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Methodological note

GUIDANCE NOTE ON THE RECORDING OF MEMBER STATES' INTERVENTIONS TO ALLEVIATE HIGH ENERGY PRICES VIA REVENUE MEASURES (TAX DEDUCTIONS, TAX DEFERRALS, TAX CREDITS AND TAXES ON EXCEPTIONAL PROFITS)

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30 MARCH 2023

I. Introduction

1. Amongst the numerous measures undertaken by Member States in order to mitigate the impact of the sharp increase in energy prices on households and/or corporations, Member States have introduced a variety of tax measures: tax reductions, tax deferrals, tax credits and taxes on exceptional profits.
2. This guidance note aims to guide on the applicable national accounts recording for such measures, recalling the general rules for recording taxes (including the recent clarifications introduced in the MGDD 2022) with a more specific focus on some energy-specific revenue measures.

II. National revenue measures

3. Tax related measures on households and/or corporations undertaken by governments in the context of the sharp increase in energy prices are quite heterogeneous. When deciding on their appropriate statistical recording, one important aspect is whether the measures are targeted at specific well-defined groups of households and corporations or not.

1) Tax reductions

4. A large number of the measures observed in Member States involve temporary reductions (or cancellations) of specific taxes, so as to support households' or corporations' real income through a reduction in selected (after-tax) prices. In some other cases, more general reductions in taxes or social contributions have been adopted with the same aim.
5. Some of these specific measures concern reductions of energy taxes (within D.212/D.214) and/or value added type taxes (VAT, D.211) on energy products, such as electricity, fuel, gas but also on energy-related investment such as solar panels, solar water heaters or heat pumps. VAT rate reduction measures in Member States range from decreases to total exemption. Other relief

measures concern reductions in fuel and electricity excise duties, or temporary cancellation of some specific taxes such as road taxes for cars, buses, and trucks (the so-called ‘public vignette’) or electricity generation tax.

6. All these sorts of tax measures are temporary and pose no particular difficulty in their recording, as they will simply decrease ‘government revenue’ as defined in ESA 2010 paragraphs 20.76-20.79.

7. This is also the case for general reductions in social contributions. However, in the specific case where a Member State opts for targeted reductions to employers’ social contributions, meaning for certain groups of employers (or certain groups of their employees), a gross recording should be applied, as recommended in the related GFS interpretation[1], leading to a government expenditure and no change in government revenue. This gross recording is applied because rights to social benefits are acquired and are indeed unchanged for all, and also in order to properly measure labour costs in the national accounts (compensation of employees). Such gross recording rules on targeted social contributions reliefs do not apply to taxes.

8. Government may also decide to support households’ income via an increase of the tax-exempt income allowance or via changes in income tax ‘brackets’ (to avoid inflation pushing taxpayers into higher income tax brackets). These income-support measures would simply reduce government income tax revenue (D.51a).

Time of recording

9. The time of recording of such tax reduction measures generally raises no particular difficulties. The reduction measure should generally have an impact in the year that is subject to the tax measure, and this is usually implemented through the normal accrual adjustment carried out by compilers.

10. In case the tax revenue is compiled on the basis of a simple time-adjusted cash (TAC) method, as it is for instance often the case for VAT, a reduction in cash flows at the beginning of a year will be automatically accrued to the previous year, and no further adjustment will be necessary. Similarly, if the last settlement routinely paid in T+1 for income taxes (related to income generated in T) is brought backwards, for accrual purposes, by compilers, the increase or decrease in income tax arising from energy measures will automatically impact year T, without a need for any further adjustments. Estimation will however have to be used for the first and possibly second EDP notifications (for April T+1 and October T+1 respectively).

11. However, if the compiler opts for the flexibility option allowed by ESA 2010 paragraph 4.82 fifth indent applicable to some income taxes (which allows recording on a pure cash basis, in T, prepayments, and in T+1 the final settlement), Eurostat recommends that an *ad hoc* correction be made to move the energy specific measures to T when they are implemented through the final settlement. This recommendation is in order to reduce the heterogeneity of treatment across Member States and in recognition that the flexibility accepted by the ESA 2010 should not lead to a significant distortion in B.9 from one year to the next or across Member States. The MGDD 2022 section 2.2.2.5 *Recording of changes in tax obligations* § 89-95 introduced some recommendations concerning similar cases observed for COVID-19 support measures (then related to *ad-hoc* reductions in prepayments).

2) Tax deferrals

12. Relief can also be provided via the deferral of tax payments (and sometimes of other payments, such as settlements of energy bills). In this case, an adjustment should be made by Member States that use cash or time-adjusted cash (TAC) approaches to tax revenue recording, by way of creating an additional receivable, for the amount of tax that will eventually be paid outside the normal lag.

[1] https://ec.europa.eu/eurostat/documents/1015035/2041357/GFS_interpretation_deductions_from_compulsory_employers_social_contributions_2019-11-06/9b10f4c9-9750-8012-c3ad-2fdbfd4574f2

13. In case the payment is delayed by a significant period of time, a precautionary estimation should be made for non-collectable taxes, using an (additional) *ad hoc* coefficient in order to avoid the recording of uncollectable amounts as revenue.
14. An *ad-hoc* correction to the coefficient should also be applied when the assessment and declarations method is used.
15. Rules on tax deferrals were introduced in the MGDD 2022 section 2.2.2.5 *Recording of changes in tax obligations* § 71-88, following the extensive use of deferral schemes during the COVID-19 crisis.

3) Tax credits

16. Various specific energy-related tax credit schemes have been used. Some of these tax credits concern specific companies, such as energy-intensive ones, while some other schemes apply to small and medium-sized enterprises (SMEs) involved in energy friendly investment, such as the renovation of buildings. Some of the tax credit schemes concern only companies, while some others also include individuals and other legal entities, e.g., for purchasing energy eco-friendly products such as cars or heating devices that are more efficient.
17. As a general rule, tax credits are to be recorded as expenditure (gross recording) when considered as payable and as a reduction in tax revenue when considered non-payable (see ESA 2010 paragraphs 20.167-168).
18. The MGDD 2022 section 2.2.2.4.3 stipulates in § 15 a general guidance on how borderline tax credits should be recorded, i.e., when the tax credits are seemingly non-payable but are transferrable, indefinitely reportable or can be used to offset the total tax liability or a large part thereof. The general guiding principle is to record a government expenditure (and F.89 liability) for those tax credit schemes where the likelihood that the tax credit will eventually be used is high, assuming the claim on government is established with sufficient certainty and for a sufficiently well determined value.
19. In these government schemes, the intention is to provide different forms of benefits through tax credits. Such benefits should be recorded as expenditure when accrued, similarly to if they had been paid out in cash rather than delivered through tax credits, thus reflecting the economic reality of the support instead of the form of the payment.
20. The government expenditure associated with the payable tax credit should be recorded consistently with the expenditure category concerned: e.g., for acquisition of fixed assets (D.92), for purchase of 'green vehicles' by households (D.31), for loss of activity or for excess inventories (D.39), for those concerning electricity bills or gas bills of corporations in general (D.31) or of only some corporations (D.39), etc. Please see the recommendations in the Guidance Note on *the recording of government expenditure measures on high energy prices*.
21. The time of recording of non-payable tax credits should normally be consistent with the tax category in which they are granted.

4) Return of renewable energy subsidies and use of renewable energy tax and subsidy schemes that are in surplus

22. In 'contracts for differences' (a type of 'feed-in-tariffs' scheme, FIT), the normal situation is that the agreed selling price is expected to be lower than the market price, with the difference between them being a subsidy (on production D.39, when the subsidy is awarded to only specific producers, and on products when awarded to any producer). However, when the agreed selling price is higher than the market price, the situation reverses and the renewable energy producers have to pay government (or the implementing unit).
23. Such payments by producers to government are to be recorded as taxes on production (D.29) revenue of government rather than as negative subsidy expenditure of government, although

flexibility may be acceptable, for pragmatic reasons, in some specific circumstances (for instance, when monthly or quarterly payments to and from government alternate within a year).

24. In cases where a renewable energy tax & subsidy scheme has accumulated a 'surplus' in the past (as the contributions levied have exceeded the subsidies, over some time) and this 'surplus' is then used by government to grant relief to consumers for instance through a subsidy or social benefit or otherwise through a reduction in taxes (e.g. VAT etc.), no government revenue is to be recorded at that time. The government expenditure related to this relief (e.g., subsidy/social benefit) that is to be recorded, spread over the period of consumption intended to be subsidised, or alternatively the government tax revenue reduction that is to be recorded, is simply matched by a reduction in the AF.89 receivable held by government corresponding to the scheme 'surplus', thus with a B.9 impact.

III. Taxes on exceptional profits and Council Regulation 2022/1854

25. In addition to the above, there are also measures relating to temporary and targeted increases in tax rates on profits of energy suppliers (generators or distributors). During the ongoing period of high energy prices, a number of energy suppliers have benefitted from surging prices and have recorded exceptionally high revenue / profits.

26. In this context, Council Regulation (EU) 2022/1854[2] of 6 October 2022 on *an emergency intervention to address high energy prices* raises several recording issues that need to be addressed: the recording of a tax on surplus profits and the cap on market revenues (as well as the sharing of the surplus revenues from electricity between the "net import dependent" and "main export" countries).

1) Energy surtaxes

27. Article 14 of the Regulation stipulates that surplus profits generated by companies and permanent establishments in the Union, with activities in the crude petroleum, natural gas, coal and refinery sectors shall be subject to a mandatory temporary solidarity contribution unless Member States have already enacted equivalent national measures. The notion of surplus profits used in this regulation is similar to the notion of "windfall" revenue.

28. The Regulation defines the surplus profit in question as the taxable profits made in 2022 and/ or 2023 that are above 20 % of the average profits in the four fiscal years starting on or after 1 January 2018. If the average profits is negative, zero is used.

29. This temporary solidarity contribution has the character of a tax in national accounts. An exception will be if the corporation subject to the additional contribution is exploiting government subsoil assets, and it can be established that the excess profit *de facto* results, only or mostly, from this exploitation (and not from other sources of profits) and that the contribution is not applied to other producers. In case these three conditions are met, the government revenue should be recorded as rent (D.45) revenue and not tax revenue, following the GFS interpretation on the *Delineation between resource taxes and rent*[3].

30. Although this tax is foreseen by EU legislation, it is not appropriate to record an EU tax followed by a current transfer back to the Member State concerned, notably because a Member State is not required to establish the surtax if it has already adopted similar windfall containment measures. Also, the power to impose the tax and to set and vary the rates remains is in substance with the Member State concerned (similarly to other corporate income taxes).

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[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1854&qid=1680167052553&from=en

[3] https://ec.europa.eu/eurostat/documents/1015035/2041357/GFS_interpretation_delineation_between_resource_taxes_and_rent_2022_03_29.pdf/e28c8d69-6612-50cd-4143-6b619f447d89?t=1648577002072

31. Whether it is meant to be a one-off tax levied on a company or industry or levied for several years, it is recorded as a tax on the income and profits of corporations (D.51b).

2) Market surplus revenues

32. Separately, Article 6 of the Regulation addresses the issue of "mandatory caps on market revenues" obtained from the generation of electricity, which should be capped to a maximum of 180 EUR per MWh of electricity produced, where 'market revenues' are defined as income realised by a producer (from sales). According to Article 7(1) of the Regulation, the cap does not apply to electricity generated from natural gas, and some substitutes, notably biomethane, hard coal and water stored in dams with reservoirs.

33. As a result, producers (as well as some 'intermediaries') that would sell electricity for more than 180 EUR per MWh would be taxed at a 100% marginal tax rate. Government revenue stemming from these above-cap amounts is to be recorded as national taxes and not as EU tax for similar reasons as described earlier.

34. Due to the design of the energy markets, a 100% tax rate need not necessarily discourage high pricing, as prices are fixed by the market, and not by individual companies (that are price takers). The government revenue raised from this measure may hence turn out to be significant in certain jurisdictions – also in view of the fact that the threshold actually used by a Member State could be lower than 180 EUR per MWh (or be based on costs).

35. The precise classification of this tax flow could be viewed as a borderline case. It could be seen as some sort of income tax, because the apparent intention is to capture all the income above a certain level. However, the tax base is not income (which is a net concept, i.e., sales minus purchases, or more precisely 'costs of sales', and minus other relevant expenditure) but the sales themselves (or turnover, which is a gross concept). As such, the revenue raised is more a tax on products or production.

36. The tax can be assimilated to a tax on products (D.214) being volume-based and levied on general sales or turnover (ESA 2010 4.20i). The fact that the tax is calculated by reference to a target price (and not as a percentage of the sale price) is not a difficulty, and is analogous to (the reverse case of) subsidies on products that can indeed explicitly take this difference-to-target modality under ESA 2010 paragraph 4.33 (option (c)). This calculation modality can also be compared to the case of profits of fiscal monopolies (ESA 2010 paragraph 4.20j) that are seen as tax on products by ESA 2010. Another view is that the 'product' produced by different electricity producers is not the same.

37. Alternatively, the tax can be assimilated to a tax on production (D.29), since the tax is not levied on some electricity producers (e.g. those using natural gas as an input) but on all others (using as an input one of the sources listed in Article 7(1) of the Regulation); i.e. the production process is the distinguishing feature, while all producers are producing the same product through different production processes.

38. On balance, for the purpose of GFS harmonisation, Eurostat recommends recording the revenue on 'market revenue caps' as D.29, unless specific national circumstances make another recording more applicable.

39. Article 11 of the regulation stipulates that if a Member State's net import dependence is equal or higher than 100 %, an agreement to share the surplus revenues shall be concluded between the importing and main exporting Member States. Such transfers between Member States should be recorded, if they arise, as current international cooperation (D.74) – revenue of the beneficiary and expenditure of the benefactor.

40. The revenue raised by this windfall tax or the energy surtaxes is to be used, according to the Regulation, for specific measures of support for final energy customers. The recording of these related expenditure (or related revenue reductions) should be classified according to the usual rules laid down in the Guidance Note on *the recording of government expenditure measures on high energy prices* (or in the Guidance above).