



VAT NEWSLETTER

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## E-Charging: ECJ confirms reseller model and raises new questions for e-mobility providers (EMP)

### 1 Background

Last year, the ECJ clarified the VAT treatment of e-charging. For VAT purposes, the ECJ treats this complex supply, consisting of the charging process and elements of other services, as a supply of goods (see KMLZ VAT Newsletter 20 | 2023). However, despite this clarification, some questions remained open, in particular, with regard to the three-party relationship. As a result, the ECJ was required to, once again, deal with the issue of e-charging in its judgment of 17 October 2024 (*Digital Charging Solutions GmbH – C-60/23*).

### 2 Facts

The plaintiff is an e-mobility provider ("EMP") and supplies users of electric vehicles with access to a network of charging points. This network provides users with real-time information on prices, locations and the availability of charging points on the network. It also provides functions for the search and location of charging points and route planning (hereinafter: service components). The plaintiff provides users with a card/app. If the user uses the card/app during the charging process, the user is registered with the plaintiff's network by the charge point operator ("CPO").



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The CPO invoices the plaintiff for the charging process monthly. On the basis of the invoices received from the CPOs, the plaintiff invoices the users, firstly for the amount of electricity supplied per month and secondly for the service components. The plaintiff charges a fixed monthly fee for the service components. This fee is due, regardless of whether any charging actually takes place.

The Swedish court referred the question to the ECJ as to whether the charging constitutes a supply of goods. The other question referred, which has not yet been clarified is, in practice, far more interesting: namely whether, in the present three-party relationship, a reseller model, within the meaning of a commission transaction, exists.

### 3 ECJ decision

The ECJ classifies the charging process as a supply of goods and affirms a reseller model. According to the ECJ, the two requirements for a commission, in accordance with Art. 14 para. 2 lit. c of the VAT Directive, "seems to be satisfied":

- The plaintiff acts in its own name but on behalf of the user under a commission contract within the meaning of Art. 14 para. 2 lit. c of the VAT Directive.
- The actual supply of electricity by the plaintiff to the user is not different from the supply of electricity by the CPO to the plaintiff.

The second requirement is not obvious, particularly in view of the fact given here that the plaintiff supplements the purchased electricity with further service components. However, the ECJ makes it clear that the second requirement is still met, even if the service components provided by the plaintiff constitute a supply of ancillary services to the supply of electricity. The ECJ referred the matter back to the referring court for a decision on the VAT treatment of the service components. However, the ECJ makes it clear that there is much to be said for treating the service elements as independent services. This is because the plaintiff invoices the service components separately each month as a flat fee that does not vary according to the amount of electricity supplied or the number of charging processes.

The ECJ distinguishes the present case from the cases on fuel card transactions in great detail. The jurisprudence on fuel card transactions is not transferable, as it concerns different facts. In particular, the plaintiff in the present case neither assumes the function of a supplier of credit (see case *Auto Lease Holland – C-185/01*) nor the organization of the group-wide fuel supply by means of fuel cards (see case *Vega International – C-235/18*).

### 4 Consequences for the practice

The ECJ judgment finally provides the long-awaited clarity that e-charging in the classic three-party relationship is to be treated as a reseller model under the above-mentioned requirements. In these circumstances, the principles of the ECJ from the cases *Vega International* and *Auto Lease Holland* do not apply. However, the assumption of a reseller model raises a number of highly relevant follow-up questions for e-mobility providers:

- Am I a reseller? (reverse charge)
- Where is the charging point located? (registration for VAT purposes)
- Do the service components constitute an independent service in this specific case?
- If so, is it a B2C or a B2B case? (place of supply, reverse charge)
- Is it a supply of electronic services in the B2C case? (evidence required)

The complex follow-up questions pose certain risks in practice, which can be minimized, in many cases, by taking these issues into consideration when contracts are drafted.