



VAT alert Belgium

Clarification on VAT status of private individuals with solar panels supplying electricity



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The Belgian Minister of Finance announced upcoming guidance on the VAT treatment of private individuals with solar panels supplying electricity and green certificates ('GSC'), based on the outcome of a recent European court case (PQ n° 561 of Ms Veerle Wouters of 5 September 2013).

Context

In 2013, the European Court of Justice ruled that the exploitation of a grid-connected photovoltaic installation on a private residence constitutes an economic activity for VAT purposes, to the extent that the electricity produced by the installation is supplied to the grid for consideration (CJEU 20 June 2013, C-219/12, *Finanzamt Freistadt Rohrbach Urfahr v Unabhängiger Finanzsenat Außenstelle Linze*).

As the case had some specific facts, this judgment's impact on the (as yet unpublished) Belgian viewpoint concerning the VAT status of private individuals producing electricity via solar panels was unclear. In response to a parliamentary question, the Minister of Finance provided some (initial) guidance on the VAT implications of solar panels and announced a future administrative guideline on this topic.

VAT status and VAT treatment

The Minister confirms that in Belgium, under every assumption, the electricity fed into the grid (and thus 'supplied' from a VAT point of view) is limited to the produced electricity that is not immediately consumed.

For private individuals with a photovoltaic installation with a so-called 'reversing meter' (which is normally the case for private individuals), the surplus of electricity produced and fed into the grid is deducted from the electricity withdrawn from the grid and invoiced by the individual's electricity supplier. As these customers have not concluded any contract to supply electricity against consideration, they in principle do not qualify as taxable persons, as the Belgian VAT authorities generally accept that there is no taxable supply for the electricity fed into the grid.

As these individuals also obtain green power certificates (GSC/PV), which they can sell on the market, the VAT status of this activity should also be determined. The VAT authorities accept that for these supplies a private individual with a reversing meter does not normally act within an economic activity framework and thus does not qualify as a taxable person. However, if the private individual

enterprises if his yearly VAT taxable turnover does not exceed EUR 15,000.00.

For private individuals possessing a photovoltaic installation with a 'double meter', the surplus of electricity produced and fed into the grid is in principle regarded as a taxable supply of electricity as, under these circumstances, the private individual has concluded an injection contract with his supplier. However, in case of limited electricity production – which shall be defined in a future publication – the private individual will not be considered a taxable person for this supply of electricity. The supply of GSC by private individuals possessing a 'double meter' is subject to the same rules as for private individuals with a 'reversing meter'. This means that in case the electricity production is VAT taxable, the supply of GSC will also be subject to VAT (albeit with the possibility to make use of the exemption for small enterprises if the yearly VAT taxable turnover does not exceed EUR 15,000.00).

Practical consequences

If a private individual becomes a taxable person following the supply of electricity on the grid and/or the supply of GSC, the private individual has to comply with all Belgian VAT obligations (e.g. registration for VAT purposes and, if applicable, filing of periodical VAT returns). At the same time however, he/she can deduct the input VAT on the purchase and installation of the solar panels. As there is also private use, the private individual will in principle have no full right of deduction. Precise rules will be defined in future guidance.

Next to the benefit triggered by the VAT deduction on the installation, the private individual should also take into account the specific energy taxes applicable to electricity consumption when evaluating the optimal setup. With a reversing meter, the electricity fed into the grid is not charged separately but reduces the net electricity taken from the grid and charged at retail price. In addition, the taxes and levies on electricity consumption only apply to the net electricity taken from the grid, thus resulting in less taxes.

What's next?

The Minister announced that the VAT authorities are currently preparing guidance on the VAT treatment applicable to the production and supply of electricity and GSC by final consumers. The VAT treatment will take into account the specific technical characteristics of solar power (and other green power) installations in Belgium. Finally, the publication will also provide some thresholds under which private individuals will not be considered taxable persons. A similar regime was already introduced in the Netherlands last year.

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