



EV Charging & VAT

Position Paper of the ChargeUp Europe E-mobility VAT Group

May 2022

ChargeUp Europe – EVG position paper on VAT treatment of EV charging

In this paper ChargeUp Europe's EVG wants to address key issues related to the VAT treatment of EV charging across the EU - what the root causes are, where they derive from and how they can be resolved – in order to support promoting the sector's EU cross-border future growth with huge benefits for both businesses and governments and aligned with and critical for Europe's Green Deal Agenda.

1. Introduction of the ChargeUp Europe EVG group

ChargeUp Europe is the voice of the electric vehicle (EV) charging infrastructure industry, working towards an expeditious and effortless rollout of EV charging infrastructure in Europe. Given the challenges and uncertainties of the current EU Value Added Tax (VAT) system for EU cross-border EV charging, ChargeUp Europe set up a new **E-mobility VAT Group (EVG)** in 2022.

The EVG is a group of business and tax experts covering the whole supply chain of the E-mobility sector, with both ChargeUp Europe members and non-members involved. This group is aligned to actively support and promote the future EU growth of E-mobility and EV charging, in line with the objectives of the European Green Deal. It is a truly European group with participants established in several Member States doing business across Europe.

The aim of the **EVG** is:

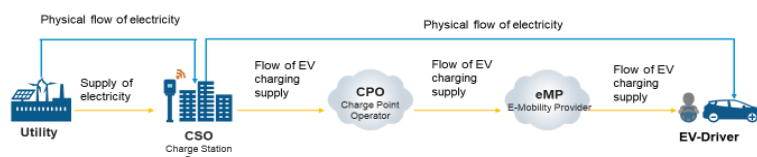
- to raise awareness on the topic of VAT and EV charging among key policy stakeholders on an EU and Member State level;
- to share and explain the commercial and operational set up of EV charging;
- to outline the needs and address the VAT challenges that currently hinder EU cross-border growth as well as the development of a European Single Market for EV charging and
- to support providing appropriate solutions that foster future growth.

This position paper prepared by the EVG helps to address and resolve the existing EU cross-border VAT challenges of EV charging and highlights what is required to promote the sector's cross-border future growth within the EU. The EVG is keen to actively support EU and Member State policy stakeholders on this particularly important endeavor.

2. Background to EV charging

a. Commercial set up

Value chain in EV charging – Big Picture*



*Illustrating the main parties in the value chain – there can also be additional parties in the chain such as card companies, leasing companies, etc.



The E-mobility sector is a new and very fast evolving sector with an increased cross border focus and with multiple parties in the value chain.

b. Future needs to promote EU cross-border growth

Looking into the future while at the same time facing today's reality, VAT has become an area of concern for the whole European E-mobility sector, as substantial legal uncertainty has arisen in this sector for businesses involved in EU cross-border EV charging, through the unclear legal situation and inconsistent VAT treatment applied by tax administrations in the 27 EU Member States. The current situation is leading to high compliance costs and VAT costs for companies in an area of tax that should be neutral for businesses and borne by the final consumer.

In fact, as it stands today VAT has become a trade barrier for future growth in EV charging and is therefore undermining the EU's Green Deal Agenda. The needs of the sector for EU cross-border trade barriers to be eliminated are:

- i. A single uniform EU approach
- ii. Legal certainty
- iii. Simplification
- iv. Neutrality

3. Issues

a. EU VAT Committee Guidelines on EV charging

In June 2019 (113th meeting) and in April 2021 (118th meeting) the EU VAT Committee discussed the topic of EV charging, where Member States unanimously agreed on how to treat key aspects from a VAT perspective (see more details below).

Whereas the EU VAT Committee Guidelines can act as a helpful reference point for businesses, they still have a non-binding character. This means that only when Member States implement the agreed VAT Committee Guidelines into their national VAT legislation, legal certainty for business is achieved. This has unfortunately only happened in a very few Member States so far, so there is still great legal uncertainty when it comes to the VAT treatment of key aspects of EU cross-border EV charging.

The implications of this uncertainty deeply affect the development of an integrated EV charging infrastructure across the EU.

b. Areas of uncertainties

i. Composite supply of goods

Member States unanimously agreed in the EU VAT Committee in June 2019 (113th meeting)¹, and this position was reconfirmed in the April 2021 VAT Committee (118th meeting)² again, that the overall supply of EV charging which includes a suite of goods and services, such as remote reservation, information regarding availability of terminals, parking space, etc. and last but not

¹ Guidelines resulting from the 113th meeting of 3 June 2019 Document A – taxud.c.1(2019)6589787 – 972

² Guidelines resulting from the 118th meeting of April 19th, 2021 – Document C – taxud.c.1(2021)6657618-1018

least the recharging of the battery should be treated as a supply of electricity, thus a composite supply of goods for VAT purposes.

ii. Supply for VAT purposes to follow the supply chain (chain transaction)

Based on the EU Commission's view in Working Paper No. 1012 and the discussions that took place in the VAT Committee meeting in April 2021 (118th meeting), Member States have unanimously agreed that EV charging is qualified for VAT purposes as a supply of electricity through the supply chain (chain transaction) when parties in the chain act on their own name and their own behalf.

Both points mentioned under points/ headings i. and ii. were welcomed by businesses that operate in the E-mobility sector, as it does reflect the functioning of the established business models and the structure of the commercial supply chain operated by the E-mobility sector and at the same time this does also safeguard VAT revenues for Member States.

However, despite the unanimous agreement in the VAT Committee, and as most EU Member States have not articulated their clear position on this in national guidance, there is still uncertainty in the 27 EU Member States whether EV charging is seen as a supply of electricity for VAT purposes that flows through the commercial chain (chain transaction).

iii. Place of supply of EV charging for VAT purposes

Following the qualification of EV charging as composite supply of electricity for VAT purposes by the EU VAT Committee, either Art. 38³ of the VAT Directive (B2B – taxable dealer) or Art. 39⁴ of the VAT Directive (B2B - end user and B2C) must be applied to determine the place of taxation of EV charging for VAT purposes. In other words, these Articles determine the country where the EV charging is taxable and whether the supplier may have to register for VAT purposes there.

Issues arise in practice regarding the following points:

1. When it comes to the determining the place of supply of EV charging according to Art. 38 VAT Directive - B2B (taxable dealer) - the term "taxable dealer" is interpreted differently across a variety of Member States.
2. When it comes to determining the place of supply of EV charging according to Art. 39 para 2 VAT Directive - B2B (end user) and B2C – the provision/term "*electricity not effectively consumed by the customer*" is unclear and therefore differently approached by Member States in practice. In which scenarios does Art.39 para 2 apply with respect to EV charging?

³ Article 38

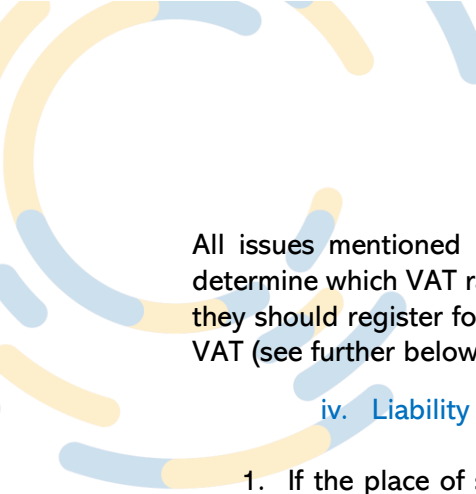
1. In the case of the supply of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity, or the supply of heat or cooling energy through heating or cooling networks to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2. For the purposes of paragraph 1, taxable dealer shall mean a taxable person whose principal activity in respect of purchases of gas, electricity, heat or cooling energy is reselling those products and whose own consumption of those products is negligible.

⁴ Article 39

In the case of the supply of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heating or cooling networks, where such a supply is not covered by Article 38, the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods.

Where all or part of the gas, electricity or heat or cooling energy is not effectively consumed by the customer, those non-consumed goods shall be deemed to have been used and consumed at the place where the customer has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.



All issues mentioned lead to huge uncertainties for businesses dealing with EV charging to determine which VAT rate of which country they need to apply on their EV charging and whether they should register for VAT in a country. It will also lead to uncertainty who is liable to pay the VAT (see further below).

iv. Liability to collect VAT

1. If the place of supply of EV charging is determined according to Art. 38 VAT Directive, EV charging is subject to VAT in the country where the taxable dealer (B2B) is established. In an EU cross border situation, the taxable dealer (customer) is liable to pay the VAT under the reverse charge regime. In addition, in many Member States, a reverse charge regime may also be applicable on domestic supply of electricity:
 - a. Therefore, the different interpretation of the term “taxable dealer” across a variety of Member States, as already highlighted above, may lead also to huge uncertainty for business when it comes to the collection of VAT (who is liable to collect, the supplier or the customer via the reverse charge regime).
 - b. Additionally, businesses struggle a lot when it comes to the application of domestic reverse charge regimes, since their application differs tremendously from Member State to Member State (e.g., one Member State implemented a certificate for taxable dealers; foreign companies cannot apply for the certificate in an easy way).

2. If the place of supply of EV charging is determined according to Art. 39 VAT Directive - B2B (end user) and B2C – the supplier is obliged to collect the VAT. In EU cross-border EV charging scenarios this creates a massive administrative burden and cost for the supplier since he has to VAT register in all the EU Member States where the actual EV charging takes place by B2B (end user) and B2C customers, thus a VAT registration is needed in the country where the charging stations are located.

This creates new compliance burdens and costs, particularly for small businesses. It is therefore important to find a fast and simple solution for the sector to avoid VAT becoming an even bigger trade barrier. The extension of the One-Stop-Shop (OSS) to cover E-mobility offers a particularly workable solution but this needs to happen in the short term and needs to be done fast track legislation wise.

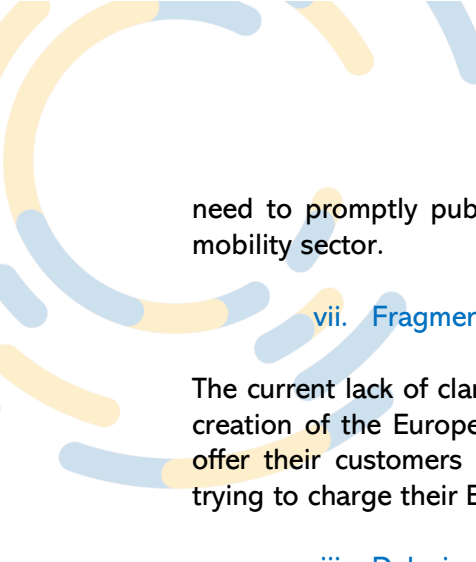
In this context we welcome the EU Commission’s “VAT in the digital Age” flagship initiative which includes the extension of the OSS for E-mobility and call for rapid actions from the Commission and Member States on this topic.

v. VAT rates applicable to electricity across the 27 EU Member States

There is no transparency and easy access of information for businesses when it comes to the applicable VAT rates for electricity across the EU. It would be important for the sector if the applicable VAT rates were published on the central website of the EU Commission and updated accordingly.

vi. Incoherent interpretation of VAT law among Member States

Currently, and as the above aspects outline, despite the harmonized legal framework under the EU VAT Directive, and despite the discussions in the VAT Committee, there is no uniform approach among Member States regarding the treatment of EV charging for VAT purposes. Member States



need to promptly publish national guidance to ensure legal certainty for operators in the E-mobility sector.

vii. Fragmentation of the European Single Market

The current lack of clarity related to VAT leads to a growing fragmentation and undermines the creation of the European Single Market around EV charging. Industry members are unable to offer their customers EU-wide charging solutions and consumers experience problems when trying to charge their EV in other Member States.

viii. Delaying the switch to Zero Emission Mobility

There is a real risk that the adoption of E-mobility among consumers and, therefore, 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 EV charging.

4. Call for action

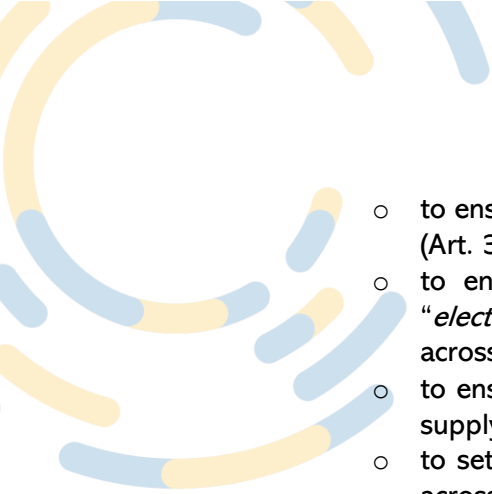
a. Adopt a common EU VAT approach

The EVG welcomes and supports the discussions between the EU Commission and Member States in the VAT Committee on VAT aspects related to EV charging, and the clear positioning of the VAT Committee on these VAT aspects, **and calls for** the EU Commission 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, which is key for promoting future EU cross-border growth of the sector and for ensuring that the objectives of the EU Commission's Green Deal Agenda are met.

b. Ensure legal certainty and EU wide coherence

The EVG calls for and urges:

- Member States:
 - to uniformly implement and apply in their national VAT laws what was unanimously agreed in the VAT Committee on:
 - the qualification of EV charging as a composite supply of goods;
 - the flow of the supplies for VAT purposes as supply of goods through the supply chain (chain transaction) and
 - the application of Article 38 and 39 of the VAT Directive when it comes to the place of supply of EV charging according to the VAT Committee Guidelines.
 - to publish promptly in national guidance the VAT aspects related to the EV charging that were unanimously agreed on in the VAT Committee (see above).
- European Commission:
 - to monitor the national application of the aspects unanimously agreed by the Member States in the VAT Committee and to encourage Member States to articulate their position in national guidance.
- European Commission and Member States:

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- to ensure a uniform interpretation and application of the term “taxable dealer” (Art. 38 VAT Directive) across the 27 EU Member States;
 - to ensure a uniform interpretation and application of the provision/term “*electricity not effectively consumed by the customer*” (Art. 39 VAT Directive) across the 27 EU Member States;
 - to ensure a more uniform application of domestic reverse charge regimes on supply of electricity across the 27 EU Member States;
 - to set up an EU web portal to publish the VAT rates applicable to electricity across the EU and
 - in the longer term, the EU Commission and Member States to amend the EU legislation accordingly (either through a Directive or an Implementing Regulation).

c. Ensure simplification and neutrality

The EVG calls for:

- **EU Commission and Member States to extend the scope of the OSS to EV charging without delay**

As 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. It is therefore of utmost importance that the scope of the existing OSS is rapidly extended to cover EV charging processes⁵, to avoid multi-registrations and reporting duties in all Member States. The reforms initiated in 2016 by the EU Commission with the E-commerce VAT package do not cover the E-mobility sector.

The EVG welcomes and supports the EU Commission's “VAT in the digital Age” flagship initiative which includes the extension of the OSS for E-mobility and calls for rapid actions from the Commission and Member States on this topic.

5. Future development of EV charging

As E-mobility is a vibrant and fast evolving sector, with new business models regularly appearing, it is necessary to stay in close and ongoing contact with policy stakeholders to reflect on, reconsider and align today's VAT treatment to the future commercial developments and apply it consistently across the EU to allow the sector to grow in line with the European Green Deal. The EVG is keen to keep in ongoing contact with key policy stakeholders from the EU Commission and Member States to share future commercial developments regarding EV charging and to promote the future growth of the EU E-mobility sector.

⁵ See also meeting notes (page 5) of the EU VAT Committee's 119th meeting dated November 22 2021, taxud.c.1(2022) 2712022-EN, April 4th 2022.



ChargeUp

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About ChargeUp Europe

ChargeUp Europe, based in Brussels, is an alliance representing the Electric Vehicle (EV) charging infrastructure sector. We pursue an expeditious and effortless roll out of EV charging infrastructure in Europe. We advocate for policies that support investment, remove market barriers and facilitate the smooth uptake of electric vehicles and a seamless driver experience for European citizens. We act as a centre of expertise for the sector with the aim to educate and inform policy makers, stakeholders and the general public about the important role of EVs and the related infrastructure for achieving zero-emission transportation.

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