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Oifig na gCoimisinéirí Ioncaim
Rannán Cánacha Indíreacha
An Brainse Polasaí agus
Reachtáfochta Cánach Breisluacha
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2, Éire

06 April 2018

Dear Sirs,

STATEMENT OF AGREED TREATMENT OF VAT UNDER THE INTEGRATED SINGLE ELECTRICITY MARKET (I-SEM)

Introduction

There is an existing agreement in place which sets out the joint position of the Revenue Commissioners and HM Revenue & Customs ('HMRC') – together referred to as the 'Revenue Authorities' – in relation to the Value-Added Tax ('VAT') treatment of the Single Electricity Market ('SEM') for the entire island of Ireland. This will continue to apply until activity and settlement under the current SEM ceases.

The European Union ('EU') is implementing the European Electricity Target Model ('EETM') which will harmonise the cross-border supply of electricity within the EU with the aim of providing an affordable and secure supply of electricity. In order to meet the requirements of the EETM, the governments of both the Republic of Ireland and Northern Ireland have requested the development of new wholesale electricity market arrangements which will form the Integrated Single Electricity Market (I-SEM) on the island of Ireland.

There is a requirement for a separate agreement to be issued to cover the agreed treatment of VAT for I-SEM. This document is the statement of agreed treatment of VAT under the I-SEM which comes into effect when the I-SEM market goes live in May 2018.

The introduction of the I-SEM on the island of Ireland in May 2018 will expand the market to a greater variety of participants outside of the Republic of Ireland and of Northern Ireland.

The settlement of the Balancing and Capacity markets and imbalance volumes in the I-SEM will be operated by Single Electricity Market Operator ('SEMO') which is a joint venture between EirGrid plc and SONI Limited.

Many aspects of the existing market will continue in the I-SEM. Under the existing SEM the VAT due on supplies of electricity is accounted for by purchasers on the reverse charge basis in the country of establishment of that purchaser. Under the I-SEM this will continue to be the case for supplies between vendors and purchasers in the Republic of Ireland and the United Kingdom ('UK'). The VAT treatment of supplies where one or both participants are established elsewhere other than the Republic of Ireland or the UK are considered in more detail below.

In the SEM, a generator sells electricity into a gross mandatory pool and a supplier purchases from the pool. In the I-SEM, a generator and supplier will be required to be balance responsible across all trading arrangements and each could become both a vendor and purchaser of electricity. Thus,



there are new scenarios to consider regarding the VAT treatment of supplies between participants in the market. The participants will be referred to as vendors and purchasers in this document.

This note sets out the joint position of the Revenue Authorities solely in relation to the VAT treatment of the market functions which will be operated by SEMO under the I-SEM (i.e. settlement of the Capacity Market, the Balancing Market and imbalances). It does not address the forward contracts market, the Financial Transmission Rights Market, Day-Ahead Market or the Intraday Market, none of which will be operated by SEMO.

Market participants may rely on this note's contents for their own VAT accounting purposes. However, where both market participants are established for VAT purposes in the same EU Member State (other than the Republic of Ireland or the UK) or the purchasing party is established in a jurisdiction outside the EU, such participants should seek taxation advice where they have any doubts over the correct taxation treatment to be applied.

Supplies of services by SEMO to market participants

In the I-SEM, SEMO will continue to be registered for VAT as a joint venture in both jurisdictions.

It is accepted that SEMO's role in the I-SEM is restricted to the settlement of the Balancing and Capacity market and imbalance volumes. The role of SEMO will result in it supplying services (referred to as market operator charges) to I-SEM market participants. Invoicing by SEMO for its own services, as distinct from settlement documents issued in respect of the sale and purchase of electricity, will be dependent on the SEMO VAT registration (Republic of Ireland or the UK) under which it is issued and by a participant's main place of establishment for VAT purposes. SEMO should obtain confirmation of the main place of establishment for market participants.

The normal VAT place of supply and invoicing rules relating to the supply of services will be applied to these services and they will be subject to the rates of VAT applicable in the Republic of Ireland and the UK, as appropriate.

Should a participant's main place of establishment for VAT purposes be an EU jurisdiction other than the Republic of Ireland and the UK, the place of supply shall be the EU Member State where the participant's main VAT establishment is located. Accordingly, those supplies will be outside the scope of both Irish and UK VAT. The participant will be required to account for VAT on the reverse charge basis in the country in which the service is received. SEMO will obtain such participant's VAT registration number and quote it on VAT invoices issued and also include an indication that a local reverse charge applies.

Where participants are established outside the EU, the place of supply is outside the EU and no Irish or UK VAT is chargeable.

Such supplies are separate to the transactions for the settlement of the Balancing and Capacity markets and imbalance volumes dealt with in the next section.

Supplies of electricity under the Trading & Settlement Code

It is assumed that all market participants are taxable dealers as defined in Article 38 of the Council Directive 2006/112/EC. For ease of reference, Article 38(2) of the Council Directive 2006/112/EC



states that *“taxable dealer’ shall mean a taxable person whose principal activity in respect of purchases...electricity... is reselling those products and whose own consumption of those products is negligible.’*

It is accepted that SEMO’s role in the I-SEM is restricted to the settlement of the Balancing and Capacity market and imbalance volumes. SEMO will not take ownership of any of the electricity supplied between participants. Like in the SEM, there will be no direct relationship in the I-SEM between a vendor and purchaser due to the net pool arrangement that is in place under the Trading & Settlement Code.

In the I-SEM, and more specifically the arrangements set out in the Trading & Settlement Code, vendors will sell to the pool and the purchasers buy from the pool. Each vendor will be deemed to have sold proportionately to each purchaser, and each purchaser will be deemed to have purchased proportionately from each vendor. This requires a proportion calculation to be determined for each of sales and purchases to enable VAT calculations.

The VAT proportion calculation methodology takes into consideration the main place of establishment for VAT purposes of both the vendor and purchaser. A purchase proportion is calculated considering all purchases in the balancing/imbalance market grouped by each main place of establishment for VAT purposes. A separate proportion is also calculated for sales on the same basis. It will be based on the monetary value of the transactions between the market participants taking their places of establishment into account and will no longer look at the megawatt-hour (‘MWh’) flows between the two jurisdictions.

The settlement being carried out in I-SEM by SEMO is for the Balancing market and imbalance settlement and so the overall energy volumes and flows on the island are no longer relevant when determining the transactions that have taken place.

At the end of each Billing Period (week), participants will be provided with a settlement document. Copy documents are to be held by SEMO and made available to the Revenue Authorities on request.

As in the SEM, the settlement documents issued by SEMO in relation to supplies and purchases of electricity by I-SEM participants will be acceptable to the Revenue Authorities as the equivalent of a VAT invoice. There will be no further requirement on participants to issue VAT invoices in relation to supplies covered by the settlement documents.

Participants operating within the pool will use these SEMO settlement documents as the basis for accounting for VAT. The way in which VAT is applied to the settlement document will be governed by the main place where a participant is established for VAT purposes.

As noted above, in the I-SEM, it will be possible for a participant to be both a vendor and a purchaser. This means that a participant could have sales and purchases as a vendor and also separate sales and purchases as a purchaser.

In the I-SEM, the total gross sales and total gross purchases of a participant in any given period will be presented on one settlement document together with an analysis of sales and / or purchases incurred within Local jurisdiction, EU and Non EU. While this is a move away from the current practice of issuing a separate document in respect of each sale and each purchase in the SEM, the change is purely for presentational purposes and will not result in the netting of sales and purchases transactions which would affect the amounts chargeable to VAT in either the Republic of Ireland or the UK.



On request, SEMO will provide the Revenue Authorities with details of all transactions that have taken place in the I-SEM in the pool.

Supplies of Capacity

The Revenue Authorities will continue to treat the sale and purchase of capacity for VAT purposes in the same manner as the sale and purchase of electricity.

The VAT proportion calculation methodology is as detailed above but for the capacity market taking into consideration the main place of establishment for VAT purposes of both the vendor and purchaser.

At the end of each Capacity Period (calendar month), participants will be provided with a settlement document. Copy documents are to be held by SEMO and made available to the Revenue Authorities on request.

As in the SEM, the settlement documents issued by SEMO in relation to supplies and purchases of capacity by I-SEM participants will be acceptable to the Revenue Authorities as the equivalent of a VAT invoice. There will be no further requirement on participants to issue VAT invoices in relation to supplies covered by the settlement documents.

Participants operating in the Capacity Market will use these SEMO settlement documents as the basis for accounting for VAT. The way in which VAT is applied to the settlement document will be governed by the main place where a participant is established for VAT purposes.

On request, SEMO will provide the Revenue Authorities with details of all transactions that have taken place in the I-SEM in the Capacity Market

Electricity supplied outside the Pool

Any trading of electricity outside of the Pool, in which SEMO is not involved in any part of the transaction, will be subject to the VAT legislation in force in the Republic of Ireland or the UK, as appropriate.

Currency gains and losses

It is confirmed that currency adjustments arising from electricity supplied through the Pool will represent pricing adjustments for the electricity. Gains or losses arising in connection with, and reflected in, SEMO charges to participants will similarly represent pricing adjustments in respect of the services provided to the participants. This will not lead to any adjustment to SEMO's input tax credit.

Interest

Interest in the I-SEM will be treated as exempt from VAT.

Retention of Records

The time limit for retention of records will be six years for both SEMO and I-SEM participants.



Supplies received by SEMO

Any supplies made to SEMO by EirGrid plc, SONI or any other supplier, will continue to be subject to the normal VAT legislation in force in the Republic of Ireland or the UK, as appropriate.

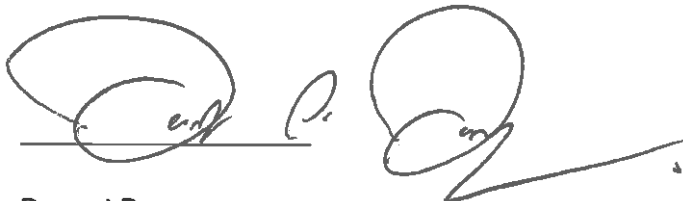
Terms

These arrangements will be subject to a review by the Revenue Authorities five years after commencement of the I-SEM or sooner in the event of any material changes in the meantime. Furthermore, nothing in these arrangements is to be taken as binding on the application of any other taxes within either jurisdiction.

Effective date

This statement which outlines the agreed VAT treatment under the I-SEM is effective from 23 May 2018 (i.e. the date that the I-SEM goes live).

Yours faithfully,



Dermot Donegan
Indirect Taxes Policy and Legislation