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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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Brussels, 17 March 2021

**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1012**

**QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

ORIGIN: Italy

REFERENCES: Articles 14, 15, 38, 39 and 193

SUBJECT: VAT rules applicable to transactions related to the charging of electric vehicles – follow-up

1. INTRODUCTION

Italy submitted a request to re-open the discussions within the VAT Committee on the VAT treatment of transactions related to the recharging of electric vehicles. This issue was examined by the VAT Committee at its 113th meeting in response to a question raised by France¹. Subsequently, this was the subject of a guideline of the VAT Committee².

2. SUBJECT MATTER

2.1. Background and previous discussions

As a short reminder, the subject matter concerns the recharging of electric vehicles (EV charging). The following parties are normally involved in this process:

- a) The infrastructure operator, also called the charge point operator ('CPO');
- b) The mobility operator, that is the e-mobility service provider ('eMP' or 'eMSP');
- c) The customer (driver).

Their role in the value chain is as follows:

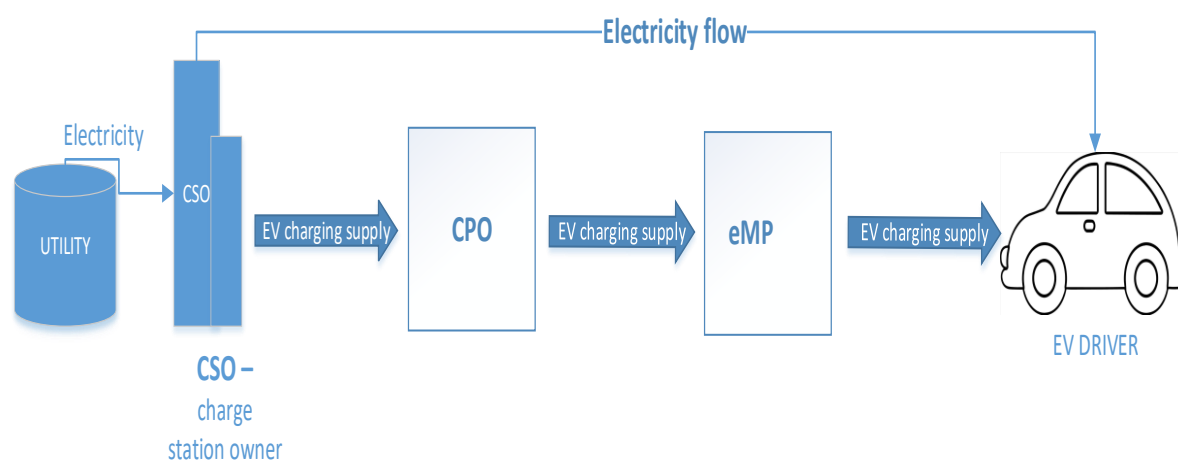
- 1) While not necessarily being the owner of the charging infrastructure, the CPO carries out numerous activities such as for instance: it operates the charging station, provides charging station information to the eMP (e.g. on whether terminals are occupied, their location, the type of socket, parking), it provides access to the charging station, provides customer support, etc. and also provides the recharging of the vehicle *per se*. The CPO invoices the eMP for all supplies of the charging activities including electricity.
- 2) The eMP in turn and on the basis of its own subscription arrangements provides drivers with authentication means to enable access for them to charging stations such as Radio Frequency Identification (RFID) cards or mobile apps. Its activities include the possibility of reservation of stations via a mobile app, information and guidance about the charging stations, provision of driver support (a telephone hotline), etc. and charging of the vehicle. The eMP invoices drivers for all those activities, including electricity. To be able to offer electric vehicle charging to drivers in as many locations as possible, eMPs sign roaming agreements with multiple CPOs.
- 3) The customer (driver) accesses the charging station and recharges his electric vehicle, usually by signing up with the eMP.

¹ Working paper No 969 of 13 May 2019, *VAT rules applicable to transactions related to the recharging of electric vehicles*.

² [Guidelines](#) resulting from the 113th meeting of 3 June 2019, Document A – taxud.c.1(2019)6589787 – 972 (p. 251).

The below scheme (prepared based on information provided to the Commission services by the e-vehicles industry) presents the typical value chain described above. Charging stations owners (CSOs) are companies who have bought (or leased) charging stations and installed them on their property. It can happen that both roles – that of the CSO and of the CPO – are fulfilled by one and the same company. It is also possible that a CPO is an eMP or that the driver does not use an eMP but recharges his vehicle on an ad-hoc basis.

Scheme: EV charging – big picture



Working paper No 969 examined the VAT treatment of transactions occurring in the process of recharging of electric vehicles. The opinion of the Commission services presented in this paper was that the transaction carried out by the CPO constitutes a supply of electricity and should in accordance with Articles 14(1) and 15(1) of the VAT Directive³ be considered a supply of goods. This interpretation was subsequently agreed unanimously by the VAT Committee in the aforementioned guideline.

The Commission services provided further analysis in Working paper No 969 regarding the VAT treatment of transactions carried out by the CPO and the eMP. Two scenarios and their VAT consequences were considered, namely 1) assuming that electricity is supplied by the CPO to an eMP, and 2) assuming that electricity is supplied by the CPO directly to the driver.

The VAT treatment of transactions carried out by eMPs was however not included as part of the above guideline.

2.2. Opinion of Italy

Italy has requested to re-open the discussions in the VAT Committee on the VAT treatment of the recharging of electric vehicles. Italy does not agree anymore with the opinion as first presented nor with the guideline. It submitted a number of elements and observations to demonstrate that a different VAT treatment should be applied to the transactions at stake.

³ 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).

Italy provided a detailed description of activities carried out by the CPO and by the eMP in the framework of the charging of electric vehicles. In this respect, we refer to points 2.1.1 and 2.1.2 of the Italian letter (included in the annex) where Italy listed and explained these various elements/activities.

2.2.1. The general legal framework

Italy refers in its letter to Directive 2014/94 on the deployment of alternative fuels infrastructure⁴ being a general legal framework for the infrastructure and charging activity scheme. In particular, Article 4(8) of that Directive reads: *‘Member States shall ensure that operators of recharging points accessible to the public are free to purchase electricity from any Union electricity supplier, subject to the supplier’s agreement. The operators of recharging points shall be allowed to provide electric vehicle recharging services to customers on a contractual basis, including in the name and on behalf of other service providers’.*

Italy believes that based on this, only the transaction between the electricity supplier and the CPO is to be considered a supply of electricity. The CPO in turn provides a recharging service. The electricity is consumed by the CPO and spent to recharge the battery used by the electric vehicle until it is discharged and has to be charged again.

Italy further points out that the supply of electricity is performed at the point of delivery relevant for the recharging infrastructure. This is the moment when the chargeable event occurs and excise duty on the sale of electricity is imposed. Accordingly, recharging points do not constitute power plants purchasing and reselling electricity. They are not even subject to a licence obligation.

2.2.2. VAT rules applicable to e-vehicles charging

Italy is of the view that the aspects described above in section 2.2.1 cannot be overlooked when it comes to determining the correct VAT treatment of the transactions at stake. Two issues (questions) are of importance in this respect, namely: 1) whether the transactions at stake are to be treated as a single supply or should be separated from each other, and 2) whether they qualify as a supply of goods or a supply of services.

1) Single supply or separate supplies?

Italy is of the view that despite the diversity of the elements and acts provided in the framework of the recharging of electric vehicles, the supplies carried out by the eMP (which could be the same person as the CPO) should be viewed from the perspective of the end user who wants to recharge his vehicle.

According to Italy, all the operations involved aim at achieving the recharging of an electric vehicle. Taking the specific requirements for this to happen, such as the necessity of parking, the need to reserve the terminal to avoid waiting times, the need to find the location in advance, etc., these operations cannot be regarded as ancillary services aimed at supplementing the main service, but should rather be considered as an indivisible part of

⁴ Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

the entire transaction forming a single act - recharging of electric vehicles. Furthermore, the end customer pays a single consideration for all elements without having the possibility to choose between them. The end customer receives a service consisting of multiple elements; only one of these elements is related to the charging of the electric vehicle. The role of this element is very important but cannot be defined as preponderant. Italy adds an additional argument, namely that the prices asked by the CPO from the eMP are not necessarily based on energy consumption, but can be charged per minute or per charging session for instance. The eMP can define its own price policy for the charging supply which can for instance result in a flat-rate price with periodic payment, a price based on connection time or a parameterised price per kWh, etc.

Finally, Italy also points out that the ad hoc charging (charging without intervention by an eMP) is only residual, as it is not suitable for the current situation of the electric vehicles market.

Italy is thus of the view that the transactions taking place in the framework of the charging of electric vehicles form a single, indivisible supply. There are in their view no main supply and ancillary supplies.

2) *Supply (or supplies) of goods or services?*

As explained above, Italy's view is that the electricity is used by the CPO to recharge batteries and not sold as electricity for subsequently carrying out transactions. Therefore, the recharging of the battery of electric vehicles does not constitute a supply of electricity (supply of goods). Furthermore, following the conclusion of the contract, the end user receives a whole range of services that constitute a single economic supply of services, which should not be decomposed, as set out above under point 1).

Italy also submits that even if the additional services were to qualify as ancillary to the recharging of electric vehicles, following the jurisprudence of the Court of Justice of the European Union (CJEU), seeing this as a single supply, the indivisible elements may all be placed on an equal footing with the result that none of them could be regarded as constituting the principal supply and others as ancillary. So even if the recharging of electric vehicles were to be considered a supply of goods (electricity), this supply should still be regarded as part of a set of services. Any interpretation identifying the acquisition of electricity as the main supply would according to Italy not be adequate.

Consequently, the set of offered services by the eMP should be treated as one composite supply of services to which the general VAT rules on the place of supply of services apply, namely Articles 44 and 45 of the VAT Directive. According to these rules, the supply of services by the CPO to the eMP would be subject to VAT in the Member State where the customer (eMP) is established. Supplies of recharging services to private consumers should be taxed where the supplier (eMP) is established.

3. THE COMMISSION SERVICES' OPINION

3.1. Information provided by the e-mobility sector

The Commission services had exchanges with the e-vehicles charging sector in order to understand the activities of the charging process. Representatives of the sector provided explanations and information on the functioning of the value chain in the charging of electric vehicles. Apparently, there is no uniform application of the VAT rules by the Member States to the EV charging activities, leading to legal uncertainty.

The e-mobility sector has looked at the impact of the *Auto Lease Holland*⁵ and *Vega International Car Transport and Logistic*⁶ cases in the Member States. According to their assessment, 24 out of 27 Member States have not taken any specific action in relation to those cases. As to *Auto Lease Holland*, Austria did so indirectly, by way of 2019 Addendum to the Guidelines of the Ministry of Finance regarding the interpretation of the national VAT Act⁷ No 345; Germany by way of the Federal Ministry of Finance Guidance from 2004⁸; and the Netherlands by explicitly mentioning the case in the approving policy of the Dutch Government⁹. As regards *Vega International Car Transport and Logistic*, action has been taken by Austria which implemented the case together with the implementation of *Auto Lease Holland* through the 2019 Addendum (see above) while the German Federal Ministry of Finance is currently considering the impacts and whether the solutions adopted in response to *Auto Lease Holland* are sufficient to implement it and the Netherlands consider that no action needs to be taken, as the action taken in response to *Auto Lease Holland* was sufficient.

The e-mobility sector also signalled that there were differing views among Member States on whether the charging of electric vehicles constituted a supply of goods or of services.

Regarding the transactions at stake, the e-mobility sector explained that the charging of electric vehicles is in their view a composite supply. From the commercial point of view, in case an eMP is involved, “ABC transactions” typically take place. The CPO, acting in its own name and on its own behalf, makes a composite supply to the eMP and issues invoice for the supply to that eMP (A to B). The eMP in turn, also acting in its own name and on its own behalf, makes the same supply to the electric vehicle driver (B to C).

⁵ CJEU, judgment of 6 February 2003, case C-185/01, *Auto Lease Holland* (EU:C:2003:73).

⁶ CJEU, judgment of 15 May 2009, case C-235/18, *Vega International Car Transport and Logistic* (EU:C:2019:412).

⁷ USt-RL 2000, Rz 345.

⁸ BMF v. 15.06.2004 - IV B 7 - S 7100 - 125/04 BStBl 2004 I 605, available at: <https://datenbank.nwb.de/Dokument/Anzeigen/133634/>

⁹ Besluit Maatstaf van heffing, available at: <https://wetten.overheid.nl/BWBR0041125/2020-11-28#:~:text=De%20maatstaf%20van%20heffing%20is,volgende%20beleidsmatige%20aanwijzingen%20en%20verduidelijkingen%3A&text=Goedgekeurd%20is%20dat%20een%20belastingplichtige,zijn%20eigen%20kosten%20mag%20aanmerken>

3.2. Commission services assessment

3.2.1. Composite supplies or ancillary supplies

Regarding the qualification of the transactions, which take place in the framework of the electric vehicles charging, the Commission services still consider that charging is the main element of the supply. Other services supplied merely have the purpose of facilitating the access and the operation of the charging itself¹⁰. So, the Commission services are of the view that the set of different activities carried out by the CPO or the eMP constitute a single supply, with the main supply being the charging of the electric vehicle, with the other supplies being ancillary supplies.

Firstly, the Commission services agree with Italy that the supply should be looked at from the perspective of the electric vehicle user. The aim of this user is to recharge his/her electric vehicle and it is for this purpose that the user acquires the set of supplies from the eMP (or the CPO in case an eMP is not involved). Would the user conclude the contract with the eMP (or the CPO) for the set of those other activities if it was not for charging of the electric vehicle? In the view of Commission services the answer to this question is in the negative. The perception of the user of an electric vehicle is that by using the RFID card or mobile application and through the offered set of activities, he/she will be able to recharge the electric vehicle.

Secondly, the Commission services do not agree with the opinion of Italy that the set of services cannot be decomposed. Although common practice would be to acquire from the eMP the whole set of activities for a number of reasons (such as facility, management of charging stations, pricing, etc.), an ad-hoc charging, directly from the CPO, and restricted to the simple charging of the vehicle, is possible. It is therefore possible for the electric vehicle driver not to acquire the set of additional services from the eMP but only charge the vehicle on a ‘pay as you go’ basis.

Thirdly, the fact that a single consideration is paid by the driver to the eMP does not exclude the transactions being qualified as the principal supply being the charging with the other transactions being ancillary to the principal one. On the contrary, in case of a main supply and ancillary supplies, one single consideration is often charged. Furthermore, the CJEU has already pointed out that charging a single price is not decisive for the supply to constitute a single supply¹¹ and that this must be assessed based on the circumstances of the case.

3.2.2. Supply of goods or services

The Commission services would like to note that the general legal framework applicable to infrastructure and vehicles charging can provide valuable background information but should not be decisive for the qualification of the transactions for VAT purposes. The VAT assessment of the transactions should take place based on the VAT Directive and the applicable jurisprudence of the CJEU.

¹⁰ CJEU, order of 19 January 2021, case C-117/11, *Purple Parking* (EU:C:2012:29). In this particular case, the CJEU considered that the parking service and the transport of passengers from the parking to the airport constitutes a single complex supply of services with parking being the predominant supply.

¹¹ CJEU, judgment of 25 February 1999, case C-349/96, *CPP* (EU:C:1999:93), paragraph 31.

In this respect, the Commission services are still of the view that the main supply being the recharging of electric vehicles (with the other being ancillary supplies), the overall supply should be qualified as a supply of electricity, thus a supply of goods.

As already outlined in section 3.2.1 above, the electric vehicle driver acquires a set of transactions with the aim to recharge his/her vehicle. In the perception of the driver, electricity is purchased enabling him/her to drive his/her electric car.

Italy points out (to support the view that the supply at stake should be qualified as a service) that the price paid for the supply is not necessarily based on the consumption of the electricity, but can be charged by the CPO for instance per minute of charging, or can be a fixed price per charging session. The price also takes into account the type of charging infrastructure technology. Further, the eMP can define its own price type for the charging, thus for instance it can be a flat-rate price with periodic payment combined with a subscription, a price based on connection time, or a price per kWh. The argument that the price is not necessarily based on the electricity consumed, is however in the view of the Commission services, not sufficient to conclude that a supply of electricity (goods) does not take place. The price can take into account, next to the electricity consumption, other elements, especially since ancillary supplies take place. Moreover, as Italy mentions and as told by the sector, suppliers may decide on a particular method for the price they charge, but they may also charge per kWh.

3.2.3. VAT treatment of the supplies made by the CPO and by the eMP

Taking into account the above considerations, in the situations where there is a CPO and an eMP, the issue which should be clarified is whether the CPO supplies electricity directly to the electric vehicle driver or whether the electricity is supplied to the eMP, who then makes a subsequent supply to the user of the electric vehicle.

Based on the information provided by France, Italy and the EV charging sector, the CPO is acting in its own name and on its own behalf. In very many cases, the CPO is not even the owner of the charging infrastructure, thus the CPO purchases electricity from the CSO to supply it further on. The CPO invoices the eMP for the charging. The eMP acts in its own name and on its own behalf and subsequently issues an invoice for charging to the driver of the electric vehicle.

This situation is rather different from that dealt with in *Auto Lease Holland*. The CPO, acting in its own name supplies electricity but also a set of other ancillary supplies making it possible for the eMP to carry out its activity. The eMP in turn, acting in its own name, supplies the electricity and other ancillary services to the driver of the electric vehicle. In these circumstances, the driver can access and dispose of the electricity only after acquiring the RFID card or mobile application from the eMP.

The EV charging sector also pointed out that in the EV charging value chain, a case involving “ABC transactions” is typically what will take place (see above section 3.1). According to the sector, the VAT rules should follow the above “ABC transactions” set up.

The Commission services are therefore of the view that that the CPO supplies electricity and ancillary supplies to the eMP who then in turn supplies this electricity with ancillary supplies to the driver of the electric vehicle. Under normal circumstances, the contractual arrangements should reflect this commercial set up.

Consequently, since the eMP purchases electricity with a view of reselling it to the driver, the eMP should be considered a taxable dealer. In accordance with Article 38(1) of the VAT Directive, the supply by the CPO to the eMP should therefore be subject to VAT where the taxable dealer (the eMP) has established his business. When VAT is due in a Member State in which the CPO is not established, the eMP will normally become liable for the payment of VAT on this supply (Article 195 of the VAT Directive).

Following Article 39 of the VAT Directive, the supply of electricity carried out by the eMP to the driver should be deemed to take place where the customer effectively uses and consumes the goods, thus at the location of charging terminals. The person liable for the payment of the VAT due will normally be the supplier. As usually the eMP allows the customers to recharge their vehicles in various Member States, the eMP will normally need to pay VAT and fulfil VAT obligations in these various Member States.

Should the CPO at the same time be an eMP, the CPO will supply electricity directly to the driver. As in the case of the eMP, the supply will take place for VAT purposes where the customer effectively uses and consumes the goods. The same rules as for the supply by the eMP will apply.

3.2.4. Conclusions of the Commission services

As already mentioned under section 3.1, apparently there is no common approach regarding the VAT treatment of the charging of electric vehicles. It would seem that some Member States consider the charging of electric vehicles a supply of goods while some see it as a supply of services, although there is a guideline saying it is a supply of electricity. This does not provide legal certainty for the economic operators.

The Commission services consider that in order to ensure the legal certainty and a level playing field for the sector at stake, it is important for Member States to apply the same VAT treatment to transactions taking place in the framework of charging of electric vehicles.

The VAT Committee at its 113th meeting already agreed the following guidelines:

As regards the transaction carried out by an infrastructure operator ('CPO') who provides a suite of goods and services, such as remote reservation, provision of information on whether terminals are available, their location, the type of sockets and parking space available and, lastly, actual recharging of the battery of electric vehicles, the VAT Committee unanimously agrees that recharging of the battery must be regarded as the main element of the transaction, since the sole purpose of the additional services supplied is to facilitate the access for such vehicles to the charging point so that their battery can be recharged and are therefore ancillary to the recharging.

Thus, the VAT Committee unanimously agrees that the transaction carried out by the CPO shall be considered to be a supply of goods in accordance with Articles 14(1) and 15(1) of the VAT Directive.

The Commission services would invite the VAT Committee to complete the existing guideline on this issue by including elements to address the VAT treatment of supplies carried out by eMPs.

4. DELEGATIONS' OPINION

The delegations are requested to give their opinion on this matter, and in particular on the following:

- 1) Do you still agree with the Commission services that the charging of electric vehicles constitutes for VAT purposes a supply of electricity, thus a supply of goods rather than a supply of services?
- 2) Do you agree with the view of the Commission services that in a typical value chain of charging of electric vehicles (and provided this transpires from contractual arrangements) the CPO supplies electricity to the eMP, while the eMP carries out the same supply to the driver?
- 3) Do you agree that a guideline should be agreed by the VAT Committee in order to ensure legal certainty for the EV charging sector? Do you believe that there is now sufficient background information about functioning of the sector for the guideline already agreed also to address the VAT treatment of supplies by eMPs?

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QUESTION FROM ITALY

Subject: Guidelines from 113th meeting - Document A (Document taxud.c.1(2019)5214362 - Working Paper No 972) - VAT rules applicable to transactions related to the recharging of electric vehicles (document taxud.c.1(2019)3532296 - Working Paper No 969).

The Italian administration wishes to reopen discussion on the issue of the VAT rules applicable to transactions relating to the recharging of electric vehicles, examined by the VAT Committee at the 113th meeting resulting in Working paper No 969 of 13 May 2019 (Working paper taxud.c.1 (2019)3532296) and subject of the Guidelines adopted as a result of the written procedure initiated by the Commission Services with note ES/vl taxud.c.1(2019)5217364 of 19 July 2019 (Working paper taxud.c.1(2019)5214362).

For the reasons explained below, the Italian delegation considers that the recharging of electric vehicles constitutes a provision of services and not a supply of electricity.

1. INTRODUCTION - EXAMINATION OF WORKING PAPERS

With working paper No 969 of 13 May 2019, the European Commission has expressed its opinion on the question posed by the French tax authorities concerning the VAT treatment of end customers within the electric mobility chain.

In this respect, the Commission makes a distinction between transactions carried out by the CPO and transactions carried out by the eMSP. In the Commission's view, in the first case, the transaction carried out by the CPO should be considered as a supply of goods and, more precisely, as a supply of electricity, while the other services should be regarded to be ancillary and therefore subject to the same VAT treatment as the main transaction. It follows that Articles 38 and 39 of the VAT Directive shall apply for the purposes of determining the place of taxation. Thus, in case the CPO supplies electricity to the eMSP, the place of taxation is the place where the CPO has established its business or has a fixed establishment for which the electricity is supplied. If, on the other hand, the electricity is supplied directly by the CPO to the end user, the place of supply is deemed to be the place where the customer effectively uses and consumes the electricity, which in this case is the recharging terminal.

As regards, on the other hand, the qualification and the relevant VAT treatment of the transaction carried out by the eMSP to the end user, the Commission services identify two different interpretative solutions depending on whether the supply of electricity is made directly by the CPO to the end user or by the CPO to the eMSP and by the latter to the end user.

In the first case, i.e. where the CPO supplies the electricity directly to the end user, the additional services supplied by the eMSP for consideration are to be regarded as the provision of services. Consequently, if the end user of the electric vehicle is a business customer, the services supplied are covered by Article 44 of the VAT Directive, whereby the place of supply is the place where the taxable person has established his business. If,

instead, the end user is not a taxable person, the Commission Services are of the opinion that the services supplied are to be considered as electronically supplied services to which Article 58 of the VAT Directive is applicable.

In the second case, i.e. where the CPO supplies electricity to the eMSP and the latter in its turn supplies it to the end user together with other services, the transaction between the eMSP and the end user would qualify as a supply of goods and the other services as ancillary services. Consequently, the place of supply, within the meaning of Article 39 of the VAT Directive, would be deemed to be the place where the customer effectively uses and consumes the goods, i.e. the location of the recharging terminals.

For the identification of the person liable for payment of the VAT, reference should be made to Articles 193 and 195 of the VAT Directive.

Following the discussions within the VAT Committee, the Commission Services have drawn up some Guidelines (Working document No 972), stipulating that as regards the transaction carried out by a CPO, the recharging of the batteries of electric vehicles must be regarded as the main transaction (the additional services must be considered as ancillary to it), and that such transaction must be deemed to be a supply of goods in accordance with Articles 14(1) and 15(1) of the VAT Directive.

2. DESCRIPTION OF THE OBSERVED CIRCUMSTANCES

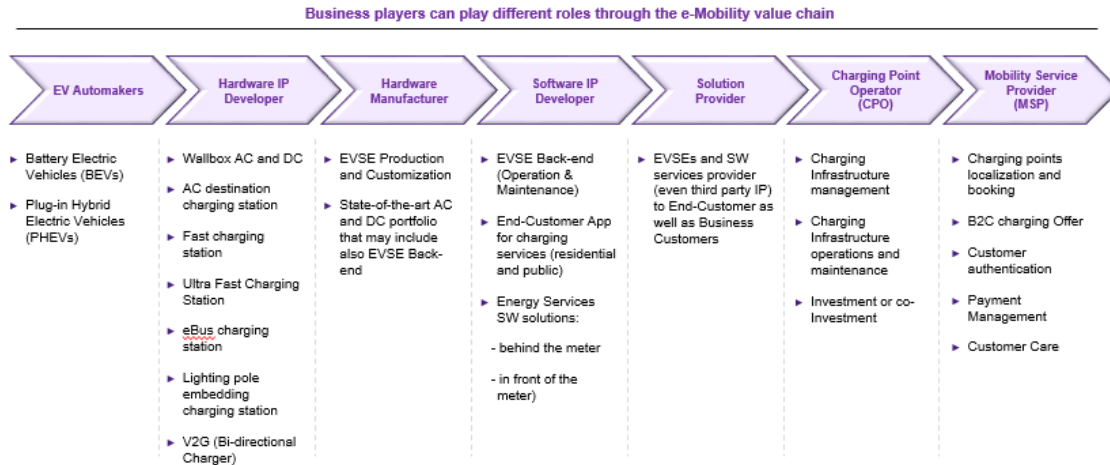
The Italian delegation deems it appropriate to open the discussion on the issue in question and to expand on the legislative, regulatory and functional aspects relating to the relationships existing in the electric mobility sector, whose key players, in addition to electricity suppliers and distributors, are the following:

- I. operators of charge points open to the public (Charge Point Operators, or "CPOs", mentioned above) that, in the exercise of their recharging infrastructure management activities, mainly provide data and information relating to the position and availability of the charging infrastructure, data ensuring search and reservation of the charging infrastructure, as well as access to the provision of recharging services. CPOs may be the owners of the recharging infrastructure, but they may also have obtained them for management purposes by the owner of the infrastructure itself;
- II. those providing recharging services (eMobility Service Providers, or "eMSP", mentioned above) to end customers through mobile applications - APPs - specifically developed to provide recharging services and information relating to the charge points managed by CPOs (with whom an agreement has been concluded), as well as to allow the end customer to use the technical functionalities made available by CPOs to eMSPs;
- III. end customers that, under an agreement with an eMSP, use the "recharging service".

Therefore, CPOs and eMSPs constitute the final part of the "value chain" in the electric mobility sector, according to the schematic representation that is provided below:

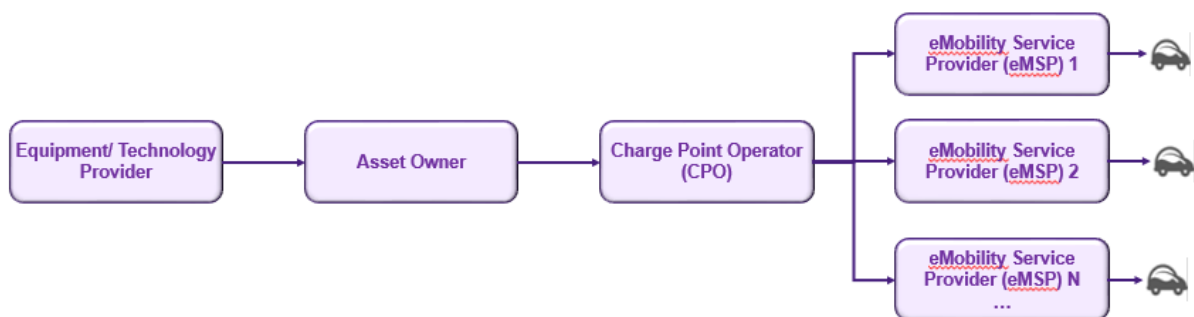
e-Mobility value chain

Roles within the e-mobility value chain



Relations between CPOs and eMSPs and between the latter and the end users are characterized by the provision of a suite of services relating to electric mobility. Furthermore, in order to guarantee their customers the possibility of recharging electric vehicles on infrastructures managed by different CPOs and in different countries, eMSPs can enter into a series of interoperability agreements. In fact, the marketing of recharging operations by eMSPs through a single legal entity guarantees the final customer a smooth experience on different networks, as is the case in the field of mobile phone services through the so-called roaming, where its provision in the various countries and application of relevant tax rules do not alter the perception of the service by the customer.

The flows described above can be summarised as shown in the following figure. Further flow models described above are described in the presentation attached to this document.



2.1. Economic operators involved and elements of the recharging service

2.1.1. The services provided by the CPO to the eMSP

Within the "value chain" of the mobility sector (of which the representative diagram provided above is referred to), the CPO can be identified as the economic operator managing the recharging infrastructure. As already highlighted, the CPOs may be the owners of the recharging infrastructures, but they may also have obtained them for management purposes by the owner of the infrastructure itself.

The CPO is therefore generally the holder of the point of delivery to which one or more recharging infrastructures are connected and is, as we shall see better below, the end customer of such point of delivery that purchases the electricity necessary to power the recharging infrastructure from any supplier.

In some cases, the owner of the charging terminal could be the holder of the point of delivery and be other than the CPO and the eMSP, as the attached diagrams 3 and 4 show. In such cases, the final consumer of electricity for the provision of the service is the owner of the charging terminal, who, in turn, enters into an infrastructure management contract with the CPO.

The CPO, in turn, allows third parties to operate on a competitive market through an open management model and in full compliance with the rules of transparency and free market. Usually, a CPO undertakes towards the eMSP, on the basis of a contractual relationship with the latter, to perform the services listed below:

- a) make charge points technically accessible to eMSPs;
- b) allow the eMSPs, thanks to the dialogue between his information systems and those of the CPO, to provide end customers with the following services:
 - map display of available recharging infrastructures;
 - start of the recharging session;
 - monitoring of the recharging process and its interruption;
 - reservation service for the availability of a charge point for a preset time interval prior to unlocking and upon starting the recharging process on the selected charge point. The end customer has the possibility to reserve the charge point using a mobile app or other remote tool provided by the eMSP and, in the same way, has the possibility to unlock the socket with an access tool: a mobile app or RFID card (radio frequency identification) associated with the same user profile. If the charging session is not started within this time interval, the charge point becomes available for other end customers.
- c) provide the eMSP with IT services relating to the communication, in real time, of the following information relating to the recharging infrastructures managed by the CPO:

- address and geolocation of recharging infrastructures;
 - availability status of recharging infrastructures;
 - type of recharging infrastructure;
 - power of the recharging infrastructure;
 - types of sockets available on recharging infrastructures;
 - all information relating to the recharging sessions;
- d) provide the eMSP with a direct help desk service, aimed at ensuring the timely resolution of any problem, in the following ways:
- for assistance of a management nature (by way of example, relating to invoicing or administration): for example, by providing the eMSP with an electronic mail box or other tool/method agreed with the eMSP;
 - for urgent technical assistance, in case of inability to start and/or end a recharging session, blocking of the recharging connector, risks to the safety and security of people (e.g. an exposed cable): the CPO provides the eMSP with a contact number for telephone assistance available on a 24/7 basis;
 - for technical assistance regarding non-urgent problems, the CPO provides the eMSP with a dedicated electronic mail box or other tool/method agreed with the eMSP.
- e) monitor the efficiency of recharging infrastructures on a daily basis;
- f) provide the eMSP with an adequate level of service on his infrastructures and, in any case, corresponding to the SLAs (Service Level Agreements) agreed with the eMSPs, ensuring that the handling of the problems reported with respect to the recharging infrastructures or the centralized management platform takes place in compliance with specific methods and timing agreed with the eMSPs;
- g) guarantee, as far as possible, the use of electricity produced from renewable energy sources, or certified as produced from renewable energy sources, through annulment on an annual basis on the GSE portal of Guarantees of Origin (GO) corresponding to the kWh procured in each period;
- h) send the eMSP notifications that charging is complete.

2.1.2. Services provided by the eMSP to the end customer

As mentioned previously, the eMSP acts as a provider of recharging services to end customers, allowing the latter to take advantage of the charge points managed by the CPOs who have entered into specific interoperability agreements with the eMSP.

More specifically, the eMSP operates in the electric mobility sector by carrying out the following activities:

- completes the contract with the CPO and the necessary preparatory technological authorisations to provide the recharging service to the end customer, manages the contract during its entire duration and is responsible for paying the agreed sums;
- defines and manages the commercial offer portfolio of the recharging services to be offered to end customers. The definition of the offer consists of: identifying the minimum set of services to be guaranteed to the end customer, enhancing them, and quantifying a price for the sale of these services;
- defines and manages the contract with the end customer for the provision of recharging services;
- defines and manages the methods of access to services, also through the use of an APP or RFID card made available to end customers, which, after their registration and authentication, allows the provision of services (through communication between APP/IT systems of the eMSP and IT systems/recharge network of the CPO);
- designs and carries out commercial communication to the outside and relationships with end customers, facilitating the resolution of management and technical problems;
- in coherence with the legislation on the processing of personal data, holds the data of end customers, in terms of both personal data and recharging service history;
- manages the invoicing of services, credit and litigation.

Based on the regulatory framework in force at the date of this document, no specific authorizations are required to act as an eMSP, since these are service activities carried out in a free market context.

Furthermore, in accordance with interoperability agreements concluded between the eMSP and individual CPOs, the latter - upon payment by the eMSP of the fees provided for in the agreements - mainly undertake to:

- transmit to the eMSP, via an IT communication protocol, the relevant information on the charge points managed by the CPOs, such as the geographical location of the charge point, the relevant power, the types of sockets available, as well as time-real information on the occupation of the socket by other users;
- periodically monitor the operating state of end customers points;
- provide the eMSP with an assistance service for the resolution of problems, of a managerial and technical nature, relating in general to the operation and functioning of the charge points managed by the CPO;

- allow the eMSP to provide end customers with services for starting the recharging session, monitoring of the recharging process and its interruption.

In turn, the eMSP undertakes, among other things, not to use the data and information relating to the charge points, including geographical locations and real-time availability, for uses other than those expressly provided for in the interoperability agreements.

The contract between eMSP and the end customer, on the other hand, regulates the provision of the recharging service to the latter. The contract details the economic conditions of access to the service and the services guaranteed to the customer, namely:

- search for filling stations, bookability, recharging, and support services;
- apps and web portals to subscribe to a recharging service offer;
- app and RFID card to manage all recharging services on public and private infrastructures, including: map display with location of recharging infrastructures, socket reservation services and payment management;
- apps and web portals for monitoring and final assessment of recharging services to B2B customers Call centers on a 24/7 basis for commercial management of end customers and directing them to the reference CPO in the event of purely technical problems.

The eMSP therefore provides a series of value-added services that make it possible to deliver the vehicle recharging experience.

2.1.3. The end customer

The recharging service is mainly addressed by the eMSP to the end customer that can access the recharging infrastructure to recharge an electric vehicle. The end customer can access the service both as a natural person, when the contract is concluded in B2C mode, and on behalf of a legal entity, when the contract is concluded in B2B mode to guarantee the recharging service to natural persons in some way connected to the company (e.g. company cars, car sharing). In both cases, the methods in which the recharging services are supplied and used will be the same.

The end customer is looking for a recharging service that is as simple and accessible and highly digitalized as possible, and perceives this service as a single, albeit complex, one. In this sense, the operators of the sector are increasingly close to this goal and, thanks to *eRoaming/Interoperability* agreements, enable access to an ever-increasing number of recharging infrastructures with the same service provider. Therefore, the use of recharging services by an owner of an electric vehicle is becoming increasingly customer-cantered, thanks to the digitization of services with a single App and to the enrichment of these services with ever greater functionalities. These features cover a wide range of customer's mobility needs, transforming the eMSP from a mere provider of recharging services into a player for all mobility services, facilitating the transition to Mobility as a Service (MaaS).

The recharging of electric vehicles may also be offered by a private individual (for example at the home, in a box/garage, in an apartment block, at work places). To the

extent that it accesses the network of comprehensive services described above, this type of recharge should also be considered, like the public one, as a service offered to the end customer of which electricity constitutes one of the elements of the activity carried out.

3. THE LEGAL FRAMEWORK

The infrastructure and charging service scheme is regulated at EU level by Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (hereinafter “the DAFI Directive”).

Article 4, paragraph 8, of that legislative act is particularly relevant here, as it stipulates that "Member States shall ensure that operators of recharging points accessible to the public are free to purchase electricity from any Union electricity supplier, subject to the supplier's agreement. The operators of recharging points shall be allowed to provide electric vehicle recharging services to customers on a contractual basis, including in the name and on behalf of other service providers" [emphasis added, ed.]

According to the literal interpretation of the rule, it is reasonable to assume that the European legislator considers only the transaction between the electricity supplier and the CPOs as a supply of electricity, while it uses the term "recharging services" for transactions between the CPOs and final consumers, which - as indicated above - may also be carried out in the name and on behalf of other service providers.

The operators of the recharging points are, therefore, the final consumers of the electricity used to recharge the batteries of electric traction vehicles. In other words, (except in cases where the electricity supply contract is concluded directly by the owner of the infrastructure) the CPO is the end customer who purchases from any supplier the electricity needed to fuel the recharging infrastructure.

Indeed, in the subsequent phases, there is no sale of electricity, but the latter is consumed to charge the battery, which will then run the electric traction vehicle until it is discharged and has to be recharged again.

For the purpose of confirming this interpretation, paragraph 9 of Article 4 of the aforementioned DAFI Directive could be relevant, as it prescribes that "*All recharging points accessible to the public shall also provide for the possibility for electric vehicle users to recharge on an ad hoc basis without entering into a contract with the electricity supplier or operator concerned*".

The supply of electricity is performed and is concluded at the point of delivery (POD) relevant for the recharging infrastructure and it is at this point that the chargeable event occurs and the excise duty on the electricity used for this purpose becomes chargeable from the parties making such supply.

Consequently, these recharging points do not in themselves constitute power plants for the purchasing and reselling of electricity and accordingly the relevant operators are not subject to a licensing obligation. Electricity is, in fact, consumed at the recharging infrastructures for the performance of the owner's or operator's own activity, which consists in the recharging the batteries of electric traction vehicles.

It should also be considered that charging electric vehicles in places accessible to the public is a service that must be developed under competitive conditions between the different operators. Therefore, the price of recharging is based on market dynamics and the supply of electricity represents only one of the production inputs of the final service, without this constituting an activity of "reselling" electricity. Indeed, paragraph 10 of Article 4 of the DAFI Directive establishes that "*Member States shall ensure that prices charged by the operators of recharging points accessible to the public are reasonable, easily and clearly comparable, transparent and non-discriminatory*". Furthermore, it is provided that "*Member States shall ensure that distribution system operators cooperate on a non-discriminatory basis with any person establishing or operating recharging points accessible to the public*" and that "*the legal framework permits the electricity supply for a recharging point to be the subject of a contract with a supplier other than the entity supplying electricity to the household or premises where such a recharging point is located*" (Article 4(11) and (12) of the DAFI Directive).

4. THE VAT RULES APPLICABLE TO RECHARGING OPERATIONS

The aspects described above, although not directly relating to value added tax, cannot be overlooked in order to apply the correct classification for VAT purposes.

In this respect, in order to identify the appropriate VAT treatment of the transactions that make up the supply chain at stake, the first question should necessarily be whether they should:

- (a) be treated as a single supply, or considered separately from each other;
- (b) be classified as supplies of goods or supplies of services.

4.1. VAT treatment: a single supply or several distinct transactions?

With regard to the first question to be answered, it should be noted that according to the settled case-law of the Court of Justice of the European Union, although every transaction should normally be regarded as being distinct and independent "*a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split*" (judgment of 10 March 2011, *Bog and Others*, C-497/09, C-499/09, C-501/09 and C-502/09, judgment of 10 November 2016, *Bařtová*, C-432/15; judgment of 18 January 2018, *Stadion Amsterdam*, C-463/16).

On the basis of these assumptions and of the above considerations, it can be stated that the value of the supply of services provided by the eMSP - which could even be the same taxable person as the CPO as per the attached diagrams (see in particular cases No 1, No 4 and No 4a) - is to be found, from the end users' point of view, in the combined use of the different functionalities for recharging the electric vehicle, so that this supply of services must be regarded as an indivisible economic supply, despite the diversity of the elements and acts provided to such beneficiaries.

These operations, in fact, are all aimed at achieving the recharging of the electric vehicle. Thus, taking into account the specific service requirements of the latter vis-à-vis the refueling of a vehicle running on petrol (e.g. the need for electric vehicles to have a parking space for recharging, which takes a long time, the need to reserve the terminal to avoid particularly long waiting times, the need to find out in advance the location of the charging points during a journey due to the reduced range of the vehicles and the impossibility to store stocks, as well as the current limited number of charging points), they cannot be regarded as ancillary services aimed only at supplementing a main service, but should rather be considered as an indivisible part of the entire transaction, forming a single act: a recharging service.

Another element that confirms that the approach suggested above is correct is the fact that the end customer will be required to pay a single consideration, without having the opportunity to choose to benefit only of some of the services supplied by the provider.

This conclusion is supported by the pricing of the recharging service, which takes into account total cost items for the construction, depreciation, maintenance and operational management of a recharge network widespread throughout Italy and Europe at all the technological levels necessary to guarantee the user experience.

In this respect, with respect to the costs incurred by the eMSP to provide access for the end customer to the recharging services at the infrastructures operated by the CPO, examples include, but are not limited to, the following:

- Cost of development and maintenance of the recharging mobile phone app and all the related functionalities made available, such as: infrastructure location, infrastructure status, socket type, socket reservation, route planning, etc.;
- Cost for interoperability contracts with different CPOs (access fees, if any, and cost of setup and operational management);
- Integration costs of eMSP systems with CPOs;
- Integration costs of partners offering value added services made available to the end customer (e.g. route planning, integration with micro-mobility tools such as kick scooters).

In short, the end customer receives from the eMSP a service consisting of multiple elements, only one of which is related to the charging of the electric traction vehicle. The role of this element, which although important cannot be defined as preponderant, is further reduced if one considers the return on the CPO's initial investment (hardware amortization, installation, connection to the electricity grid) and the ancillary operating costs (costs associated with the license, software updating).

Moreover, the types of price applied by the CPO to the eMSP are not necessarily parameterized to energy consumption (e.g. €/KWh), but it can also be: (i) a fixed price when the charging socket is unlocked, (ii) price per minute (€/ minute), (iii) a fixed fee per charging session. Each type of recharge tariff can be combined with one or more tariffs of the above types, for instance the unlocking tariff can be combined with the per minute

tariff, the pay per use tariff can be combined with the per minute tariff and so on. In this way, each CPO is free to apply the tariff it deems most appropriate, also depending on the type of recharging service it offers to the eMSP. In addition, the price is based on the type of charging infrastructure technology, providing different charging experiences to end customers.

Similarly, the eMSP can define its own price type for the charging service to the end customer as it considers most appropriate, like for instance: (i) flat price with periodic payment and subscription price (€/month), (ii) price based on connection time, (iii) parameterized price per kWh, (iv) price per session for the eMSP, all of which can be diversified based on the charging infrastructure technology.

On the other hand, apparently the "Ad-hoc charging" pattern has a residual application, whereby only a recharging service is provided to the end user by the owner or operator of the recharging point. In such cases, the end user does not enter into a contract with the eMSP offering him a whole set of services to enable him to benefit from vehicle recharging services at the infrastructures managed by the CPOs. The value chain and, therefore, the electric mobility chain is missing. Consequently, the end user receives an invoice from the CPO or from the infrastructure owner exclusively for the recharging of the electric battery.

The limited application of these circumstances is due to the fact that it is not suitable to the current situation of the electric vehicle market, characterized by long recharging times, the need to reserve the charging station to avoid long waiting times, the reduced range of vehicles requiring prior locating of recharging stations, the impossibility of storing stocks as well as the current limited number of charging points.

4.2. VAT treatment: supplies of goods or supplies of services

Once it has been established that transactions related to the recharging of electric vehicles, despite their mixed nature, should be treated as a single complex transaction, where it is not possible to identify a principal transaction, all of them being of key relevance to facilitate the vehicle recharging event, it should be clarified whether this complex transaction should be considered as a supply of goods or as a supply of services.

According to Article 14 of the VAT Directive "*Supply of goods' shall mean the transfer of the right to dispose of tangible property as owner*", while the subsequent Article 24 states that "*Supply of services' shall mean any transaction which does not constitute a supply of goods*".

In the present case, once excluded that the recharging of the battery of electric vehicles constitutes a supply of electricity since the latter is used by the infrastructure and not sold to carry out the transaction, it can be seen that the subject-matter of the contract in question lies in a suite of performance obligations, so closely linked to each other as to form a single supply of services, indivisible from an economic point of view.

In fact, the eMSP, following the conclusion of the contract with the end user, provides a whole range of inseparable services that give rise to a single economic supply that cannot be divided into several parts. In other words, the services provided are necessary to enable

the vehicle to be recharged and the customer is required to pay a single consideration, without having the option of choosing not to benefit from some of the services offered by the eMSP.

In short, the service provided by the eMSP, which could even be the same business as the CPO, i.e. the charging point operator, is a single indivisible supply of services resulting in to a single payment of VAT.

5. FINAL CONSIDERATIONS

Once it has been clarified that transactions related to the recharging of electric vehicles, despite their mixed nature, should be treated as a single complex transaction and that the latter constitutes a supply of services, some of the issues examined in Working Paper No 969 and the Guidelines in Working Paper No 972 need to be addressed in more detail.

First, it should be noted that there is no supply of electricity from the CPO to the eMSP and from the CPO to the end user, or alternatively directly from the CPO to the end user. The electricity is purchased by the CPO (or the infrastructure owner) in view of using it for the purpose of charging the batteries, which will enable the electric vehicles to run until they are discharged again and have to be recharged.

This being the case, it can be stated that the circumstances at stake are different from the ones examined by the Court of Justice of the European Union in its judgment of 6 February 2003, C-185/2001, *Auto Lease Holland*, referred to by the Commission Services in Working paper No 969.

In fact, the case ruled on by the Court of Justice of the European Union related to a company (i.e. Auto Lease) which, besides the leasing of a car, also offered the lessee the option of entering into a fuel management agreement with it. The agreement permitted the lessee to fill up his motor vehicle with fuel and from time to time to purchase oil products, in the name and on behalf of Auto Lease. For that purpose the lessee received a so-called “*ALH-Pass*” as well as a fuel credit card issued by the German credit card company DKV. That card qualified Auto Lease as the DKV customer. DKV regularly submitted its account to Auto Lease and itemized the various supplies per vehicle. The lessee paid to Auto Lease each month in advance one twelfth of the likely annual petrol costs. At the end of the year, the account was then settled according to actual consumption. There was a supplementary charge for fuel management.

The Court of Justice of the European Union, in answer to the question on whether the fuel was previously supplied to Auto Lease and then resold to end customers or whether the filling stations supplied that fuel directly to the end customer, opted in favour of the second solution.

Conversely, in the electric mobility chain, the end user does not purchase electricity from the dealer (which would be the CPO, following the line of argument of the Commission Services), but the electricity is used and consumed within the infrastructure to recharge electric vehicles. Nor can it be said that the electricity is sold by the CPO to the eMSP and by the CPO to the end user, as the eMSP, under interoperability agreements with the CPO,

offers in its name and on its behalf a complex charging service to the end user using the infrastructure made available by the CPO.

Basically, the CPO is not the electricity dealer and this is confirmed by the fact that it can operate without a license.

Secondly, it should be pointed out that the services offered by the eMSP are so closely linked that they form a single indivisible economic supply, which it would be artificial to split. These services must be placed on an equal footing in view of the characteristics of the electric mobility sector, where the current low level of availability of recharging stations requires the eMSP, which offers the recharging service in the charging point, to provide additional services that enable, inter alia, the location of the recharging infrastructure to be displayed on a map, the reservation of the socket, payment or redirection to the CPO in the event of technical problems.

To that effect, a situation where for the CPO simply provides the recharging service, while the eMSP provides other services, would not be feasible. The recharging service is, in fact, offered by the eMSP (which could be the same taxable person as the charging point operator, i.e. the CPO) together with the other services, constituting a single supply. The only possible alternative is the so-called "Ad-hoc charging", under which the owner of the column only provides for the possibility to recharge the electric vehicle, but in actual fact such circumstances are residual and limited in their application due to the difficulties associated with finding the location of the recharging stations.

In any case, the fact that the service is one single supply still holds true even where the additional services are qualified as ancillary to the recharging of the electric vehicle. In fact, the notion of 'one single supply' may include, in the Court's case-law, two types of situations. On the one hand, the indivisible elements of the single service may all be placed on an equal footing, with the result that none of them could be regarded as constituting the principal service whilst another as the ancillary service (to that effect, see judgment of 19 July 2012, *Deutsche Bank*, C-44/11). On the other hand, one single supply is deemed to occur even in cases where one or more elements are to be regarded as constituting the principal service, whilst other elements are to be considered as one or more ancillary services, which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service provided by the supplier (see judgments of 25 February 1999, *CPP*, C-349/96 and of 18 January 2018, *Stadion Amsterdam*, C-463/16).

Likewise, there would be no impact on the above conclusions even if Article 15 of the VAT Directive - which, it should be remembered, treats electricity as tangible property¹⁷ by law - were to be interpreted very strictly.

Indeed, in this respect, even if the recharging of the electric vehicle were to be considered as the transfer of tangible property (electricity) - and, consequently, the latter were to be qualified as a supply of goods - it should be pointed out that, also in this case, it should be regarded as part of a set of services. Consequently, any interpretation that identifies the mere acquisition of electricity as the chief aim of the end customer, would not seem to be adequate.

In the light of these considerations and of what has been described in detail in the previous paragraphs, it is clear that recharging operations constitute a very complex activity including a large number of provisions of services as a whole, not limited to the supply of electricity/power supply. It follows that this transaction should in any case be considered as one single supply with a prevailing performance obligation, i.e. a supply of services.

Consequently, the set of services offered by the eMSP - which, as mentioned above, could also, but not necessarily, be the same taxable person as the CPO - would appear to be a single supply of services and as such should be governed for VAT purposes by Articles 44 and 45 of the VAT Directive. Therefore, in situations where an eMSP, under interoperability agreement, receives supplies of services from CPOs established in different Member States, the place of supply for VAT purposes would be the State where the eMSP is established. On the other hand, as regards the supplies of services made by an eMSP to private consumers, these should be taxed in the State where the eMSP is established, whether the service is provided in the same State or in a different State, under an interoperability agreement. By contrast, if the services are supplied by the eMSP to a taxable person, the place of taxation should be the place where the taxable person has established his business.

For these reasons, Italy considers it appropriate to reopen the discussion within the VAT Committee on the VAT treatment to be applied to transactions related to the recharging of electric vehicles and possibly to change the guidelines that have been drawn up on this issue in the meantime.