

New CJEU ruling on VAT treatment of electric vehicle charging services 2/49/24



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A recent ruling from the Court of Justice of the European Union (CJEU) addresses the VAT treatment of electricity supplied to users of electric vehicles (EVs) through a third-party network. The original proceedings involved a German company contesting the Swedish tax authority's decision on electricity supplied in Sweden. The CJEU ruling emphasises clarity in VAT treatment and reinforces adherence to the VAT framework. In this article, we summarise the key arguments and facts the CJEU considered in its ruling.

Digital Charging Solutions GmbH (DCS) has its place of business in Germany and does not have a fixed establishment in Sweden. DCS provides EV users in Sweden with access to a network of charging points. DCS has entered into contracts with independent operators running the charging points to help EV users charge their vehicles. DCS provides EV users with a card and an app for authentication. When the card or the app is used, the charging session is registered with the network operator, who then invoices DCS for those sessions. Invoicing takes place at the end of each calendar month, with payment due within 30 days.

Based on invoices received from the network operators, DCS invoices the card or app users on a monthly basis: first, for the quantity of electricity supplied and, second, for access to the network and ancillary services. The price of electricity varies according to consumption, but a fixed subscription fee is always charged for access to the network even if no EV charging was done during a particular period.

The following questions were referred to the CJEU for a preliminary ruling:

- Does a supply of electricity to the EV user, which consists of charging an EV at a charging station, constitute a supply of goods?
- Must such a supply be considered to exist at every stage of the chain of transactions that includes an intermediate company where the chain is accompanied by agreements at each stage but only the EV user decides on items such as the quantity, time and place for charging and how the electricity will be used?

The CJEU refers to earlier judgements confirming that a supply of electricity to charge an EV at a charging point within a public network of such points constitutes a supply of goods. A supply of goods means a transfer of the right to dispose of tangible property as owner. The concept includes any transfer of physical property from one party to another, allowing the recipient to use it as if they were the owner.

The key issue is whether a supply of goods can be established at every intermediary stage in the light of the CJEU's previous judgements, i.e. the Auto Lease Holland case (C-185/01) dated 6 February 2003 and the Vega International Car Transport and Logistic case (C-235/18) of 15 May 2019, where the CJEU determined that a supplier of fuel cards or lease services who issued fuel cards to a lessee is merely a provider of payment services and cannot be treated as having supplied the fuel.

So the most important issue is whether the supply of electricity can be viewed as follows: the charging point operator first supplies it to DCS, and DCS supplies it on to the end user (the EV owner) because it's

the user who chooses the amount, time, place and use of electricity.

There was a concern as to whether instead of being considered a supplier of goods to end users, DCS could be treated as performing a financing role for them.

The CJEU ruled that in this scenario, goods are supplied at every stage of the chain for the following reasons:

- The network operators have contractual relationships with DCS only. Under their agreements, DCS provides EV users with a card and an app, granting access to the charging network so they can charge their EVs at designated charging points.
- The network operators issue a monthly invoice to DCS for the cost of electricity supplied.
- DCS issues monthly invoices to the EV users for this cost, including a fee for related services.
- These contractual relationships should be viewed as sale or purchase commission agreements, as they involve an authorisation whereby the commission agent engages in the purchase/supply of goods on behalf of the principal and the goods acquired by the commission agent are identical to those sold. So there are two identical successive supplies for VAT purposes because a taxable person who, acting in their own name but on behalf of another person, participates in the supply of goods is considered to have himself acquired and supplied those goods. The contract can be a sale or purchase commission agreement.

Additionally, the CJEU provided guidance on how to assess whether the supply of electricity and the services supplied by DCS (access to the network and ancillary services) constitute a single composite transaction where the supply of electricity is the characteristic and dominant element, or whether the supply consists of two separate transactions, i.e. the supply of electricity and the provision of access to the charging network.

The CJEU holds that each transaction should typically be regarded as a distinct and independent one. However, a transaction that constitutes a single service from an economic standpoint should not be artificially split. A transaction is considered a single one if two or more elements or activities the taxable person provides to the customer are so closely linked that they objectively form a single, indivisible economic supply, where separation of those elements would be artificial. It's essential to remember that ancillary services will always have the same VAT treatment as the main transaction.

It should be noted that DCS issues a monthly invoice to the end user, separately indicating a fee for EV charging (electricity) and a fixed fee for access to the charging network. The access fee is payable whether or not the user has done any charging in that month. According to the CJEU, if the services were considered inseparable from the supply of electricity, that would ignore the economic reality. Where only the service assessed by the court is provided, it should be treated as a sale of electricity. The situation is further complicated by the fact that billing for the use of DCS services can be done in various countries. Also, the service fee does not vary according to the amount of electricity supplied to the user or the number of charging sessions. This means the CJEU agrees with DCS's practice of treating the access service and the supply of electricity as separate transactions.

Key takeaways

Businesses should review their current VAT practices in the light of the CJEU ruling to ensure compliance, inform their VAT strategies, and minimise potential liabilities in other countries. Engaging tax professionals to interpret and implement these changes could further streamline the process.