

Photovoltaic systems: new categorisation

Introduction

In our Taxpage of November 2019, we referred to two rulings of the Swiss Federal Supreme Court dated 16th September 2019, which clarified the tax consequences for photovoltaic systems (PVS) as roof-mounted installations. According to this case law, such rooftop PVS are considered movable assets and cannot therefore be taken into account in determining the official value of the building, as was previously the practice of the cantonal authorities (e.g. in the Canton of Berne). In conclusion, this case law appears to be consistent with the energy law categorisation of PVS, which distinguishes between integrated, attached or free-standing systems (Art. 6 of the Energy Promotion Ordinance), if the roof-mounted PVS has been qualified from a tax point of view as a movable object and not as a component of the building.

Free-standing, attached, integrated

The categorisation of PVS as free-standing, attached or integrated originates from energy law and the subsidy system prior to the total revision of the Energy Act on 1st January 2018 (cf. our ELQ of March 2018) as part of the Energy Strategy 2050. Free-standing installations were considered to be those which have no constructive connection to buildings, whereas attached installations were those which are constructively connected to buildings or other infrastructure installations and are used solely for electricity production, for example on flat roofs using fastening systems or modules mounted on a tiled roof. According to today's definition, integrated systems are systems that are integrated into buildings and, in addition to producing electricity, also serve as weather protection, thermal insulation or fall protection.

In the past, this system category was decisive for the level of the feed-in tariff, with the tariff rate being highest for integrated PVS and lowest for free-standing PVS. The fact that the categorisation was therefore of great interest to the applicant is shown by the numerous ElCom directives

on the subject, which are available at www.elcom.admin.ch.

Since the Energy Promotion Ordinance, in force since 1st January 2018, determines the amount of the feed-in tariff, the system category is no longer decisive for new systems, only the performance class. The comparatively stronger promotion of lower performance in comparison to high-performance PVS was also abandoned and the remuneration approach was set at the same level for all performance classes.

In contrast to the feed-in tariff for PVS, in addition to the performance classes (< 30 kW, < 100 kW, ≥ 100 kW), the system categories are still a distinguishing feature in the one-off tariff for PVS, although only the integrated systems < 100 kW receive a higher performance contribution.

Remuneration reductions

Based on a Federal Council assessment of market developments, the remuneration rates for PVS were reduced as of 1st January 2020. It was assumed that the average investment costs would be reduced by 10%. As a result of the reductions in remuneration, funds are to be freed up for applications on the waiting list.

Thus, for plants commissioned from 1st April 2020, a lower feed-in tariff of 9 cents/kWh (previously 10 cents/kWh; Annex 1.2. Clause 2.2. Energy Promotion Ordinance) and, in the case of the one-off fee, a lower basic contribution of CHF 1,100 (previously CHF 1,550) for integrated plants and CHF 1,000 (previously CHF 1,400) for attached and free-standing plants (Annex 2.1. Clause 2 Energy Performance Ordinance) applies.

Own consumption

Electricity consumed in whole or in part at the place of production by the producer himself or by third parties shall be deemed to be own consumption. Usually, own

consumption results in a reduction in external electricity purchases. If a PVS system is eligible for feed-in remuneration, only the surplus energy fed into the grid of the grid operator shall be remunerated. And only this surplus energy can be recorded in the system of guarantees of origin.

Own consumption can take various forms: in the practical model of distribution system operators, there is only one end consumer at the place of production or several end consumers without a consortium; in the model of a consortium for own consumption (COC), several landowners or one landowner and his tenants/leaseholders are organised in an COC at the place of production.

Consortium for own consumption (COC)

A COC is only permissible if the production capacity of the plant(s) is at least 10 % of the connected load of the consortium. Plants operated for a maximum of 500 hours per year are not taken into account for the determination of production capacity. The new guidelines for own consumption of energieschweiz (December 2019, Version 2.1) show, among other things, how such a COC can be organised.

COC with rental or lease agreements

In the case of a COC with tenancy or leasing relationships, for example, the landlord can integrate the provisions on the COC directly in the tenancy agreement and charge the electricity costs as additional costs. The landlord also selects an external electricity product in case his own PVS does not cover the entire consumption. During the current tenancy, such tenants/leaseholders can only withdraw from the COC if they apply for access to the free electricity market as large consumers or if the landlord violates his obligations regarding electricity supply and billing.

Own consumption in tenancies without COC

In its newsletter 09/2019, ElCom announced that a specific solution for own consumption involving tenants is not permissible without the establishment of a COC, if there is no tenant consent to own consumption. In addition,

these tenants, who continue to receive the electricity bill from the grid operator, may only be charged the grid fee on the electricity they purchase from the distribution grid. The system operator must also allow the tenants to participate in the remuneration of the grid operator. According to ElCom, such a model is only permissible if the tenants agree to their own consumption, if the grid usage fee is effectively charged to the tenants only on the electricity drawn from the distribution grid, and if the corresponding billing by the system operator is transparent.

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