

DRAFT

VAT Reverse Charge – Gas, Electricity, Gas and Electricity Certificates.

Introduction

Finance Bill 2015 includes a provision to introduce a VAT reverse charge mechanism for accounting for VAT on supplies of

- wholesale gas or electricity, and
- gas or electricity certificates.

Under the reverse charge mechanism, the recipient, rather than the supplier, is accountable for the VAT on the supply.

These changes are currently being discussed in the Oireachtas and are expected to be passed into law during 2015. The new rules will then come into effect from 1 January 2016. This means that supplies which take place on or after this date will be affected by this change.

Who is impacted by the new rules?

The new rules will impact on the following transactions:

- the supply of gas or electricity by a business in the State, to a taxable dealer carrying on business in the State, and
- the supply of a gas or an electricity certificate by a business in the State, to another business in the State.

In this context, a “taxable dealer” is a person whose main business in respect of supplies of gas or electricity received by that person, is the onward supply of those goods for consideration and whose own consumption of those goods is negligible in comparison to their onward supplies. In the Irish gas or electricity sector, a taxable dealer could be, for example, Bord Gais Energy or Electric Ireland. Power stations are also considered to be taxable dealers.

“**Gas**” means gas supplied through the natural gas distribution system and does not include for example, bottled gas.

“**A gas or an electricity certificate**” means any electronic document which conveys information about the source and production of the energy. An example of a commonly traded gas or electricity certificate is a Guarantee of Origin which provides proof that a quantity of energy has been generated from a renewable source. At the time of writing, other examples of gas or electricity certificates include Levy Exemption Certificates and International Renewable Energy Certificates.

Scope

The new rules will not impact on supplies of gas or electricity made to an end customer for consumption.

The following specific supplies are covered by the reverse charge:

- Wholesale gas or electricity (including electricity supplies under power purchase agreements).
- “Capacity charges” paid to generators by the Single Electricity Market Operator (“SEMO”) on the basis of their availability to generate electricity on instruction from the grid operator. **(Note that interconnector capacity charges are not covered by the reverse charge).**
- The following charges paid or levied by SEMO:
 - o Constraint/Imperfections charges
 - o Testing charges
 - o Unstructured imbalances
 - o Make whole payments
- Supplies of electricity to power stations
- Supplies of gas or electricity certificates, including Guarantees of Origin and Levy Exemption Certificates.

Examples of specific charges which are excluded from the reverse charge include:

- Fixed and variable market operator charges levied by SEMO.
- Interconnector capacity charges
- Public service obligation levy
- Gas network use of system charges
- Electricity network use of system charges
- Balancing system use of system charges

This list is not exhaustive.

How the Reverse Charge System works

Under the reverse charge system, the recipient, rather than the supplier, is accountable for the VAT on supplies made to him or her.

- The supplier issues a document to the recipient (hereafter referred to as a reverse charge invoice) that includes all of the information required on a VAT invoice, except the VAT rate and the VAT amount. It also includes an indication that it is the recipient who is accountable for the VAT.
- If there is prior agreement between the supplier and the recipient, the recipient may issue the reverse charge, subject to agreed procedures being in place for the acceptance by the supplier of the validity of the invoice.
- The recipient does not pay the VAT to the supplier but instead accounts for it in the VAT return for the relevant period in VAT on sales (T1).
- The recipient can claim a simultaneous input credit in VAT on purchases (T2) for that VAT if s/he has valid documentation and would have been entitled to an input credit if that VAT had been charged by the supplier.

Invoicing

The supplier should issue a reverse charge invoice to the recipient in respect of supplies of gas or electricity or a gas or an electricity certificate within 15 days of the end of the month in which goods or services are supplied. However, the recipient may issue the reverse charge invoice where:

- There is prior agreement between the supplier and the recipient and
- There are agreed procedures in place or the acceptance by the supplier of the validity of the invoice (e.g. both parties sign the invoice).

Recipients must take all reasonable steps to ensure that information provided on the reverse charge invoice is correct and that VAT numbers provided are valid and in date at the time of supply.

Deductibility in respect of VAT incurred, either by reverse charge or under normal invoicing rules, is only allowed on the basis of valid VAT invoices.

Information required on the reverse charge invoice

The reverse charge invoice must contain all the information required on a VAT invoice **except** the VAT rate and the VAT amount. The information required includes:

- the date of the invoice,
- a sequential number, based on one or more series, which uniquely identifies the document,
- the full name, address and VAT registration number of the person who supplied the goods or services to which the invoice relates,
- the full name and address of the person to whom the goods or services were supplied,
- a statement “ VAT on this supply is to be accounted for by the recipient”,
- the quantity and nature of the goods or services supplied,
- the date on which the goods or services were supplied,

- the unit price of the goods or services supplied, any discounts or price reductions not included in that unit price, and
- the amount of consideration exclusive of VAT.

Deductibility

Where the recipient of a supply of gas, electricity or a gas or an electricity certificate is accountable for VAT under the reverse charge rules, that recipient can claim a simultaneous input credit in respect of that VAT but only if:

- the recipient has a valid reverse charge invoice/settlement document, whether drawn up by the supplier, the SEMO or (by agreement) the recipient.
- the recipient is engaged in fully taxable activities and would have been entitled to deductibility if the VAT was invoiced under normal VAT rules.

Supplies of gas, electricity or a gas or electricity certificate by persons not registered for VAT

Where a recipient receives a supply of gas, electricity or a gas or an electricity certificate from a taxable person who is not registered for VAT (for example, supplies of electricity from a flat-rate farmer), the recipient must keep a full record of those supplies. S/he should also issue to the supplier, and retain a copy of, a document which contains the following information:

- the date of issue of the document,
- a sequential number, based on one or more series, which uniquely identifies the document,
- the full name and address of the person who supplied the goods or services to which the document relates,
- the full name and address of the person to whom the goods or services were supplied,
- the quantity and nature of the goods supplied,

- the date on which the supply was made,
- the unit price of the goods or services supplied,
- the amount of consideration,
- agreed procedures of the acceptance by the supplier of the validity of the document (e.g. signature of both parties).

Transactions taking place through the Single Electricity Market (“SEM”)

The SEM is a pool-based mechanism for the sale and purchase of wholesale electricity across the island of Ireland. Participants in the SEM include generators and suppliers. Entities generating electricity (generators) sell into the pool and entities that sell electricity direct to final customers (suppliers) buy their electricity from the pool.

The Single Electricity Market Operator (“SEMO”) operates and administers the SEM. A function of SEMO includes the issue of settlement documents to SEM participants at the end of each settlement period. These settlement documents are acceptable to the Revenue Commissioners as the equivalent of a VAT invoice, or the reverse charge invoice referred to above.

Following the introduction of the domestic reverse charge for wholesale gas and electricity supplies, ROI based generators will no longer apply VAT to supplies of electricity; rather the ROI based supplier receiving the supply will be liable to account for VAT on that supply to the Revenue Commissioners. VAT settlement documents issued in respect of supplies which take place on or after 1 January 2016 will reflect this change and are accepted by the Revenue Commissioners as satisfying the requirement for issue of a document set out in the legislation governing this reverse charge (section 66(4C) of the VAT Consolidation Act 2010).

Settlement documents issued to generators will not include any VAT amount. Accordingly, generators will no longer have any obligation to account for VAT on their supplies of electricity through the SEM. Settlement documents issued to suppliers will not include a VAT rate or amount but will include a line of text advising

that they must self account for the VAT chargeable on that supply on a reverse charge basis.