



## ECJ: VAT treatment of the charging of electric vehicles (e-charging)

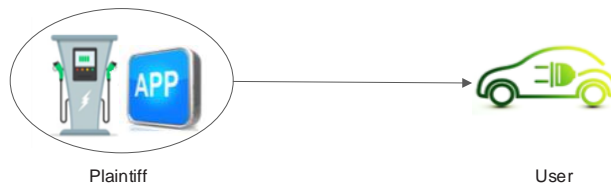
20 | 2023

### 1 Background

To date, the VAT treatment of e-charging has been quite controversial. So far, only the VAT Committee of the European Commission had dealt with this issue (KMLZ VAT Newsletter 27 | 2019 and 33 | 2021). However, the VAT Committee has no power to make any legally binding decisions. Therefore, the ECJ's judgment of 20 April 2023 (C-282/22), which classifies e-charging under VAT law, comes as very welcome news.

### 2 Facts of the case

The plaintiff sets up and operates publicly accessible charging stations for electric vehicles. Depending on the specific needs of the user, the supplies of services carried out in each charging operation also include the following transactions: Provision of recharging devices (including the connection of the charger to the vehicle's operating system), transmission of electricity with appropriately adapted parameters to the battery of the electric vehicle and necessary technical assistance. In addition, the plaintiff provides a special platform, website or app through which users can reserve a specific charging connection and view their transactions and payment history. The plaintiff charges a single price for all of these supplies, with billing based on the loading time.



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The Polish referring court asked the ECJ whether the complex supply provided by the plaintiff at recharging points to users of electric vehicles is, from a VAT perspective, a supply of goods or a supply of services.

### 3 ECJ decision

The ECJ first states that the present case involves a combination of supplies consisting of the supply of electricity for charging electric vehicles and the provision of various supplies of services. This constitutes a single supply for VAT purposes. The ECJ qualifies this single supply as a supply of goods and focuses on the perspective of the average user of recharging points. The transmission of electricity is the characteristic and dominant component of the single and complex supply. This is because the user of the charger is authorized, in the context of the charging process, to consume the transmitted electricity, which is, in accordance with Art. 15 para. 1 of the VAT Directive, treated as tangible good for the purpose of powering his vehicle. In contrast, the granting of access to this device is merely a minimal supply of services, which is necessarily linked to the supply of electricity. Also, any technical assistance is merely deemed to be the means necessary in order to take advantage of the supply of goods for the purpose of the propulsion of the electric vehicle under optimal conditions. This also applies to the provision of IT applications that enable the user concerned to reserve a connection, view the transactions already delivered and acquire credit for the payment of recharges. In the ECJ's view, all of the supplies of services listed therefore constitute supplies of ancillary services that share, from a VAT perspective, the fate of the main supply (here: the supply of electricity).

### 4 Consequences for the practice

In the present case, in addition to the supply of electricity, the plaintiff provides elements of supplies of services (eg app for reservation) that are typically provided by so-called e-mobility providers ("EMP"). The ECJ stated, with remarkable clarity, that in this case a single supply, in the form of a supply of goods, is given. In addition, the ECJ's findings contribute to legal certainty that the billing method is not a crucial criterion as regards the delimitation between a supply of goods and a supply of services. Previously, in practice, billing calculated on the loading time, was sometimes used as an argument for a supply of services. Likewise, the ECJ must be agreed that any recourse to Art. 4 para. 8 of the Directive 2014/94/EU ("*electric vehicle recharging services*") was irrelevant when delimiting between a supply of goods and a supply of services. In the past, Italian representatives had presented a recourse to Directive 2014/94/EU in the VAT Committee, although Directive 2014/94/EU does not make any statements on the VAT treatment.

However, some practice-relevant questions remain open. Unfortunately, the ECJ was not required to deal with the classic constellation of an EMP being connected between the charging point operator and the user:



Thus, the question remains as to whether a supply chain exists in this three-party relationship or whether the charging point operator carries out a direct supply of electricity to the user and the EMP merely performs a supply of services (see ECJ in *Vega International – C-235/18* and *Auto Lease Holland – C-185/01*). Given the current rapid expansion of the charging infrastructure, it is only a matter of time before the ECJ will also be asked to deal with this question.