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Annex 1

Minimum excise duty rates according to ETD, as applied in Czech Republic, Poland and Sweden

Below you see minimum excise duty rates that a Member State has to apply to most relevant energy products (for fuel and transport, as well as electricity) compared to the rate in Czech Republic (CZ), Poland (PL), and Sweden (SE) in January 2020 (numbers are rounded up). Sweden's rates are in most cases distinctively higher, thanks to its carbon tax. That is also a reason for lower rates for the EU ETS industry, which is exempted from paying the carbon tax (it is covered by the EU ETS).

fuel/energy		minimum rate in € (ETD)	CZ (€)	PL (€)	SE (€)
Motor fuels*	unleaded petrol	359 per 1000 l	499	383, 444	431, 622 or 619 (classed)
	leaded petrol	421 per 1000 l	533	416 (not on market)	704
	LPG	125 per 1000 kg	153	191	333
	LPG – commercial and industrial use	41 per 1000 kg	50	191	32 (EU ETS industry), 365, 440, 333
	natural gas	2.6 per GJ	2.9	0	5.9
	natural gas – commercial and industrial use	0.3 per GJ	0.3	0	0.7 (EU ETS industry), 6.6, 8.2, 5.9
Heating and electricity**	heavy fuel oil	15 per 1000 kg	18	15	421
	LPG (butane, propane)	0 per 1000 kg	0	13	440, 32 (business use)
	heavy fuel oil – rate for business	15 per 1000 kg	18	15, full exemption for agriculture	26 (EU ETS industry), 360
	natural gas	0.3 per GJ	0.3	0.3	8.2
	natural gas – rate for businesses	0.15 per GJ	0.3	0.3	0.7 (EU ETS industry), 6.6
	coal and coke	0.3 per GJ	0.33	0.29	10.7
	coal and coke – rate for businesses	0.15 per GJ	0.33	0.29, full exemption for agriculture and railways	0.6 (EU ETS industry), 9.3, full exemption for railways
	electricity	1.0 per MWh	1.1	1.14	32.7
	electricity – rate for businesses	0.5 per MWh	1.1, exemption for railways, metro, tram	1.14	0.46, exemption for railways, metro, tram

*Fuel used in aircraft for international transport is exempt from the excise duty (Art. 14(1)(b)) of the ETD. Gas oil and kerosene are not mentioned for their relatively low relevance.

** Gas Oil and kerosene are not mentioned for their relatively low relevance.

Sources (Annex 1):

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

European Commission DG Taxation and Customs Union. Excise Duty Tables. In: European Commission [online] [accessed: 2020-08-14]. Available at

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/excise_duties/energy_products/rates/excise_duties-part_ii_energy_products_en.pdf.

Annex 2

Overview of possible legal bases for common carbon tax in the Treaty of Functioning of the EU (TFEU) and adoption procedures required

Legislative procedure	ordinary	special
Article 113 TFEU: Harmonization of Taxes (incl. excise tax)	-	Council, unanimously (consultation of EP, Economic and Social Committee) – if necessary to ensure functioning of internal market and avoid distortion to competition
Article 114 TFEU: Approximation of Laws*	EP and Council (consultation of Economic and Social Committee) – does not apply to fiscal measures	-
Article 115 TFEU: Approximation of Laws, measures affecting functioning of internal market	-	Council unanimously (consultation of EP, Economic and Social Committee)
Article 192 (1) TFEU: Environment	EP and Council (consultation of Economic and Social Committee, Committee of Regions)	-
Article 192 (2) TFEU: Environment, measures primarily of a fiscal nature or affecting choice between energy sources	-	Council unanimously (consultation of EP Economic and Social Committee, Committee of Regions)
Article 194 (2) TFEU: Energy	EP and Council (consultation of Economic and Social Committee, Committee of Regions) – measure shall not affect the choice between energy sources	-
Article 194 (3) TFEU: Energy, measures primarily fiscal nature	-	Council unanimously (consultation of EP)

*provision the original ETD was adopted under

Annex 3

Overview of other legislative tools that could be classified as '*of a fiscal nature*' and their legal bases

Area of legislation	Directive / Regulation	based on	detail
Tax	Council Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market	Art. 115 of the Treaty on the Functioning of the European Union	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.193.01.0001.01.ENG
	Regulation of the European Parliament and of the Council establishing the 'Fiscalis' programme for cooperation in the field of taxation	Art. 114 and 197 of the Treaty on the Functioning of the European Union	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018PC0443 The regulation used argumentation suitable for the support of approximation of tax measures universally: 'The EU tax objectives of fighting against tax fraud, tax evasion and tax avoidance, **improving tax fairness and transparency as well as supporting the functioning of the single market and competitiveness cannot be achieved by the Member States alone. Common rules, coordination and cooperation between Member States' tax authorities are needed to deliver on these objectives and face all related challenges**.'
	Council Directive 2008/118/EC concerning the general arrangements for excise duty	Art. 93 of the Treaty establishing the European Community	https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456138665149&uri=CELEX:02008L0118-20140101
	Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco	Art. 113 of the Treaty on the Functioning of the European Union	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:176:0024:0036:EN:PDF
	Proposal of Council Directive laying down rules relating to the corporate taxation of a significant digital presence	Art. 115 of the Treaty on the Functioning of the European Union	https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_significant_digital_presence_21032018_en.pdf
	Proposal of Council directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation	Art. 113 and 115 of the Treaty on the Functioning of the European Union	https://ec.europa.eu/taxation_customs/sites/taxation/files/2020_tax_package_dac7_en.pdf
Energy & Environment (fiscal nature)	EU ETS Directive (Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC	Art. 175(1) of the Treaty establishing the European Community	https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:32003L0087 (procedure) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0087 (Directive)

Amendments to ETD (successful and unsuccessful)	Proposal for a Council Directive amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation (2004)	Art. 93 of the Treaty establishing the European Community	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52004PC0042
	Proposal for a Council Directive amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation (2004)		https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52004PC0185
	Proposal for a Council Directive amending Directive 2003/96/EC as regards the adjustment of special tax arrangements for gas oil used as motor fuel for commercial purposes and the coordination of taxation of unleaded petrol and gas oil used as motor fuel (2007)		https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007PC0052
	Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (2011)	Art. 113 of the Treaty on the Functioning of the European Union	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011PC0169