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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
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Value added tax

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 969**

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

ORIGIN: France

REFERENCES: Articles 14, 15, 38, 39, 44, 46, 58, 193 and 195

SUBJECT: VAT rules applicable to transactions related to the recharging of electric vehicles

1. INTRODUCTION

The French authorities have asked the opinion of the VAT Committee on the VAT rules applicable to the recharging of electric vehicles ('EV') in which an infrastructure operator and mobility operators intervene. A translation of the text of the question is annexed to this document.

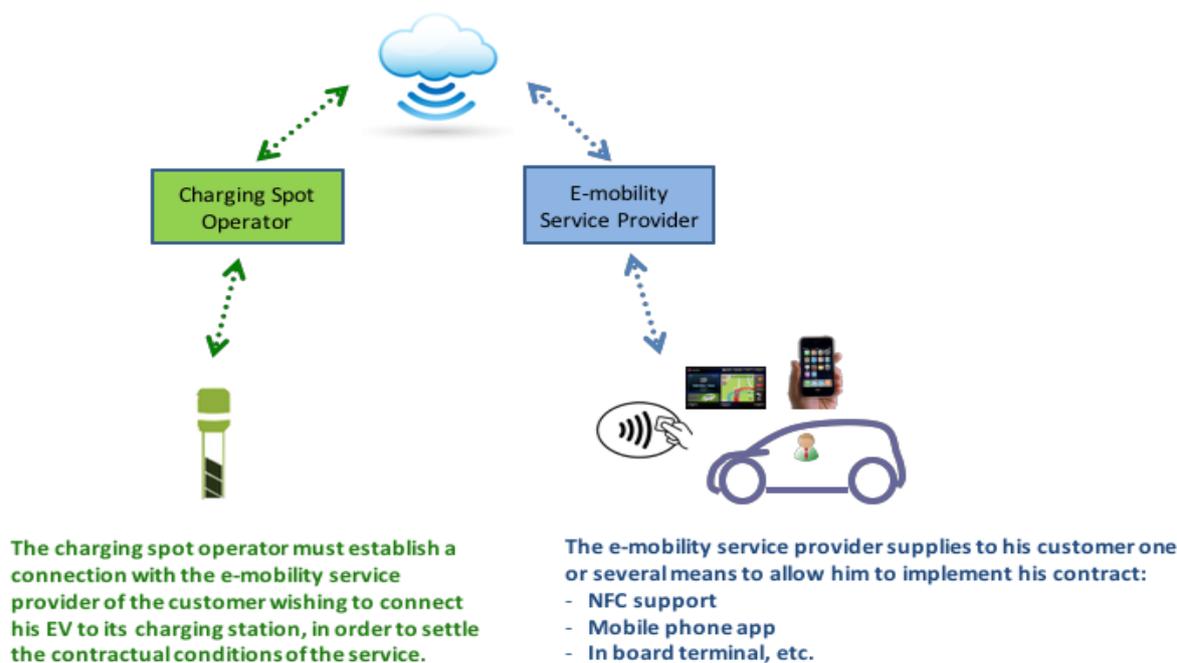
2. SUBJECT MATTER

In the situation described by the French authorities, the recharging of electric vehicles involves the intervention of the following actors:

- The infrastructure operator ('charge point operator', 'CPO') who provides a set of goods and services, such as remote reservation, provision of information on whether terminals are occupied, their location, the type of socket, parking and, lastly, the recharging service *per se*.
- The mobility operator ('e-mobility service provider', 'eMSP') who offers these goods and services to its customers on the basis of its own subscription arrangements.

The French authorities have examined the different sets of general conditions for the sale of goods and services supplied by eMSPs to their customers which they are aware of. From this examination, it is concluded that the eMSP acts in its own name and on its own behalf towards its clients.

The illustration below was taken from the internet for the sole aim of visualising the situation.



The question asked by the French authorities concerns the VAT treatment of the transactions occurring in the situation set out above.

3. THE COMMISSION SERVICES' OPINION

The supply carried by the CPO

In the view of the Commission services, the recharging of the battery is the main element of the transaction carried out by the CPO. The set of additional services supplied have the sole purpose of facilitating the access for electric vehicles to the charging point in order to have their battery recharged.

Article 14(1) of the VAT Directive¹ stipulates that 'supply of goods' shall mean the transfer of the right to dispose of tangible property as owner.

Article 15(1) stipulates that electricity, gas, heat or cooling energy and the like shall be treated as tangible property.

The transaction carried out by the CPO which consists in providing the electricity for recharging the battery shall, in accordance with Articles 14(1) and 15(1), be considered as a supply of goods.

The question is whether the CPO supplies the electricity that is provided to the eMSP, who would then make a subsequent supply to the electric vehicle user or whether the CPO supplies the electricity directly to the electric vehicle user.

The situation at stake here has similarities with the situation in Case C-185/01 *Auto Lease Holland*² decided by the Court of Justice of the European Union (CJEU) on 6 February 2003. That case related to the situation whereby Auto Lease, 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 at the expense of Auto Lease. For that purpose the lessee received a so-called ALH-Pass as well as a fuel credit card from the German credit card company DKV. That card named Auto Lease as the DKV customer. 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.

In paragraphs 32 to 34 of its decision, the CJEU stated the following:

“32. As the Court found in paragraphs 7 and 8 of Shipping and Forwarding Enterprise Safe, it is clear from the wording of that provision that 'supply of goods' does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were the owner of the property. The purpose of the Sixth Directive might be jeopardised if the preconditions for a supply of goods — which is one of the three taxable transactions — varied from one Member State to another, as do the conditions governing the transfer of ownership under civil law.

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

² ECLI:EU:C:2003:73.

33 *Consequently, in order to answer the question referred, it is necessary to determine to whom, whether the lessor or the lessee, the oil companies transferred, in the main proceedings, that right actually to dispose of the fuel as owner.*

34 *It is common ground that the lessee is empowered to dispose of the fuel as if he were the owner of that property. He obtains the fuel directly at filling stations and Auto Lease does not at any time have the right to decide in what way the fuel must be used or to what end.”*

Based on the above, one could argue that CPO supplies the electricity directly to the electric vehicle user.

If so, the place of supply of the electricity would in accordance with Article 39 of the VAT Directive be deemed to be the place where the customer effectively uses and consumes the goods; that is the location of the recharging terminals.

However, the French authorities point out that different from the situation in *Auto Lease Holland*, the eMSP offers other services to the electric vehicle user and it acts in its own name and on its own behalf.

It could in those circumstances also be argued, therefore, that the CPO supplies the electricity to the eMSP. Since the eMSP purchases the electricity in view of reselling it, the eMSP would qualify as a taxable dealer in accordance with Article 38(2) of the VAT Directive.

The place of supply in that case, in accordance with Article 38(1) of the VAT Directive, would be deemed to be the place where the eMSP has established his business or has a fixed establishment for which the electricity is supplied.

When VAT is due in a Member State in which the CPO is not established, the eMSP would become liable for the payment in accordance with Article 195 of the VAT Directive and the CPO should not charge VAT to the eMSP on these supplies.

In practice, this also means that the CPO should be able to make a distinction between on the one hand supplies made to eMSP established in the same Member State as the CPO and to electric vehicle users who are not making use of an eMSP for the recharging of their car (since the CPO should charge VAT to them) and on the other hand supplies to eMSPs not established in the Member State of establishment of the CPO (since the CPO should not charge VAT to them).

The supply carried out by the eMSP

Should it be found that the CPO supplies the electricity directly to the electric vehicle user, the subsequent question to be examined concerns the qualification of the transaction(s) carried out by the eMSP.

In case the eMSP would be making a supply to the CPO for consideration, this would be a B2B service covered by Article 44 of the VAT Directive considered to take place at the location of the customer (the CPO).

In case the eMSP would be making a supply to the electric vehicle user for consideration, this could be either a B2B or a B2C supply of services. When the electric vehicle user is a business customer, the supply would again be covered by Article 44 of the VAT Directive and would thus be considered to take place at the location of the customer.

When the electric vehicle user is a non-taxable person, it needs to be assessed whether the services supplied by the eMSP constitute those of an intermediary or rather electronic services. This matter has already been discussed by the VAT Committee previously³ and was followed by guidelines⁴. According to the guidelines in question, intermediary services provided in a digital environment shall require an active involvement of the intermediary which goes beyond the automated supply provided with the use of only minimal human intervention.

The service provided by the eMSP consists in providing information in an electronic form to the electric vehicle user on whether the terminals are occupied, their location, the type of socket and in allowing that user to make a reservation on-line.

Based on this, the Commission services would consider that providing this service requires no more than minimal human intervention and therefore is to be considered as an electronic service. According to Article 58 of the VAT Directive, such services are located at the place where the electric vehicle user is established, has his permanent address or usually resides.

Alternatively, should the CPO be found to supply the electricity to the eMSP, then the question arises whether the subsequent supply from the eMSP to the electric vehicle user is to be considered a single supply or several transactions.

Similar to the reasoning set out above, the Commission services would also in this case consider that the recharging of the battery is the main element of the transaction carried out by the eMSP. The set of additional services supplied all have the sole purpose of facilitating access for the electric vehicles to the charging point in order to have their battery recharged.

The place of supply of the electricity would in accordance with Article 39 of the VAT Directive be deemed to be the place where the customer effectively uses and consumes the goods; that is the location of the recharging terminals.

The person liable for payment of the tax would, in accordance with Article 193 of the VAT Directive, generally be the supplier. In very specific circumstances, the customer could be the person liable in accordance with Article 195.

Since eMSPs often provide to their customers the possibility of recharging their electric vehicle in various Member States, an eMSP will need to fulfil reporting and payment obligations in all the Member States in which it is liable to pay the tax.

To be noted also that in most circumstances this is a B2C supply of goods that will fall outside the scope of the EU MOSS, even after the extension of its scope as of 1 January 2021. That is so as such supplies could not qualify as distance sales of goods.

³ See Working paper No 906.

⁴ [Guidelines](#) resulting from the 107th meeting of 8 July 2016, document D – taxud.c.1(2017)1402399 – 914.

The observations above from the Commission services are based on the available information about the relationship between the three actors involved and have therefore a preliminary character. The French delegate but also the other delegates will, based on their experiences, have the opportunity to complement this information during the discussion in the VAT Committee.

4. DELEGATIONS' OPINION

Delegations are invited to express their views on this matter raised by the French authorities and the observations made by the Commission services.

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Question from France

Subject: VAT system applicable to recharging services for electric vehicles between an infrastructure operator and mobility operators.

Pursuant to Article 398(4) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'), we wish to obtain the opinion of the Commission and the Member States on the rules applicable to the recharging of electric vehicles between an infrastructure operator ('charge point operator', 'CPO') and mobility operators ('e-mobility service provider', 'eMSP').

Since this issue is likely to affect operators based in different Member States, the opinion of the Commission and of the VAT Committee, in a harmonised framework, on the classification of transactions of this type is of interest to all the Member States.

Basically, the CPO provides a set of goods and services, such as remote reservation, provision of information on whether terminals are occupied, their location, the type of socket, parking and, lastly, the recharging service per se.

The eMSP then offers these goods and services to its customers on the basis of its own subscription arrangements. An examination of different sets of general conditions for the sale of goods and services supplied by eMSPs which we are aware of suggests that the eMSP acts in its own name and on its own behalf.

I. Legal framework:

Article 4 of Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure states that Member States must ensure that operators of recharging points accessible to the public are free to purchase electricity from any Union electricity supplier. The operators of recharging points are allowed to provide electric vehicle recharging services to customers on a contractual basis, including in the name and on behalf of other service providers.

Pursuant to Article 2 of the VAT Directive, the supply of goods and services for consideration within the territory of a Member State by a taxable person acting as such is subject to VAT.

Article 14 of the Directive states that supply of goods means the transfer of the right to dispose of tangible property as owner.

Article 15 of the Directive indicates that electricity is to be treated as tangible property.

Pursuant to Article 38 of the VAT Directive, in the case of the supply of electricity to a taxable dealer, the place of supply is 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.

By contrast, pursuant to Article 39, in the case of the supply of electricity not covered by Article 38, the place of supply is deemed to be the place where the customer effectively uses and consumes the goods.

Lastly, as regards the person liable for the tax, Article 195 states that VAT is payable by any person who is identified for VAT purposes in the Member State in which the tax is due and to whom goods are supplied in the circumstances specified in Articles 38 or 39, if the supplies are carried out by a taxable person not established within that Member State.

Moreover, it follows from CJEU case-law, first, that every transaction must normally be regarded as distinct and independent and, secondly, that a transaction which comprises a single supply from an economic point of view should not be artificially split.

In order to determine whether the taxable person is supplying the customer with several distinct principal services or with a single service, the essential features of the transaction must be ascertained. A single supply is therefore deemed to occur in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as 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 supplied^{1 2}. When assessing the key elements of a transaction, the view of the average consumer should be taken into account.

Lastly, as regards the application of Article 14 of the VAT Directive to fuel supply under a vehicle leasing contract whereby the lessee of the vehicle could refuel his vehicle using a credit card issued on behalf of the car leasing company, the CJEU took the view that there is not a supply of fuel by the lessor of a vehicle to the lessee where the lessee fills up at filling stations the vehicle which is the subject-matter of a leasing contract, even if the vehicle is filled up in the name and at the expense of that lessor³. The CJEU takes the view in this decision that the lessee of a vehicle is entitled to dispose of the fuel as if he were the owner of that property in so far as he obtains the fuel directly at filling stations and the lessor does not at any time have the right to decide in what way the fuel must be used or to what end.

In those circumstances, for the Court, the fuel management agreement concluded between the lessor and the lessee using the fuel credit card is not a contract for the supply of fuel, but rather a contract to finance its purchase.

II. Issue raised

We wish to raise with the VAT Committee the matter of the correct interpretation when electric vehicles are recharged by a CPO for an eMSP which then offers these services to its customers.

¹ See the Court of Justice judgments in case C-349/96 *Card Protection Plan* of 25 February 1999, case C-41/04 *Levob Verzekeringen BV and OV Bank NV* of 27 October 2005 and case C-111/05 *Aktiebolaget NN* of 29 March 2007.

² See the aforementioned judgments and the Court of Justice judgment in case C-208/15 *Stock '94 Szolgáltató Zrt.* of 27 June 2013.

³ See the Court of Justice judgment of 19 September 2002 in case C-185/01 *Auto Lease Holland BV*.

The question essentially relates to the classification of the recharging operation, i.e. whether it is several distinct supplies or a single transaction, and whether, in the latter case, this single transaction should be classified as a service or as the supply of electricity.

If the recharging operation were deemed to constitute supply of electricity for VAT purposes, it would be necessary to determine to whom the electricity suppliers had transferred the right actually to dispose of the electricity as owner (to the CPO, the eMSP or the electric vehicle user).

Lastly, the classification applied is likely to have consequences for the territory rule (see Annex 1). The cases submitted to the French tax authorities had a cross-border dimension in so far as there were CPOs located in France and an eMSP based in another Member State or in a third country, since the latter's customers could also be based or domiciled outside France.

III. France's interpretation

The CPO carries out battery charging for eMSPs and their customers to which other transactions are linked. These transactions are not an aim in themselves for customers, but a means of better enjoying the principal battery recharging service.

We regard this transaction as a single act in accordance with the principles enshrined in Court of Justice case-law.

Given that recharging the battery is the main component of the single complex transaction for the customer, all the components of this transaction share the tax treatment of the battery recharging operation. Neither the terminal location service nor the possibility of free parking during recharging would appear to be an aim in itself for the customer which could be separated from the recharging operation.

As regards the legal classification of this single transaction, we take the view that it corresponds to an act of supply of electricity for the purposes of VAT. Irrespective of legal classifications adopted in other areas of law, this is an economic transaction consisting of the supply of electricity.

In other words, the deliberations of the energy regulator dated 12 June 2014⁴ which recommended that the French legislator classify the legal relationship as a service contract and not as a power supply contract to ensure that the rules enshrined in the Energy Code or the Consumer Code did not apply are irrelevant.

VAT must retain its own logic guided by the criteria laid down by the CJEU as set out above, and cannot depend on other legal classifications adopted in other areas of law on the basis of different considerations.

Lastly, in the event of the latter solution being adopted, the electric vehicle user will be deemed to obtain the electricity directly from the recharging terminals and to freely select the recharging time and the time of purchase.

⁴ Deliberations of the energy regulator of 12 June 2014 comprising recommendations on the development of smart low-voltage electricity grids.
Recommendation No 8 <https://www.cre.fr/content/download/11844/115624>

However, unlike a lessor within the meaning of the Court of Justice *Auto Lease* judgment, the CPO and the eMSP offer specific services (remote reservation, provision of information on whether terminals are occupied, their location, the type of socket, the recharging service and parking) to electric vehicle users enabling the latter to benefit from vehicle recharging under the best conditions.

In these circumstances, it could be argued that the energy supplier transfers the right to dispose of electricity to the CPO, which subsequently carries out a single complex transaction for the benefit of the eMSP, the main component of which is the supply of electricity. Finally, the eMSP offers this single complex transaction to the final customers.

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ANNEX 1: Territorial rule by chosen classification

I – Transactions between the CPO and eMSP

Classification of the transaction	Place of establishment of the CPO (supplier or provider)	Place of establishment of the eMSP (customer)	Applicable provisions of the VAT Directive	Place of taxation
Supply of services (general principle)	France	France	Article 44 of the VAT Directive.	France
		Member State 1	Article 44 of the VAT Directive.	Member State 1
		Third country	Article 44 of the VAT Directive.	Non-taxable in the European Union
Supply of electricity	France	France	Article 38 of the VAT Directive.	France
		Member State 1	Article 38 of the VAT Directive.	Member State 1
		Third country	Article 38 of the VAT Directive.	Non-taxable in the European Union

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II – Transactions between the eMSP and its customer

Assumption 1: the customer is a non-taxable person.

Classification of the transaction	Place of establishment of the eMSP (supplier or provider)	Domicile of the (non-taxable) customer	Applicable provisions of the VAT Directive	Place of taxation
Supply of services	France	France/ Member State/ Third country	Article 45 of the VAT Directive.	France
	Member State 1	France/ Member State 1/ Member State 2/ Third country	Article 45 of the VAT Directive.	Member State 1
	Third country	France/ Member State/ Third country	Article 45 of the VAT Directive.	Non-taxable in the European Union
Supply of electricity	France/ Member State 1/ Third country	France/ Member State/ Third country	Article 39 of the VAT Directive.	Place of actual use and consumption, i.e. the recharging terminal

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Assumption 2: the customer is a taxable person

Classification of the transaction	Place of establishment of the eMSP (supplier or provider)	Place of establishment of the customer (taxable person)	Applicable provisions of the VAT Directive	Place of taxation
Supply of services		France	Article 44 of the VAT Directive.	France
	France	Member State	Article 44 of the VAT Directive.	Member State
		Third country	Article 44 of the VAT Directive.	Non-taxable in the European Union
		France	Article 44 of the VAT Directive.	France
		Member State 1	Article 44 of the VAT Directive.	Member State 1
	Member State 1	Member State 2	Article 44 of the VAT Directive.	Member State 2
		Third country	Article 44 of the VAT Directive.	Non-taxable in the European Union
		France	Article 44 of the VAT Directive.	France
	Third country	Member State	Article 44 of the VAT Directive.	Member State
		Third country	Article 44 of the VAT Directive.	Non-taxable in the European Union
Supply of electricity	France	France/ Member State/ Third country	Article 39 of the VAT Directive.	Place of actual use and consumption, i.e. the recharging terminal
	Member State 1/ Third country	France	Article 39 of the VAT Directive	Place of actual use and consumption, i.e. the recharging terminal VAT is payable by the French customer
		Member State 1/ Member State 2/ Third country	Article 39 of the VAT Directive.	Place of actual use and consumption, i.e. the recharging terminal