

Tax collection in the future billing regime

A common Nordic end-user market with
combined billing

Stockholm, 11 May 2012

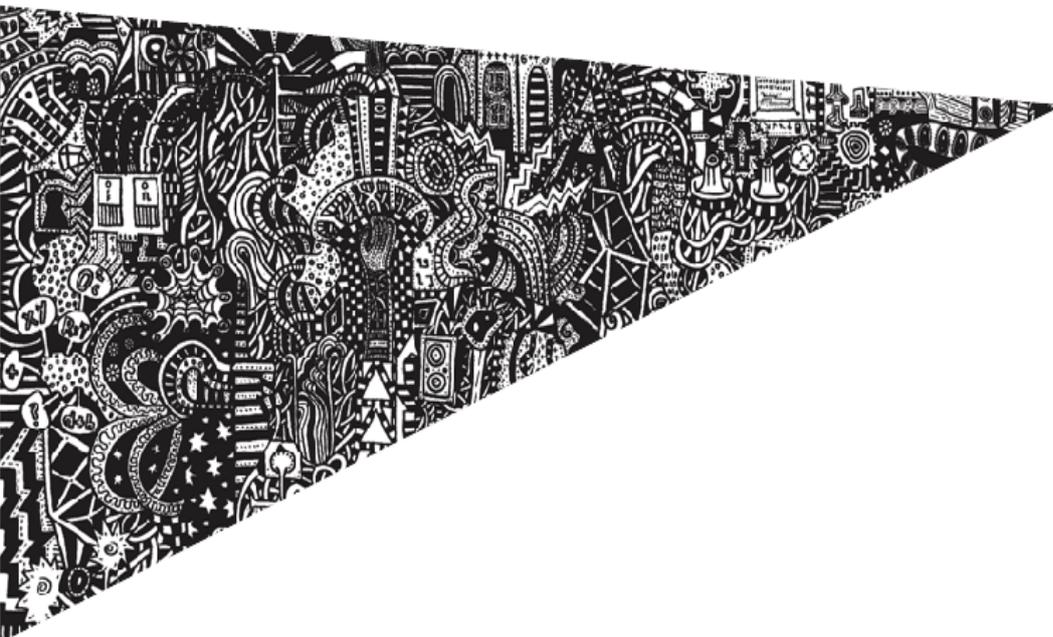


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1. Summary and key findings

1.1. Summary

In Denmark, Finland, Norway and Sweden (the Nordic countries) electricity is subject to energy tax, grid costs, VAT and various fees. Taxes and fees are in the end carried by the end user but collected by the market operators. There are differences between the liability to energy tax and fees in the Nordic countries.

NordREG has in December 2011 recommended a mandatory combined billing regime in the future Nordic end user market. This recommendation has formed the basis for the following analysis and suggestions.

This report describes the current tax and fee collection practices in the end user electricity market in each of the Nordic countries. The description is followed by an analysis of whether national tax and fee legislation allows foreign suppliers to collect taxes and fees in each of the Nordic countries.

The last section of the report consists of a suggested taxation regime together with recommendations on how the responsibility of collecting taxes and fees etc. should be arranged between suppliers, DSOs and relevant third parties (e.g. tax authorities). In the suggested taxation and fee regime suppliers should collect all taxes and fees and forward relevant taxes and fees to the DSOs. DSOs should be liable to energy tax in all Nordic countries, i.e. the liability to energy tax is harmonized.

DSOs are liable to pay VAT and various energy fees. In Norway and Sweden suppliers have a quota obligation for green certificates. No suggestion is made to change those responsibilities.

1.2. Key findings

Taxation and fee regulation for electricity in the Nordic countries have several similarities but also national peculiarities.

In order to establish a future truly common supplier centric end user market for electricity it is not necessary from a tax and fee perspective to make any substantial legal amendments to current national legislations. Some legal amendments are however required to improve the conditions of the future market.

One key finding in Sweden is that if a natural person receives electricity from a supplier established outside Sweden the Swedish Energy Tax Act is unclear who in this scenario is responsible for reporting and paying the energy tax to the Swedish Tax Agency.

Another finding in Sweden is if a legal person receives electricity from a supplier established outside Sweden, the legal person will in this scenario be responsible for reporting and paying the energy tax to the Swedish Tax Agency.

If the customer enters into two agreements, one with the DSO and one with the supplier, two invoices have to be issued. The invoices can be combined in one document.

2. Definitions

DSO – Distribution System Operator (The operator of the local or low voltage electricity network)

End user – Business and residential user

▶ **Consumer** – a natural person purchasing electricity for his own household consumption

▶ **Customer** – a natural or legal person purchasing electricity for his own consumption

Liable to energy tax – The party responsible for reporting and paying energy tax to authorities

Liable to fees – The party responsible for reporting and paying fees to authorities

Supplier – The Company that is the seller of electricity to the end user

VAT – Value Added Tax

3. Introduction

3.1. Background

In 2009 NordREG published the report “Market Design, Common Nordic end-user market”. In the report NordREG has mapped the present end-user market models of the Nordic countries (excluding Iceland) and identified the issues that should be harmonized in order to establish a common Nordic end-user market.

NordREG published another report in 2011 “Rights and obligations of DSOs and suppliers in the customer interface”. The report describes roles and responsibilities for DSOs and suppliers in the customer interface.

NordREG has also published a report written by a consultant firm (VaasaETT), “Consideration of alternative billing regimes for the Common Nordic End-User Market”. The report is a basis for NordREGs decision concerning the choice of billing regime in the Nordic end-user market.

One of NordREGs next steps in the work with the future common Nordic end user market is to describe, analyze and compare how a voluntary combined billing model and a mandatory combined billing model will work from a tax collection point of view. Ernst & Young has got the opportunity to conduct this investigation and the results of this study are presented in this report.

NordREG has in December 2011 published recommendations to introduce a mandatory combined billing model in the future common Nordic end user market.

3.2. Objective

The objectives of this study are to describe the current tax and fee collection practices in the end user market of electricity in each of the Nordic countries on a high level.

It is analyzed in the report whether national tax and fee structure legislation will allow foreign suppliers to collect taxes and fees in each Nordic country.

The report is concluded with an analysis on how the collection of taxes and fees should be arranged between suppliers, DSOs, relevant third parties (e.g. tax authorities) and how the suggested taxation regime will affect stakeholders from a tax and fee point of view.

The suggested taxation model should be measured against the following different objectives:

- ▶ Customer friendliness
- ▶ Well functioning common market
- ▶ Improved competition among suppliers
- ▶ Improved efficiency
- ▶ Compliance with EU regulation and development
- ▶ Neutrality of DSOs

3.3. Scope of the study

The study primarily covers the following areas:

- ▶ High level study of national energy tax and VAT structure legislation in the Nordic countries
- ▶ High level study of the structure for other fees in the Nordic countries
- ▶ High level analysis and suggestions of how collection of taxes and fees should be arranged between suppliers, DSOs and third parties in the future common Nordic end user market

3.4. Limitation of the study

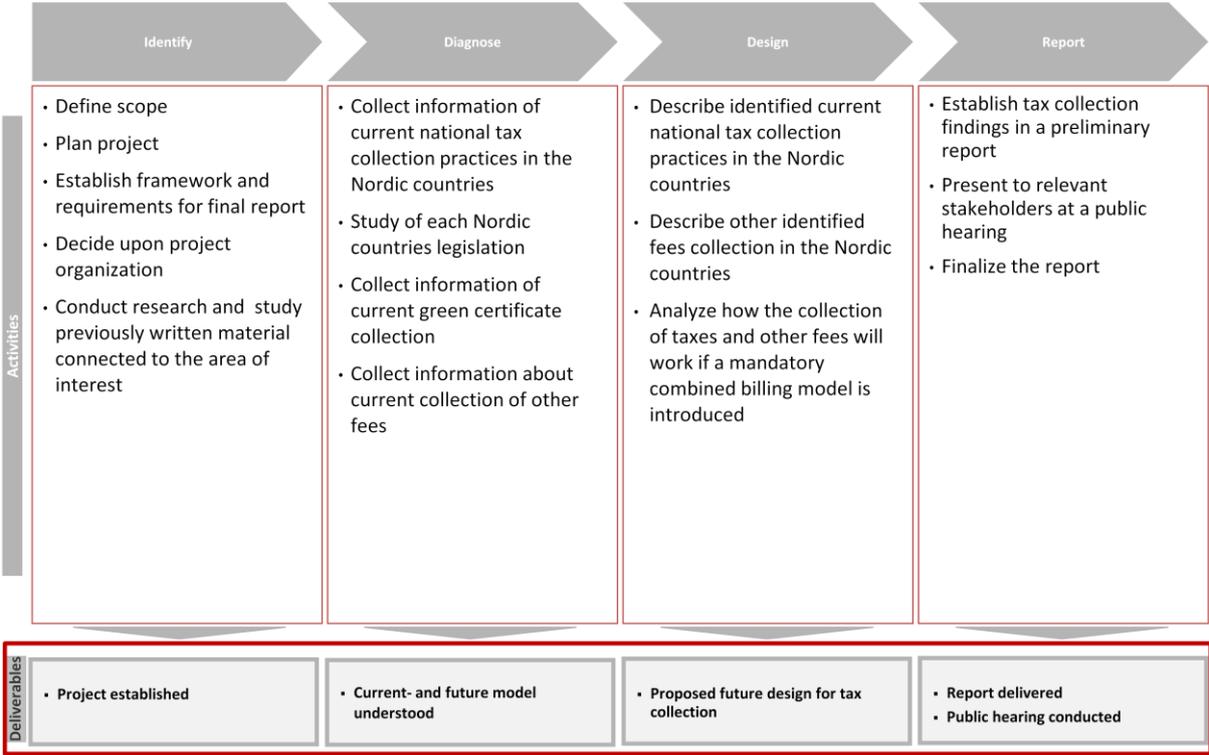
Different energy tax rates apply depending on where, and for what purpose, electricity is consumed by end users. Tax rates are not further discussed in this report.

A number of exemptions from energy tax on electricity exist, e.g. electricity used for electricity production. Those exemptions are not further discussed in this report.

NordREG has in December 2011 recommended a mandatory combined billing regime in the future Nordic end user market. The report is limited to discuss and analyze a future taxation and fee regime based on this recommendation.

It is assumed that in the future common Nordic end user market the customer will have two agreements, one with the supplier and one with the DSO. If the customer would only have one agreement with the supplier it could have an impact on the VAT but not on energy tax or fees. NordREG has not made any recommendation if one or two agreements should be used.

3.5. Methodology



The report is based on previous studies from NordREG and takes into consideration national tax and fee legislation as well as EU regulation. The report has been compiled through desk-top research.

This study has consisted of two different work streams; one for tax collection and one for risk management. This report only covers the tax collection regarding energy tax, fees and VAT and has been conducted in collaboration with Ernst & Young in the Nordic countries as well as aligned with the study from the risk management work stream.

4. Current energy tax and fee collection practices

4.1. General

In all of the Nordic countries electricity is subject to energy tax, grid costs, and various fees. Taxes and fees are in the end carried by the end user but collected by the market operators.

In Denmark, Finland and Norway the DSOs collect and are liable to energy tax whereas in Sweden the energy tax is collected by the supplier. Suppliers in Sweden are also liable to energy tax.

Council directive (2003/54/EC) concerning common rules for the internal market in electricity gives Member States the possibility to allow grid and supply activities within the same company on condition that the activities are separated. Finland is the only Nordic country that has used this possibility. Norway is not a member of the EU, but according to national legislation grid and supply activities have to be in separate companies.

Most other fees are collected by the DSOs with exception of the fee for green certificates which is levied in Norway and Sweden. Green certificate fees are collected by suppliers.

In the following, the general regulations of energy tax and fees in the Nordic countries are described, how and by whom they are collected, and to which authorities the taxes and fees in the end are paid to.

4.2. Denmark

In Denmark the Energy tax is levied as an electricity fee. Electricity consumed in Denmark is subject to this electricity fee. Electricity that is exported is not subject to electricity fee. Electricity producers and DSOs are liable to pay the electricity fee.

The liability to electricity tax occurs when DSOs issue an invoice for the grid services and should be reported and paid on the first day of the month following invoicing.

DSOs have to register at the Danish Tax and Customs Administration (SKAT). The fee accounting period is one calendar month.

The electricity fee consists of energy fee, energy saving allowance, electricity distribution allowance, electricity saving fee and electricity additional fee. There is also a Public Service Obligation (PSO) fee.

The energy fee is mainly a fee for the energy consumption which also includes the energy saving allowance. The energy saving allowance finances GóEnergi (the Danish Energy Saving Trust) which is a governmental organization commissioned to promote energy efficiency in households, the public sector, and the commercial and the industrial sectors for all forms of energy use other than transport.

The electricity distribution allowance is a fee for the distribution of electricity.

The electricity saving fee is a fee for reduction of carbon dioxide emissions.

The PSO fee is supposed to secure electricity supply maintenance and finance environmental friendly energy and environmental friendly electricity production R&D.

The electricity additional fee was introduced in 2011 to develop green energy sources.

All fees are collected by the DSO.

4.3. Finland

4.3.1. Energy tax and strategic stockpile fee

Electricity consumed in Finland is subject to energy tax and a stockpile fee. Electricity that is exported is exempted from energy tax and stockpile fee.

DSOs and electricity producers are liable to energy tax and stockpile fee. Also those who receive electricity in their business activity from outside Finland are liable to tax if the electricity does not flow through an electricity network in Finland.

The liability to energy tax occurs when electricity is transferred for consumption.

Someone liable to energy tax and stockpile fee has to register at the Finnish Customs. The tax period is one calendar month.

DSOs can allow suppliers to collect the energy tax and the stockpile fee. DSOs are however always liable to energy tax and stockpile fee towards Finnish Customs.

4.4. Norway

4.4.1. Energy tax

Electricity consumed in Norway is subject to energy tax. The liability to tax occurs when the electricity is supplied to an end user and as a main rule when the electricity is used by a DSO, transporter/supplier of electricity or a producer of electricity. DSOs are responsible for paying a fee to Enova, a state enterprise. The fee to Enova is included in the network tariff charged by the DSO.

Producers and companies transporting/supplying electricity to end users have to register at the regional Norwegian Customs Office and report the energy tax. An energy tax return should be filed on a monthly basis.

4.4.2. Further regulation for import of electricity

As mentioned above the liability to tax occurs when the electricity is supplied to an end user and as a main rule when the electricity is used by a DSO, transporter of electricity or a producer of electricity. Thus, import of electricity does not per se result in a liability to energy tax. The subsequent use will determine the energy tax consequence.

4.4.3. Fees collected by the supplier

The supplier of the electricity collects a fee for green certificates. This will be included as a cost in the electricity price. The supplier has a quota obligation for renewable supplied electricity. If the supplier does not fulfill the quota obligation, the supplier has to buy green certificates to balance the quota obligation.

Statnett is assigned to issue green certificates to the producers and manages the account system for the producers, other quota obligated and other account holders.

4.4.4. Fees collected by the DSO

The end user is charged a grid cost fee by the DSO. This fee includes the Enova fee. Currently it is not allowed to offer the end user a combined invoice. Thus, the DSO and the supplier of the electricity must pursuant to the Norwegian legislation issue separate invoices. However, the Ministry of Finance is currently assessing whether to allow combined invoicing. In addition to the grid cost fee the DSO also pays the Enova fee.

4.5. Sweden

4.5.1. Energy tax

As a general rule, electricity consumed in Sweden is subject to energy tax. Electricity that is exported is exempted from energy tax.

Suppliers and commercial producers of electricity are liable to energy tax. Also, someone who imports electricity is liable to tax. The liability to tax occurs when the electricity is consumed. The tax is collected by the supplier or importer.

Someone liable to energy tax has to register at the Swedish Tax Agency. This rule applies for both national and foreign suppliers. An energy tax return should normally be filed on a monthly basis.

4.5.2. Further regulation for import of electricity

Someone who commercially produces or supplies electricity is liable to energy tax. Someone who imports electricity is considered to be a producer and therefore liable to Energy tax. It should be noted that the importer, according to the Energy Tax Act, is not considered to be a *commercial* producer. This makes the Energy Tax Act not quite clear on the matter if a natural person who imports electricity is liable to energy tax since a natural person *does not* normally have any commercial activities.

A legal person, on the other hand, *does* normally have commercial activities and should therefore be liable to energy tax, i.e. be considered as a commercial producer of electricity, when the legal person imports electricity.

Some comments on this matter are made in the proposal to the Energy Tax Act where it is stated that someone who imports electricity is liable to energy tax. The statement in the proposal does not specifically make any distinction between natural or legal persons. The preparatory works are often useful in clarifying the intention of legislation or a treaty. However, they are still secondary or less important than looking to the ordinary meaning in the legislation. This could mean that both natural and legal persons could become liable to energy tax if they buy electricity from a supplier outside Sweden.

It could be questioned if a natural person who imports electricity for his own consumption could be considered to do the import commercially and in that sense also equal to a commercial producer of electricity. Because of the general rule that electricity consumed in Sweden is subject to Energy tax, and no exemption is applicable for a natural persons own import of electricity, the question is if the natural person or someone else is liable to Energy tax.

EY has been in contact with the Swedish Tax Agency regarding this matter and the Swedish Tax Agency is aware that the Energy Tax Act is unclear. However, the Swedish Tax Agency is not at the moment able to give a straight answer on how the Energy Tax Act should be construed.

4.5.3. Fees collected by the DSO

The end user is charged a grid cost fee by the DSO. Grid costs are collected either by the DSO or the supplier depending on if the end user has a separate invoice for the grid cost or a combined invoice. The end user can only be offered a combined invoice if the supplier and the DSO are in the same company group.

In addition to the grid cost fee the DSO also collects fees for electricity safety, emergency and supervision.

The electricity safety fee finances the work of the National Electrical Safety Board.

The emergency fee finances parts of the Swedish National Grid's activities.

The supervision fee finances parts of the Swedish Energy Markets Inspectorate's activities.

The DSO reports and pays the fees to the National Electrical Safety Board.

4.5.4. Fees collected by the supplier

The supplier collects a fee for green certificates. The supplier has a quota obligation for renewable supplied electricity. If the supplier does not fulfill the quota obligation, the supplier has to buy green certificates to balance the quota obligation.

The Swedish National Grid is assigned to issue green certificates to the producers and manages the account system for the producers, other quota obligated and other account holders.

4.5.5. Possible obstacles for foreign suppliers to collect taxes and fees due to national tax structure legislation

A legal person who chooses to have electricity supplied from a foreign supplier is considered to be a producer of electricity. This means that the legal person is liable to energy tax himself and has to report and pay the energy tax. A consequence of this might be that it is less interesting for foreign suppliers to enter the Swedish market. Foreign suppliers end up in a more unfavorable position than national suppliers since national supplier takes care of reporting and paying the energy tax. Foreign suppliers pass on this responsibility to the customer.

As mentioned above in section 4.5.2, it is not quite clear how the Energy Tax Act should be construed regarding the liability to energy tax when a natural person imports electricity to Sweden. One possible solution to avoid this uncertainty could be for foreign suppliers to establish branches in Sweden. In that case the electricity would be supplied from the branch to the end user and the branch would be liable to energy tax and report and pay the energy tax to the Swedish Tax Agency.

Another solution is to move the liability to energy tax from the supplier to the DSO in order to harmonize the liability to energy tax within the Nordic countries and avoid interpretation questions regarding liability to energy tax when electricity is imported to Sweden.

4.6. Compilation of responsibilities in current tax and fee acts

Country	Stakeholder	Tax payment responsibility energy tax	Tax payment responsibility VAT	Different fee, payment responsibility
Denmark 	DSO	X (electricity tax)	X	X (energy saving allowance, electricity distribution allowance, electricity saving allowance, electricity additional fee, Public service obligation fee)
	Supplier		X	N/A
Finland 	DSO	X (energy tax and stockpile fee)	X	N/A
	Supplier		X	N/A
Norway 	DSO	X	X	X (fee to Enova)
	Supplier		X	X (green certificate)
Sweden 	DSO		X	X (electricity safety fee, emergency fee, supervision fee)
	Supplier	X	X	X (green certificate)

5. VAT

5.1. General

VAT is due in the country where the taxable supply of goods or services is deemed to be made. Each country has its own national VAT legislation. However the national VAT legislation in the EU countries should be based on the provisions in the EU's VAT Directive. To determine in which country the VAT should be paid and by whom, the place of supply of respective service or good has to be decided.

5.2. VAT and supply of transmission services

Supply of grid services / transmission of electricity through the distribution system are regarded as services.

In Norway such services are deemed to be supplied in Norway if the transmission takes place in Norway. The seller is the one who is liable to charge VAT on the supply made.

In the EU countries such services are deemed to be supplied in the country where the DSO and the customer are established, when established in the same country. The seller is the one who is liable to charge VAT on the supply made.

DSO enters into contracts with the end-user and will therefore be regarded as the seller of the services to the end-user. Since the DSO and the end-user are established in the same country, the DSO will be liable to pay and report local VAT on supplies made to end-users.

However, if these services will be supplied between two parties established in two different countries (cross-border sales) the outcome will be different. These situations could come into question if a Supplier without an establishment in the same country as the DSO/end-user will purchase the services from the DSO and re-sell it to the end-user.

Cross-border sales, business to business

Within EU such cross-border sales are deemed to be supplied in the country of the customer if made between two taxable persons ("business to business"). In this case the customer is the one who is liable to pay and report VAT on his purchase of the services according to the reverse charge principle. This would apply for cross-border sales made from a DSO to a supplier, established in another EU country, but also for cross-border sales made from suppliers to taxable persons/businesses in EU.

In Norway, a foreign supplier of these services has to register for VAT in Norway and charge Norwegian VAT, if the transmission takes place in Norway.

Cross-border sales, business to consumer

Sales of grid services/transmission made to non-taxable persons (such as private individuals) established in another EU country will be treated differently depending on if the seller also is established within EU or is established in a country outside EU.

When the supplier is established in another EU country the supply is deemed to be made in the country of the seller. The seller is liable to pay and report VAT in his country. The end-users will in this case receive an invoice with foreign VAT.

However if the supplier is established in a country outside EU, such as Norway, the supplier will have to register and charge VAT in the EU country where the customer is established.

The same applies when a supplier is established in an EU country and the customer is established in Norway.

5.3. VAT and supply of electricity

In EU, supply of electricity is regarded as a supply of goods subject to VAT in the country where the electricity is consumed. This is applicable when electricity is sold to end-users. When electricity is sold to a re-seller, the supply is subject to VAT in the country where the re-seller is established. The physical flow of the electricity is not to be regarded when determine the place of supply for VAT purposes.

In Norway, supply of electricity is regarded as a supply of goods subject to Norwegian VAT if the electricity is delivered in Norway.

In Norway it is always the supplier who is the one who is liable to pay and report Norwegian VAT on supplies of electricity delivered in Norway. However, there is a zero rate for certain supplies in the North of Norway. Foreign suppliers who supplies electricity delivered in Norway will therefore have to register for VAT in Norway. Foreign suppliers, who register for VAT in Norway without having a fixed establishment in Norway, will have to appoint a VAT representative in Norway. The VAT representative will be liable for the payment of the Norwegian VAT towards the Norwegian Tax Authorities, hence information regarding the VAT representative has to be included in the invoices. The practical treatment of this has to be investigated further.

In EU, the main rule is that it is the supplier who is liable to pay and report the VAT in the country of the end-users. This applies to situations where the supplier and end-user is established in the same country as well as when a foreign supplier, without a fixed establishment in the country, sells electricity to end-users that are private individuals or persons who are not VAT registered. A foreign supplier who sells electricity to private individuals will therefore have to register for VAT in these countries.

Supplies made by foreign suppliers to VAT registered end-users in EU are subject to reverse charge in the country of the end-user. According to the reverse charge principle it is the customer who is liable to pay and report VAT for their purchase of electricity from a foreign supplier. The VAT is reported as output VAT in the customers VAT return and the same amount will be deductible at the same time as input VAT (if the customer conducts fully taxable business for VAT purposes). The supplier should in these cases not charge any VAT on supply of electricity.

The effect of the reverse charge principle is that a foreign supplier, without a fixed establishment in the country of the customer, will have to treat supplies of electricity made to Sweden, Denmark and Finland differently dependant of customer type. If the customer is VAT registered a foreign supplier should not charge any VAT on the invoice but if the customer is not registered for VAT, such as private individuals, the supplier should register and charge local VAT on the invoice. However, in Finland there is an option for a foreign supplier to register voluntarily for VAT in Finland on supplies of electricity to customers with a VAT registration in Finland and charge Finnish VAT on sales of electricity to all types of customers. This is not possible in Sweden or Denmark.

In EU, when electricity is sold to a re-seller, the supply is subject to VAT in the country where the re-seller is established. If the seller and re-seller are established in two different countries no VAT should be charged on the invoice. The re-seller is liable in his country to pay and report the VAT on his purchase of electricity according to the reverse charge principle. This applies even if the electricity is not physically transported between the countries.

For example, a Finnish supplier buys electricity in Sweden and re-sells it to a private individual in Sweden. The Finnish Supplier is VAT registered in Sweden but has no fixed estab-

ishment in Sweden. The Swedish supplier should not charge any VAT on the sale of electricity to the Finnish supplier since the Finnish supplier is established in another country than Sweden. The Finnish supplier is liable in Finland to pay and report Finnish VAT on the purchase of the electricity. The Finnish supplier re-sells the electricity to the end-user in Sweden. The Finnish supplier is liable to pay and report Swedish VAT on the re-sale of electricity to the Swedish end-user. If the end-user had been a company registered for VAT in Sweden, the reverse charge principle had been applicable meaning that the Finnish supplier should not charge any VAT and instead the customer is liable to pay and report Swedish VAT on their purchase.

Imports of electricity, as well as exports, are exempted from VAT, in all countries. In Norway import and export declarations must be filed.

5.4. VAT and combined billing

5.4.1. Two invoices combined in one document

Today the electricity customer enters into two agreements in order to get electricity – one agreement with a DSO on the transmission of electricity through the electricity system and one agreement with an electricity supplier on the purchase of electricity for consumption.

According to Article 220 in EU's VAT Directive every taxable person shall ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party regarding supplies of goods or services made to another taxable person or to a legal person. Incorrectly issued invoices can cause problems for the customer's possibility to deduct the VAT, since the customer has to have a correct issued invoice to certify his right to deduct the VAT.

This means that the DSO has to ensure that an invoice is issued for his supply of transmission services to the customer and the supplier has to ensure that an invoice is issued for his supply of electricity. The same applies even if the DSO should sell his receivables to the supplier.

The supplier can in addition to his own invoice also issue an invoice in the DSO's name and for the account of the DSO. The supplier will then provide an administrative service to the DSO.

According to the invoice requirements in Article 226 in EU's VAT Directive (applicable for Sweden, Denmark and Finland) an invoice has to state the following details;

1. the date of issue,
2. a sequential number, based on one or more series, which uniquely identifies the invoice,
3. under which VAT registration number the taxable person supplied the goods or services,
4. the customer's VAT registration number if the customer received a supply of goods or services for which he is liable for payment of VAT, according to the reverse charge principle,
5. the full name and address of the taxable person and of the customer,
6. the quantity and nature of the goods supplied or the extent and nature of the services rendered,

7. the date on which the supply of goods or services was made or completed or the date on which prepayments was done, in so far as that date can be determined and differs from the date of issue of the invoice,
8. the taxable amount per rate or exemption, the unit price exclusive of VAT and any discounts or rebates if they are not included in the unit price,
9. the VAT rate applied,
10. the VAT amount payable,
11. where the customer is liable for the payment of the VAT, the mention "Reverse charge".

In Sweden, Denmark and Finland the two invoices can be combined in one document. However the content of the document has to fulfill the invoice requirements for each invoice. The supply made by the DSO will always be with VAT but the supply made by the supplier will in some cases be without VAT if the reverse charge principle applies, see section 5.3. Also the name and VAT-number of the DSO and the supplier has to be stated in the document in such way that it is clear which supply was made by whom. The supply of the DSO has to have a separate sequential number different from the sequential number for the supply made by the supplier. The payment can be done to the supplier, who then will collect the payment including VAT for the DSO's account. The DSO and the supplier are each one liable to pay and report VAT for their own supply. The supplier will not take over the liability to pay and report DSO's VAT to the Tax Authority.

In Norway the two invoices cannot be combined in one document. The two invoices can however be sent to the customer together with a cover letter stating that the total amount can be paid to the same bank account. A proposal has been made to change the Norwegian legislation with respect to this. The proposal is currently being assessed by the Ministry of Finance in Norway.

5.4.2. One invoice

From a VAT perspective the supplier can only issue one invoice for the transmission fee and the electricity sold to the customer if the supplier (i) purchase the transmission service from the DSO and re-sell it to the customer or (ii) act as a commissionaire (i.e. the supplier supply the transmission services in his own name to the customer). The customer will in this case only enter into an agreement with the supplier.

A foreign supplier, without a fixed establishment in the country of the customer, will then supply transmission services as well as electricity cross-border, from a VAT point of view.

Cross-border supplies of transmission services within EU will be subject to VAT in the country of the supplier when the services are sold to private individuals or non-taxable persons, for example a Finnish supplier who supply both electricity and transmission services to private individuals in Sweden will have to register in Sweden and charge Swedish VAT on the electricity and Finnish VAT on the transmission services.

Cross-border supplies of transmission services to taxable persons in Sweden, Denmark and Finland will be subject to reverse charge, which means that the supplier (Norwegian, Swedish, Danish or Finnish) does not charge any VAT on the transmission services and instead the customer is liable in his country of establishment to account for the VAT on the purchase of the services. For the supply of electricity the customer (taxable persons) also has to be VAT registered for the reverse charge principle to be applicable.

Cross-border supplies of both transmission services and electricity to customers in Norway have to be with Norwegian VAT. Cross-border supplies from Norway of both transmission

services and electricity to private individuals in EU have to be with VAT of the country where the private individual resides.

Regarding the suppliers purchase of transmission services and electricity from a seller established in the country of the customer, the following applies if the supplier has no fixed establishment in the same country as the seller. For example a Swedish DSO sells transmission services to a Danish supplier, the Swedish DSO should not charge any VAT on the supply since the Danish supplier is established in another country than Sweden. The Danish supplier purchase electricity in Sweden that he re-sells to the end-user in Sweden. The Swedish seller of electricity should not charge any VAT on the sale of electricity to the Danish supplier (re-seller) since he is established in another country than Sweden. In Denmark the Danish supplier is liable to pay and report Danish VAT on both the purchase of transmission services as well as the purchase of electricity.

If the Danish supplier purchases transmission services and electricity in Norway and re-sell it to an end-user in Norway the following applies instead. The Norwegian DSO should charge Norwegian VAT on the transmission services sold to the Danish supplier since the transmission takes place in Norway. The Norwegian seller of electricity to the Danish supplier should charge Norwegian VAT on the supply of electricity since it is delivered in Norway.

6. Analysis of responsibilities

6.1. Classifying customers regarding energy tax

In all Nordic countries the energy tax rate is differentiated depending on for what purpose the electricity is used by the end user, e.g. manufacturing processes. It could be argued that the supplier, in a supplier centric market model, is the one who would have most knowledge of for what purpose the electricity is used by the end customer.

On the other hand, in a deregulated electricity market, it could be argued that the suppliers will have less local knowledge which would make them less suitable than the DSOs to classify the customers regarding energy taxation.

The classifying of customers regarding energy taxation is important for several stakeholders; parties liable to tax, end users and tax authorities. It is therefore appropriate that the party liable to energy tax also classifies the customers regarding energy taxation. The question of classifying customers regarding energy taxation should therefore not be treated separately from the liability to tax.

Also for linguistically reasons, it should be easier for those liable to energy tax to communicate with end users in the same country and for the tax authorities to communicate and collect energy tax. It should also be easier for tax authorities to claim energy tax if those liable for taxes operate in the same country where the energy tax should be reported and paid.

In principle, all DSOs operating on the market needs a grid concession. The concession is only granted those who from a general point of view are regarded suitable to act as DSOs. It is likely that the evaluation guarantees that the DSOs are serious actors (this does not mean that suppliers are unreliable). The investments and other requirements related to grid activities guarantees that the DSO will operate for a long time and create necessary routines. Based on this, the conclusion is that even in a supplier centric market model the DSO would be best fitted to classify customers regarding taxation on condition that the DSO is liable for energy tax in all of the Nordic countries.

6.2. Classifying customers regarding VAT

The VAT tax rate differs in the Nordic countries and for some customers the reverse charge principle is applicable. It is necessary to classify the customer regarding VAT for both transmission services and supplied electricity. It should be easier to classify customers regarding VAT than to classify customers regarding energy tax because the classifying of VAT only has to take into consideration if the customer is registered for VAT or not. Therefore it should be natural in a supplier centric market model that suppliers classify customers regarding VAT.

6.3. Collecting taxes and fees

In Denmark, Norway and Finland the energy tax is collected by the DSOs whereas in Sweden the energy tax in most cases is collected by the supplier. As stated in the report Market Design, Common Nordic end user market (NordREG report 3/2009) it would be easier for the suppliers if the responsibilities for collecting taxes are similar in the Nordic countries. In the supplier centric market model should it be natural that suppliers collect all taxes and fees from the end user and forward relevant taxes and fees to DSOs. It would be easier for end users to compare prices between suppliers when suppliers collect all taxes and fees on one document.

6.4. Answer questions regarding taxes and fees

As a starting point, it is assumed that questions regarding taxes and fees are best answered by the party who is reporting and paying the taxes and fees to the authorities. This is not to say that other solutions are not possible. In a supplier centric market model it would be natural for the end user to contact the supplier for most questions regarding the electricity invoice. Even if the supplier is not liable to energy tax and fees or VAT on the grid services, a function for answering questions could be established if such a function is not already in place. This might however not be the best practice from a customer friendly perspective due to the fact that different languages are spoken in the Nordic countries.

6.5. Paying taxes and fees to the authorities

The responsibility for paying taxes and fees to the authorities strictly depends on national tax and fee legislation. Any changes regarding the responsibility for paying taxes and fees to the authorities must therefore be made through legal amendments. At present, the responsibility for reporting and paying taxes and fees differ between the Nordic countries.

Denmark has decided to introduce a Data Hub in the Danish electricity market. A proposal has in connection with the decision recently been made by the Danish Energy Agency to make the suppliers responsible for reporting and paying energy taxes and fees to authorities. If the proposal results in a change of the liability to pay energy taxes and fees Denmark will have an energy taxation regime similar to Sweden.

A step towards a future truly common Nordic end user electricity market could be to harmonize the liability to energy tax, i.e. the liability to energy tax is placed either on the supplier or the DSO.

Suppliers in Norway and Sweden have a quota obligation for green certificates for electricity. In a supplier centric market model it is preferred that suppliers or parties invoicing end users should still collect and fulfill the obligation of green certificate fee.

DSOs have the responsibility to report and pay all other fees to different national authorities. However, the supplier could collect these other fees and forward them to the DSO so the DSO could report and pay the fees to relevant authorities.

DSOs should report and pay VAT to the tax authorities for the transmission services supplied in the same country as the customer's. Suppliers collect the VAT for the transmission services and forward it to the DSO. Suppliers have to be registered for VAT in the same country as the customer, assuming that the suppliers will have natural persons as customers, and collect, report and pay the VAT on the supplied electricity to tax authorities if the reverse charge principle is not applicable. If the reverse charge principle is applicable the customer should report and pay VAT to tax authorities themselves.

7. Suggested taxation and fee regime

7.1. Compilation of suggested taxation and fee regime

Based on the discussion earlier in this report and with assumption that the end user has two agreements (one with the DSO and one with the supplier), the following taxation and fee regime is suggested:

- ▶ DSOs are liable to energy tax (report and pay the energy tax to tax authorities)
- ▶ DSOs are responsible for classifying the end user regarding energy tax
- ▶ DSOs are liable for other fees than green certificates (report and pay the fee to the authorities)
- ▶ DSOs are liable to VAT on supply of transmission services (report and pay VAT to tax authorities)
- ▶ Suppliers are liable for the green certificates quota obligation for electricity in Norway and Sweden
- ▶ Suppliers are liable to VAT on supply of electricity (report and pay VAT to tax authorities)
- ▶ Suppliers issue two invoices in one document (one invoice in the DSO's name and for the account of the DSO)
- ▶ Suppliers collect all taxes and fees and forward relevant taxes and fees to the DSO (only the taxes and fees which the DSO is liable for and obliged to report and pay to different authorities)
- ▶ Suppliers answer questions regarding taxation and fees from the end user

7.2. Compilation of necessary amendment in national legislation

To achieve the suggested taxation and fee regime, following amendment in national legislation is required:

- ▶ The liability to energy tax in Sweden has to be changed from the supplier to the DSO (the Swedish Energy Tax Act has to be amended)
- ▶ Amendment of national legislation in Norway (Forskrift om bokføring) allowing two invoices in one document

7.3. Compilation of other necessary required actions

Other actions required to achieve the suggested taxation and fee regime are:

- ▶ Suppliers in Denmark, Finland and Norway have to prepare a function for answering questions from the end user regarding taxation and fees

- ▶ DSOs in Sweden have to prepare a function for classifying end users regarding energy taxation
- ▶ DSOs in Sweden have to prepare a function for reporting and paying energy taxes
- ▶ Suppliers in Denmark, Finland and Norway have to prepare a function for collecting taxes and fees
- ▶ Suppliers will have to register for VAT and prepare a function for reporting and paying VAT to tax authorities in the country of the customer for cross border supply of electricity
- ▶ Suppliers without a fixed establishment in Norway has to appoint a VAT representative in Norway
- ▶ Suppliers in all Nordic countries have to prepare a function for forwarding relevant taxes and fees to DSOs (only the taxes and fees which the DSO is liable for and obliged to report and pay to different authorities)

7.4. The suggested taxation and fee regime measured against the objectives of a future common Nordic retail electricity market

7.4.1. Customer friendliness

One of the objectives of the future common Nordic retail market for electricity is to increase the customer friendliness of the market and to make it easier for the customer to be active in the market. What matters to most customers from a tax perspective is to understand from the electricity invoice how much is related to taxes, fees and VAT and how much is the fault of the electricity industry. At the same time, most customers rather have simple invoices than more complex ones. Information about taxes, fees and VAT on the electricity invoice should be clear and easy to understand in order to increase the customer friendliness. If the information is kept simple enough and easy to compare to other electricity price components it could possibly also make it easier for the customer to be active in the market. The suggested taxation regime based on a combined billing model makes it easier for the customer to see the total amount of taxes and fees presented on one invoice instead of two. From that perspective the suggested taxation and fee regime is more customer friendly than the current situation where some customers receive two invoices. It is however important from a VAT perspective that invoices to legal persons fulfill the invoice requirements for VAT purposes, otherwise the customer will not be able to deduct the VAT.

The fact that customers in the suggested taxation and fee regime are referred to the supplier with questions about taxes and fees might be less customer friendly since the DSO is assumed to have more knowledge of energy tax related issues. This shortcoming regarding energy tax is however considered to improve over time once the suppliers have set up a proper function for answering these questions.

7.4.2. Well functioning common market

The goal is to have a well functioning common electricity market (wholesale and retail). A well functioning market consists of e.g. simplicity of market entry, balance of market power between suppliers and DSOs, competitive supplier prices and consumer protection.

In Sweden the market entry process for new suppliers (both domestic and foreign) is made easier since they do not have to register for energy tax, and thus do not have to report and pay energy tax to the tax authority. Suppliers avoids the uncertainty regarding liability to tax according to Swedish tax legislation when suppliers outside Sweden supply electricity to natural persons in Sweden. Legal persons in Sweden also avoids to be liable to energy tax themselves when supplied with electricity from a supplier outside Sweden.

Suppliers in Denmark, Finland and Norway have to prepare a function for answering questions regarding taxes and fees from the customers. Compared to the current situations this is not a simplification but necessary to achieve the purpose of a supplier centric market model.

Other components of a well functioning future common market are not considered tax related, e.g. balance of market power.

7.4.3. Improved competition among suppliers

An important objective is to improve competition among suppliers. Suppliers operating in the market should, even from a tax and fee perspective, be able to operate on the same conditions. This does not necessarily require that the liability to pay taxes and fees are similar in the Nordic countries, but it could be an advantage. As the liability to pay taxes and fees currently differs in the Nordic countries it is suggested that the future taxation regime is harmonized. In Sweden the suppliers are already liable to pay energy tax, and in Denmark a suggestion has been made to move the liability to energy tax from the DSOs to the suppliers. This could possibly be made also in Finland and Norway which would create a more level playing field for all suppliers operating in the future common Nordic market. A more level playing field could improve competition among suppliers.

An alternative is to move the liability to energy tax from the supplier to the DSO in Sweden and to keep DSOs in the other Nordic countries liable to energy tax. However, keeping DSOs in Denmark liable to energy tax could be regarded as a step backwards from a Danish perspective. In Denmark a proposal has been made to move the liability to energy tax from the DSO to the supplier.

In the suggested taxation regime DSOs are liable to energy tax in all Nordic countries. The suggested taxation regime means that necessary legal amendments to current legislation are minimized and a harmonization of liability to energy tax in the Nordic countries.

7.4.4. Improved efficiency

In the suggested taxation and fee regime DSOs are responsible for paying taxes and fees to the authorities. This is considered to be more efficient than if suppliers would have this responsibility. One reason is that suppliers do not have to register with tax authorities in all of the Nordic countries in order to operate on a future common market.

Another reason is that classification of customers for energy tax is made by the DSOs with assumed better local knowledge of the customer.

Tax and other authorities are able to communicate with those responsible for reporting and paying energy tax and fees in the same language. This is more efficient for both authorities and DSOs, e.g. if authorities decides to make a tax investigation or the DSO wants to appeal a tax or fee decision.

7.4.5. Compliance with EU legislation and development

The suggested taxation and fee regime should comply with the general development in the EU and with existing and coming EU regulation. The following EU regulation has been identified as relevant to the suggested taxation and fee regime.

- ▶ Council directive (2003/96/EC) restructuring the Community framework for the taxation of energy products and electricity
- ▶ Council directive (2003/54/EC) concerning common rules for the internal market in electricity
- ▶ Council directive (2006/112/EC) on the common system of value added tax

Current EU regulation regarding energy tax, fees and VAT does not prevent, or interfere with, the suggested taxation and fee regime from being introduced.

The EU commission has made a proposal to amend the council directive 2003/96/EC. The proposed amendment does not have an impact on the suggested taxation and fee regime. Any other coming regulation or taxation trend within the EU that would have an impact on the suggested taxation and fee regime has not been identified.

7.4.6. Neutrality of DSOs

DSOs should function as market facilitators and it is essential that DSOs or their interests are not able to interfere with a customer's choice of supplier. In the suggested taxation and fee regime the DSOs are responsible for classifying customers regarding taxation and for paying taxes and fees to the authorities. However, questions from customers concerning taxes and fees should be answered by suppliers. The responsibility for classifying customers could have a negative impact on the neutrality of DSOs, because the classification is not a question strictly related to the physical connection to the grid.

It is necessary that DSOs are responsible for answering grid related questions. Even if DSOs should also be responsible for classifying customers regarding taxation, the negative impact on the neutrality of DSOs assumes to be relatively small compared to the advantages of the other objectives for the future common electricity end user market.

8. Sources

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Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax

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