energy products used for heating purposes).
- Article 5: possible tax differentiation
 - Between business and non-business use (electricity, heating fuel use of energy products) above the applicable minimum levels of taxation;
 - For electricity and energy products used for heating purposes depending on quantitative consumption levels.



Tax treatment of business/commercial use (overview, part 2)

- Article 7(2): tax differentiation between commercial and non-commercial consumption of gas oil used as propellant;
- Article 17: industrial competitiveness
- Specific situations (Article 21(3) and Article 15; Article 14)



Commercial gas oil used as propellant

- Article 7(2): Member States may differentiate between commercial and non-commercial use of gas oil used as propellant provided that two conditions are met:
 - The Community minimum levels of taxation are observed;
 - The rate for commercial gas oil used as propellant does not fall below the national level of taxation in force on 01/01/03 (under certain conditions Article 7(4) allows this requirement be waived in case that system of road user charges is introduced).



Article 17

- Member States may apply tax reductions above the applicable minimum levels of taxation to electricity and energy products used for heating purposes or for certain purposes of Article 8
 - consumed by energy intensive businesses
 - consumed by other undertakings (under the conditions set in 17(1)(b))
- Member States may apply levels of taxation down to zero to energy products and electricity as defined in Article 2 when used by energy intensive businesses under the conditions set in 17(4)
- Member States may apply levels of taxation down to 50% of the minimum levels in the Directive to energy products and electricity as defined in Article 2 when used by businesses entities as defined in Article 11 (which are not energy intensive) under the conditions set in 17(4)



FINAL REMARKS



Main definitions contained in the Directive

- Article 2(4)b – “dual use”, “mineralogical processes”
- Article 11 – “business use” and “business entity”
- Article 7(3) – gas oil used as propellant for the purposes defined thereby
- Article 14(1)b – “private pleasure-flying”
- Article 14(1)c – “private pleasure craft”
- Article 16 – “biomass”
- Article 17 – “energy intensive business”



Information of the Commission

- Articles 25 and 26: Member States shall inform the Commission of:
 - the **level of taxation** which they apply to the products under the scope of the Directive,
 - measures taken using the **flexibility** offered by the Directive (articles 5, 14(2), 15 and 17),
 - measures such as tax exemptions, tax reductions, tax differentiation and tax refunds, which might constitute **State Aids** (article 88(3) of the Treaty).



Additional Questions?

→ Check our web site :

http://europa.eu.int/comm/taxation_customs/index_en.htm

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