



Position paper on VAT for EV charging

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ChargeUp
EUROPE

Introduction

ChargeUp Europe ASBL is the voice of the electric vehicle (EV) charging infrastructure industry. ChargeUp Europe has been formed to accelerate the switch to zero emission mobility and ensure a seamless driver experience with access to high quality, readily available charging infrastructure across the EU. As of today, our member companies represent over 300.000 charging points in all 27 Member States.

Among other areas of law, VAT law has been found to be crucial for the development of a European Single Market for EV charging infrastructure. Particularly when it comes to cross-border transactions, the industry is currently confronted with many uncertainties regarding the correct interpretation of EU and national VAT law. Furthermore, the existing VAT regime has turned out to be a major obstacle to the development of an integrated European EV charging infrastructure market.

In this paper ChargeUp Europe wants to point out some of the main issues the EV charging infrastructure industry is currently facing with regard to VAT and wants to bring the issue forward for debate in order to elaborate possible strategies to remedy the current situation.

Issues

1. **Good or Service?** To date, it is not clear whether charging an EV qualifies as a supply of a good or a service in terms of VAT. The implications of this uncertainty deeply affect the development of an integrated EV charging infrastructure across the EU.
2. **Single direct Supply or Chain-Transaction?** There is uncertainty whether the European Court of Justice's decisions regarding transactions involving fuel cards are of any relevance for the EV charging infrastructure industry.
3. **Place of Supply?** The very nature of EV charging processes still being unclear (good or service), there is currently no clarity as to the correct determination of the place of supply for these transactions in terms of VAT.
4. **Registration for VAT in each Member State?** In case EV charging processes qualify as supply of goods, this would imply a duty for industry members to register for VAT in all 27 Member States under the current legal framework.
5. **Incoherent Interpretation of VAT Law among Member States?** Currently, despite the harmonized legal framework under the VAT Directive, there is no uniform approach among Member States regarding the treatment of charging processes in terms of VAT.
6. **Fragmentation of the European Single Market?** The current lack of clarity related to VAT leads to a growing fragmentation of the European Single Market in the area of EV charging. Industry is unable to offer their customers EU-wide charging solutions and consumers experience problems when trying to charge their EV in other Member States.
7. **Delaying the Switch to Zero Emission Mobility?** There is a real risk that the adoption of eMobility among consumers and, as a consequence, the switch to zero emission mobility in general will be (further) delayed due to the above-mentioned obstacles to the development of a European Single Market in the area of EV charging.

1 – Good or Service?

From a VAT perspective, charging an EV can be seen either as supply of a good (electricity) in the meaning of Articles 14 and 15 of the VAT Directive¹ or as supply of a service in the meaning of Art 44 of the VAT Directive.

The French authorities asked for the opinion of the European Commission VAT Committee on the application of VAT rules to EV charging processes.²

Following France's request, the VAT Committee indicated in their guidelines that the transaction carried out by a Charge Point Operator (CPO) shall be considered to be a supply of goods in accordance with Articles 14 and 15 of the VAT Directive.³ However, the VAT Committee did not answer the question to whom the electricity is supplied – to the driver of an EV (eDriver) or to the eDriver's eMobility Provider (EMP).

In their response to a subsequent request submitted by the Italian authorities, the Commission Services reiterated their view that the CPO should be regarded as a supplier of electricity in the meaning of Articles 14 and 15 of the VAT Directive, clarifying that from their point of view the CPO is making a supply of electricity (including ancillary supplies) to the EMP who in turn makes a supply of the same electricity (including ancillary supplies) to the eDriver.⁴ The VAT Committee is scheduled to reconvene around this legal opinion of the Commission Services and will decide whether further guidelines in that sense should be issued in one of their upcoming meetings.

ChargeUp Europe welcomes the EU Commission's opinion on this matter and hopes that the VAT Committee might be able to conclude along similar lines to ensure an EU-wide coherent VAT approach for the eMobility sector.

However, as it stands today and bearing in mind that the guidelines of the VAT Committee are mere views of a consultative committee which do not bind the EU Commission or the Member States, the question whether charging an EV constitutes a supply of a good or a service is still likely to remain open and undecided and will therefore still be handled differently in different Member States and among industry members in the future.

As a consequence, the conclusion of cross-border roaming agreements among industry which would allow eDrivers to charge their EVs across the EU with only one single contract is often times impossible because of differing views about the very nature of the EV charging process in terms of VAT.

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1, amended by OJ L 83, 25.03.2019, p. 42 (VAT Directive).

² *Value Added Tax Committee*, Working Paper No 969, 13.05.2019.

³ *Value Added Tax Committee*, Guidelines resulting from the 113th Meeting, Document A – 972, 03.06.2019.

⁴ *Value Added Tax Committee*, Working Paper No 1012, 17.03.2021.

2 – Single direct Supply or Chain-Transaction?

As already indicated above, the EV charging value chain consists of several stakeholders whose mutual interaction from a VAT perspective has not yet been conclusively clarified.

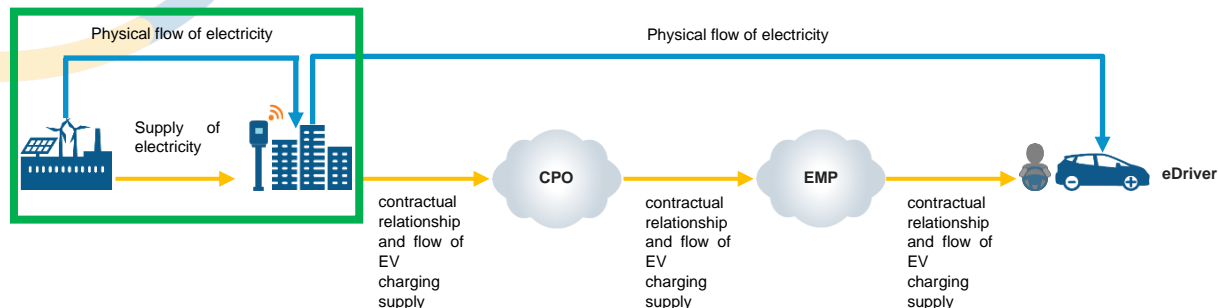


Figure 1 EV Charging Supply Chain

The charging station is supplied with electricity via the building's or property's electrical connection.

The person who operates the charging station and makes it available for use to third parties (**Charge Point Operator, CPO**) can be either the owner of the building or property including the charging station (**Charging Station Owner, CSO**) or a third person contracted by the owner.

As charging stations are usually operated remotely (meaning that there is normally no cashier's booth or presence of a cashier, etc.), eDrivers use so-called charging cards or charging apps issued by their **eMobility Provider (EMP)** to be able to identify themselves at a charging station (to ensure subsequent billing) and start a charging process. On the one hand, in order to provide their eDrivers with access to a comprehensive and dense network of charging stations, EMPs conclude access agreements (so-called roaming agreements) with as many CPOs as possible.

On the other hand, EMPs conclude contracts with **eDrivers** and provide them with the above-mentioned charging cards or charging apps enabling the eDrivers to identify themselves and start charging processes at charging stations of the CPOs with whom their EMP maintains contractual relationships.

As required by EU regulations, there are situations where an EMP is not involved but where the eDriver interacts directly with the CPO without using a charging card or charging app of an EMP (this is the case with so-called ad-hoc charging). There are also situations where CSO and/or CPO and/or EMP are one and the same person. However, most of the time, EMPs are involved in the charging process, acting as independent legal entities in their own name and for their own account.

It must be noted that, in case an EMP is involved and in case the CPO and the EMP are different persons, there is no direct contractual relationship between the CPO

and the eDriver because the latter has a contract only with the EMP. Therefore, we are of the opinion that in this case the charging process should be regarded as a chain of subsequent supplies (chain-transaction) in terms of VAT (*Figure 1*).

In its decisions “*Auto Lease Holland*”⁵ and “*Vega International*”⁶, however, the European Court of Justice (EUCJ) ruled that in case of refuelling cars by using a fuel card, the company issuing the fuel card is not part of the supply chain of the fuel, but the petrol station makes a single direct supply to the driver of the car, whereas the company issuing the fuel card provides a financial service to the driver of the car.

The Commission Services outlined in their latest working paper that in their opinion the situation in eMobility is rather different from that dealt with in *Auto Lease Holland* and *Vega International*. They are therefore of the view that a chain of subsequent transactions (ABC-transaction) between CPO, EMP and eDriver is taking place.⁷

ChargeUp Europe welcomes the clear positioning of the Commission Services in this regard. Nevertheless, it should not be overlooked that the situation and function of an EMP is – at least partially – comparable to that of a company issuing fuel cards and the question therefore remains if and to what extent these rulings could apply to EV charging processes involving EMPs and which conditions must be met to definitely exclude an application of the above-mentioned rulings.

3 – Place of Supply?

As explained above, EV charging could be seen either as supply of a good (electricity) or as supply of a service in terms of VAT. The distinction is important because the VAT Directive foresees different rules for supplies of goods and services when it comes to the determination of the place where a transaction is taxable.

As there is no clarity as to the very nature of EV charging in terms of VAT, there remains also great uncertainty regarding the correct determination of the place of supply for these transactions in terms of VAT.

This becomes a problem particularly in cases where a transaction has links to more than one Member State (e.g., a Dutch eDriver having a contract with a German EMP charges their EV at a charging station located in Italy operated by an Austrian CPO). In such situations, the question arises in which Member State the transaction is taxable. Obviously, the answer to this question depends, firstly, on whether the charging process is qualified as a supply of goods (electricity) or as a service and,

⁵ Judgment of the Court (Fifth Chamber) of 6 February 2003, *Auto Lease Holland BV v Bundesamt für Finanzen*, C-185/01.

⁶ Judgment of the Court (Eighth Chamber) of 15 May 2019, *Vega International Car Transport and Logistic – Trading GmbH v Dyrektor Izby Skarbowej w Warszawie*, C-235/18.

⁷ *Value Added Tax Committee*, Working Paper No 1012, 17.03.2021.

secondly, on whether one assumes a chain-transaction including the EMP or a single direct supply between only the CPO and the eDriver.

More precisely, either Articles 38 and 39 together with Article 195 or Articles 44 and 45 together with Article 196 of the VAT Directive may be applicable to these transaction(s) though this is not a certainty.

To date, there are no binding EU-wide guidelines in place that would allow for a uniform approach in this regard.

4 – Registration for VAT in each Member State?

Under the current legal framework and depending on whether one regards EV charging as good or service, CPO and/or EMP could be obliged to register for VAT in each Member State where charging processes of their customers are taking place.⁸

The high tax administration and consulting costs not only hinder industry to offer their services in other Member States but also represent a considerable barrier to the entry into the EV charging market in the first place, especially for SMEs. This inevitably leads to a segmentation of the European Single Market on the one hand as well as to market concentration including less competition and reduced consumer choice on the other.

In view of the above, it could be well argued to widen the scope of the existing MOSS⁹ to EV charging processes, disregarding the qualification of these transactions as supply of goods or services, to avoid multi-registration and reporting duties in all Member States. It is however unclear if and to what extent the recently adopted reforms of the existing MOSS (becoming effective as of July 2021) will apply to transactions between CPOs, EMPs and eDrivers.

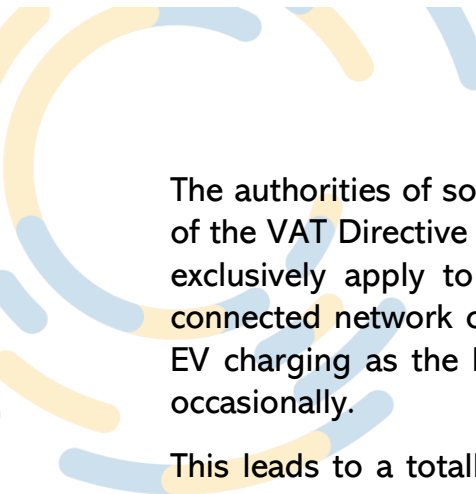
5 – Incoherent Interpretation of VAT Law among Member States?

At the moment, not only is the factual situation unclear, (good vs. service, chain-transaction vs. single direct supply) but also the cited Articles of the VAT Directive are assessed differently by tax authorities of different Member States and among industry.

In some Member States, EV charging is considered a good, whereas in others it is considered a service. In some Member States there is no clear official guideline at all.

⁸ Article 39 of the VAT Directive regarding the supply of electricity to other persons than taxable dealers (i.e. to eDrivers) states that “[...] the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods” which would – in case of EV charging – most arguably be the place of the charging station.

⁹ MOSS - Mini One Stop Shop



The authorities of some Member States are of the opinion that Articles 38 and 39 of the VAT Directive apply to EV charging. In others the cited Articles are meant to exclusively apply to the transmission of electricity by means of a permanently connected network only, which, according to these authorities, is not the case for EV charging as the EV is not permanently connected to the power grid but only occasionally.

This leads to a totally untenable situation for those companies who want to offer their customers a seamless and comfortable way to charge their EV across all 27 Member States. These companies are not only confronted with an unclear legal situation but also with conflicting approaches and interpretations of the VAT law adopted by foreign and local contractual partners and authorities. Oftentimes, the approaches and legal opinions of foreign contractual partners and authorities conflict with the views of the local authorities which makes it virtually impossible to provide one's customers with a means to charge their EV across the EU.

6 – Fragmentation of the European Single Market?

As illustrated above, the current problems regarding VAT in their entirety and complexity lead to a situation where most industry members are reluctant to offer charging services in other Member States. If they nevertheless try to do so in the effort to offer their customers a seamless EV charging experience across all 27 Member States, these industry members expose themselves to significant tax compliance risks.

This situation leads to a severe fragmentation of the European Single Market for EV charging. Alongside this, consumers face problems when travelling abroad, with a very limited choice when it comes to EU-wide charging services.


7 – Delaying the Switch to Zero Emission Mobility?

It goes without saying that the problems outlined in this paper are hindering and delaying the eagerly expected transition to zero emission mobility.

By its nature, the eMobility sector can fall under the scope of different pieces of legislation from transport, energy, digital, payment and taxation. A proper, adequate and harmonized regulatory framework for VAT charging in eMobility is crucial to foster the deployment of eMobility in Europe, providing operators with legal certainty and full transparency to the eDriver about the costs for charging.

The EU has set the target of reaching 55% of GHG emissions by 2030 and climate neutrality by 2050. The role of decarbonized transport will be crucial in this path and all means need to be leveraged to facilitate this and at the very least, to remove existing burdens to make this happen.

As part of the EU's and the Member States' sincere efforts to make the European economy more sustainable and climate-friendly, a reform of the current VAT regime in the area of EV charging should be strongly and urgently considered. The



provisions of the VAT Directive should be adapted to mobility behaviour within a united Europe allowing industry to offer their charging services to customers throughout the EU without excessive administrative burdens.

Recommendations

1. **Adopt a common EU VAT approach!** ChargeUp Europe encourages the EU and Member States to adopt a common EU VAT approach for the EV charging industry to help it scale and to enable smooth business operations.
2. **Clarify the Qualification of EV Charging!** The EU Commission should issue a binding decision or at least mandate the Member States to commit themselves to a common approach regarding the qualification (good or service) of charging processes in terms of VAT.
3. **Clarify the Applicability of the ECJ's Rulings on Fuel Cards!** The EU Commission should issue binding guidelines or at least mandate the Member States to agree and state clearly if and under which circumstances the Auto Lease Holland case and the Vega International case apply to EV charging as well as the conditions for the assumption of an ABC-transaction between the CPO, EMP and eDriver.
4. **Clarify the Interpretation of Articles 38 and 39 of the VAT Directive!** Provided that the EU Commission considers charging an EV as a supply of electricity, the EU Commission should issue binding guidelines or at least mandate the Member States to commit themselves to a common approach regarding the correct interpretation of the existing VAT rules, clarifying whether Articles 38 and 39 of the VAT Directive apply to charging processes or not.
5. **Extend the scope of the MOSS to EV charging!** In case EV charging processes qualify as supply of goods, this would under the current legal framework imply a duty for industry to register for VAT in all 27 Member States. The EU Commission should consider widening the scope of the existing MOSS to EV charging processes, disregarding the qualification of these transactions as supply of goods or services, avoiding multi-registration and reporting duties in all Member States. It should be clarified whether and to what extent EV charging processes are affected by the recently adopted reform of the existing MOSS coming into effect by 1st July 2021.
6. **Foresee sufficient implementation periods!** Should a common approach be adopted, and given the current divergent practices across Member States and across our industry, ChargeUp Europe requests an implementation period of 12 Months to be foreseen in order for the sector to adjust operations and the underlying contractual agreements.



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