

VAT treatment of charging stations for electric vehicles 2/21/23

On 20 April 2023 the Court of Justice of the European Union (CJEU) ruled on case C-282/22 concerning the VAT treatment of services supplied by EV charging stations that offer charging equipment and software in addition to the charging service. This article explores the CJEU's interpretation.

Background

A Polish company was planning to install publicly accessible charging stations for electric vehicles, which would provide access to the charging station, the necessary integration of the charger into the vehicle's control system, and charging, as well as technical assistance if needed. The charging stations also offered a choice of charging speeds. Access to the charging service was planned through a platform that would allow customers to book a particular charging station, check their history of transactions and payments, postpone payment, etc. The Polish company believed this supply should be treated for VAT purposes as a single compound supply: a supply of services. The Polish tax authority claimed this was a supply of goods. The question is a crucial one because in certain cases this assessment could result in a different place of supply, a different person being responsible for paying VAT, and possibly even a different rate of VAT. The dispute landed in the CJEU.

Case law

The CJEU began its analysis by referring to its earlier case law. If a supply consists of two or more elements and activities, then we need to consider all the circumstances in which it was carried out in order to answer the following questions:

1. Are there two or more separate services or is there a single service for VAT purposes?
2. Is the single supply (if any) treated as a supply of goods or of services?

The basic principle

The CJEU pointed out the basic principle that each supply is treated as separate and independent. However, what is a single supply from an economic viewpoint cannot be split artificially. Under certain conditions, two or more elements (or activities) that a taxable person supplies to a customer, which are formally distinct and could be supplied separately, with VAT also being charged separately, are so closely linked that they objectively constitute a single indivisible supply. This is the case where one or more elements make up the main service but the rest are treated as one or more additional services. An additional service is characterised by the fact that it is not per se the customer's goal, but merely the best way to receive the supplier's main service.

In a single supply, all the elements comprising the main service and any additional services are subject to the same VAT treatment.

The CJEU agreed with the finding that the Polish company's supply qualifies as a single compound supply. To determine whether its dominant element is goods or services, the supply should be viewed from the standpoint of the average user of charging stations, considering the qualitative as well as quantitative meaning of the elements of a supply of services compared to those of a supply of goods. Moreover,

according to the CJEU, any sale of goods always involves a minimal supply of services. Therefore, in assessing whether this is a supply of services or of goods, we need to consider only services that are different from those which are clearly linked to the supply of goods already.

The CJEU stated that under the VAT directive, a supply of goods means the transfer of the right to deal with a tangible asset as its owner, with electricity, gas, heat, cooling energy, etc. being treated as a tangible asset.¹

Providing access to the charging equipment is a minimal supply of services linked to the supply of electricity, so this cannot be considered in evaluating the services portion of a compound supply. Any technical assistance users might need is not an aim per se, but merely a way to secure the best terms for receiving the electricity needed to run the vehicle. So this would be an additional service. The platform available to the charging station's users represents some practical additional equipment whose only purpose is to improve the way vehicles are supplied with electricity and to provide an overview of earlier transactions. The CJEU found that the characteristic and dominant element of this single compound transaction is the supply of electricity, so the transaction qualifies as a supply of goods. In its assessment the CJEU considered the fact that the user's payment may cover not only the supply of electricity but also a downtime charge.

¹ Section 1(20) of the VAT Act, too, makes it clear that electricity, gas, heat, water, steam and cooling energy are to be treated as goods for VAT purposes.