

**Case C-60/23**

**Request for a preliminary ruling**

**Date lodged:**

6 February 2023

**Referring court:**

Högsta förvaltningsdomstolen (Sweden)

**Date of the decision to refer:**

3 February 2023

**Appellant:**

Skatteverket

**Respondent:**

Digital Charging Solutions GmbH

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**HÖGSTA  
FÖRVALTNINGS-  
DOMSTOLEN**

**MINUTES**  
3.2.2023  
[...]

[...]

**APPELLANT AND RESPONDENT**

Skatteverket  
[...]

**RESPONDENT AND APPELLANT**

Digital Charging Solutions GmbH [...]

**SUBJECT MATTER**

Advance tax ruling on value added tax ('VAT'); request for a preliminary ruling from the Court of Justice of the European Union

[...]

The Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) makes the following

## **ORDER**

A request for a preliminary ruling in accordance with Article 267 TFEU is to be made to the Court of Justice of the European Union as set out in the annexed request for such preliminary ruling (annex to the minutes).

[...]

## **ANNEX**

### **Annex to the minutes**

**Request for a preliminary ruling in accordance with Article 267 TFEU concerning the interpretation of Articles 14(1), 15(1) and 24(1) of Council Directive 2006/112/EC on the common system of value added tax ('the VAT Directive')**

### **Introduction**

- 1 The Supreme Administrative Court seeks a preliminary ruling in order to clarify whether the charging of electric vehicles at a charging point means that the user of the electric vehicle purchases electricity – which, in accordance with the VAT Directive, is to be deemed to be tangible property and treated as goods – or whether, when charging the vehicle, the user is instead supplied with some form of service.
- 2 If the supply is to be regarded as constituting the delivery of goods in the form of electricity, the Supreme Administrative Court also seeks clarification of whether the supply is to be deemed to be made by the company operating the charging point ('the charging point operator') directly to the user or whether the supply to the user is instead to be deemed to be made by a company which provides a network of charging points to users ('the network company'). The latter view implies that the supply is made in two steps, first from the charging point operator to the network company and subsequently from the network company to the user.
- 3 The questions referred have arisen in a case concerning a German company which provides a network of charging points to users of electric vehicles in Sweden. The

answer to the questions is important as regards the country in which the company's supply is to be subject to taxation.

### **Relevant provisions of European Union law**

- 4 In accordance with Article 2(1)(a) and (c) 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 to be subject to VAT.
- 5 It follows from Article 14(1) thereof that 'supply of goods' is to mean the transfer of the right to dispose of tangible property as owner. Under Article 15(1), electricity is to be treated as tangible property.
- 6 Pursuant to Article 24(1), 'supply of services' is to mean any transaction which does not constitute a supply of goods.
- 7 In the case of the supply of electricity to a taxable dealer, the place of supply is, in accordance with Article 38(1) of that Directive, to be deemed to be the place where that dealer has established his or her business or has a fixed establishment for which the goods are supplied. Where the electricity is supplied to a non-taxable person, pursuant to Article 39 thereof the place of supply is to be deemed to be the place where the customer effectively uses and consumes the goods.
- 8 In the event that the supply cannot be deemed to be a supply of electricity, but a service, then, in accordance with the primary rule in Article 45 of the Directive, the place of supply of services is to be the place where the supplier has established his or her business.

### **Relevant provisions of national law**

- 9 In accordance with point 1 of the first subparagraph of Paragraph 1 of Chapter 1 of the mervärdesskattelagen (1994:200) (Law on value added tax; 'the ML'), VAT is to be paid, in principle, on supplies in the country of goods or services which are subject to taxation and are carried out by a taxable person acting as such.
- 10 Under Paragraph 6 of Chapter 1 thereof, 'goods' is to be understood as meaning tangible property, including immovable property and gas, heat, cooling energy and electricity. 'Services' is understood as meaning everything else that can be supplied.
- 11 Pursuant to point 1 of the first subparagraph and point 1 of the third subparagraph of Paragraph 1 of Chapter 2 of the ML, the supply of goods is to be understood as, inter alia, a supply of goods for consideration and the supply of services is to be understood as, inter alia, a supply, transfer or other provision of a service to a person for consideration.

- 12 Provisions which correspond to Articles 38, 39 and 45 of the [VAT Directive] have been transposed, principally with the same wording, into Paragraphs 2c, 2d and 6 of Chapter 5 of the ML.

**The facts of the case**

- 13 The case concerns an advance tax ruling from the Skatterättsnämnden (Revenue Law Commission, Sweden) against which an appeal has been lodged before the Supreme Administrative Court by both the Skatteverket (Swedish Tax Agency) and the company which sought the advance tax ruling, Digital Charging Solutions GmbH. The Revenue Law Commission found that the supply by the company constitutes a complex supply mainly characterised by the supply of electricity and that the place of the supply should therefore be deemed to be in Sweden.
- 14 Both the Tax Agency and the company maintain that the company is to be deemed to supply electricity to the users, but they do not agree on the question of whether that is a single complex supply or two separate supplies.
- 15 The facts are as follows.
- 16 Digital Charging Solutions has its place of business in Germany and does not have a fixed establishment in Sweden. The company supplies users of electric vehicles in Sweden with access to a network of charging points. Via the network, the users receive current information on prices and availability of the charging points on the network. In addition, the network service includes functions for searching for and finding charging points and route planning.
- 17 The charging points on the network are not operated by the company but by operators with whom the company has entered into a contract. The company provides the users with a card and an application for authentication to enable them to charge vehicles at the charging points. When the card or the application is used the charging session is registered with an operator, which invoices the company for the users' charging session. Invoicing takes place on a monthly basis at the end of each calendar month and payment must be made within 30 days.
- 18 After the company has received the invoice from the operators, the company invoices the users on a monthly basis for the quantity of electricity supplied and access to the network service. The charging session and the network service are invoiced separately. Payment must be made within 14 days after receipt of the invoice. The price for the electricity is variable but a fixed fee is levied for the service. The fee for the service is the same regardless of whether the user actually purchased electricity during the relevant period or not. It is not possible only to purchase electricity from the company without at the same time paying for access to the network.

## Arguments of the parties

### *Tax Agency*

- 19 The Tax Agency claims that the advance tax ruling should be confirmed. The Tax Agency is of the view, as is the Skatterättsnämnden (Revenue Law Commission, Sweden), that the company's supply should be deemed to constitute a supply of electricity to which the network service is subordinate – which means that everything which the company supplies to the user is taxable in Sweden – but at the same time wishes to highlight the fact that the relevance of the earlier decisions of the Court of Justice of the European Union to the question of whether what is actually provided can be deemed to be a supply of electricity is unclear.
- 20 The Swedish Tax Agency notes that the Court of Justice has in fact, in similar cases, taken the view that a company whose credit card has been used to pay for the purchase of fuel did not supply the fuel to the cardholder but rather supplied credit, since at no time did the company have the authority to decide the manner in which or the purpose for which the fuel should be used (*Auto Lease Holland*, C-185/01, EU:C:2003:73, and *Vega International Car Transport and Logistic*, C-235/18, EU:C:2019:412).

### *Digital Charging Solutions*

- 21 Digital Charging Solutions also maintains that it supplies electricity but states, unlike the Tax Agency, that there are two separate supplies: one supply of electricity and one supply of a network service. The company therefore claims that the advance tax ruling should be amended and that the Supreme Administrative Court should declare that it is only that part of the company's supply which concerns the supply of electricity which should be taxed in Sweden.
- 22 The company states that the facts of the present case differ from those in the case of *Auto Lease Holland* (C-185/01, EU:C:2003:73). In the present case, the company has entered into separate contracts for the supply of electricity with users and with the charging point operators. It is clear to the parties involved that the supply of electricity takes place in two steps. Another difference is that there is no payment in advance. On the contrary, it is the company which finances each purchase of electricity and which subsequently resells the electricity to the users.

## The need for a preliminary ruling

### *Introduction*

- 23 In order subsequently to be able to rule on whether the transaction at issue in the case consists of one or more supplies, the Supreme Administrative Court must first take a view on whether a supply of electricity forms part of the supply by the company at all. Indeed, the parties to the case agree that the company does supply

electricity to the users, but there are arguments in favour of adopting an opposing view.

*The Revenue Law Commission's ruling*

- 24 The Revenue Law Commission, which, like the parties to the case, took the view that the company supplies electricity, stated that the electricity is first to be regarded as being transferred between the charging point operators and the company and thereafter between the company and its users. In support of the position adopted by it, the Revenue Law Commission argued that the electricity was supplied from the charging point operators to the company in a chain of transactions which is accompanied by contracts, that the company is invoiced for the electricity by the operators and thereafter invoices the users on a monthly basis and that there is no contract for the supply of electricity between the operators and the users who purchase the electricity.
- 25 A minority in the Revenue Law Commission was, however, of the view that the company did not purchase any electricity from the operator, but rather stated that what happens when the user charges the vehicle is that the operator either supplies the user with charging sessions or supplies electricity to the user. That minority, with reference to the findings of the Court of Justice in the cases of *Auto Lease Holland* (C-185/01, EU:C:2003:73), *Vega International Car Transport and Logistic* (C-235/18, EU:C:2019:412) and *Fast Bunkering Klaipėda* (C-526/13, EU:C:2015:536), was of the view that the subsequent invoicing of the company does not mean that the user purchases electricity on behalf of the company or that the company purchases the electricity on its own account to resell it. The minority stated that the company supplies an administrative service which consists of, inter alia, the supply of a network of charging points and the subsequent invoicing of the users, which includes a certain provision of credit.
- 26 The Revenue Law Commission was thus not unanimous on the question of whether what is supplied by the company constitutes a supply of electricity.

*Question from the Naczelny Sąd Administracyjny in Poland*

- 27 In a request for a preliminary ruling submitted to the Court of Justice on 26 April 2022, the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) seeks a ruling on whether a complex transaction made to users of electric vehicles at charging points is to be regarded as constituting a supply of goods or a supply of services (Case C-282/22 before the Court of Justice). A lower court has taken the view in that case that there is no supply of electricity.
- 28 The question raised in the Polish case is also relevant to the examination of the present case, but concerns only the question of whether electricity can be regarded as being supplied when a charging point operator directly supplies to the user the possibility of charging electric vehicles. If the Court of Justice were to take the view that there is a supply of electricity in such a situation, the question arises

whether there can also be deemed to be a supply of electricity between the intermediary network company and the user where, as in the present case, the transactions are governed by a chain of contracts and there is no contract between the operator and the user.

*The previous case-law of the Court of Justice*

- 29 In previous rulings in the cases of *Auto Lease Holland* (C-185/01, EU:C:2003:73) and *Vega International Car Transport and Logistic* (C-235/18, EU:C:2019:412), the Court of Justice has taken the view that there is no supply of fuel from a company to a final consumer when the company has supplied the consumer with a card which the consumer has used to refuel a vehicle at fuel suppliers. In those rulings, the Court of Justice stated that the final consumer had a free choice as to conditions such as, inter alia, its quality, quantity, the time of purchase and the way in which the fuel would be used, and that the final consumer wholly bears the costs of the fuel. In the view of the Court of Justice, the intermediary company is not deemed to have purchased the fuel to resell it; rather it was instead the final consumer who purchased the fuel directly from the fuel supplier.
- 30 In addition, in the case of *Fast Bunkering Klaipėda* (C-526/13, EU:C:2015:536), which concerned the bunkering of fuel to operators of vessels which was carried out by a fuel supplier on the high seas, the Court of Justice gave weight to the ability to dispose of the fuel. The orders for bunkering were made by a company which was also invoiced for the fuel by the fuel supplier. The Court of Justice found that the company acted in its own name as regards both the supplier and the operators of the vessels. However, the Court of Justice took the view that if the transaction could be deemed to constitute a supply of goods to and from the company, it was necessary that give the right to the company effectively to dispose of the fuel as owner (paragraphs 50 to 52).
- 31 Furthermore, in cases where the Court of Justice has held that there was a supply of electricity in a number of stages, the Court gave particular weight to who made the purchase and had a free choice as to its quality and quantity (*Wojkowska Agencja Mieszkaniowa w Warszawie*, C-42/14, EU:C:2015:229, paragraphs 26 and 27).

*Guidelines from the Value Added Tax Committee*

- 32 Some of the facts which the Court of Justice has identified as tending to suggest that the intermediary company should not be regarded as supplying fuel to the final consumer also occur in the present case. Accordingly, the case-law of the Court of Justice gives some support to the interpretation that the company does not supply electricity to the users. However, the EU VAT Committee adopted, in June 2019 and April 2021, guidelines which tend to support an opposite view (Guidelines resulting from the 113th meeting of 3 June 2019, document A–taxud.c.1(2019) 6589787–972 and Guidelines resulting from the 118th meeting of 19 April 2021, document C–taxud.c.1(2021) 6657618–1018).

- 33 It is apparent from the guidelines that the Committee unanimously considered that, in the charging of electric vehicles in a value chain involving a charging point operator and a company which supplies network services, the operator is to be deemed to supply electricity in accordance with Articles 14(1) and 15(1) of the VAT Directive to the network company and the network company is to be deemed to supply electricity to users of electric vehicles.

*Conclusion*

- 34 In the view of the Supreme Administrative Court, it is not clear how the previous rulings of the Court of Justice on the supply of fuel relate to the situation at issue in the present case, in which there are contracts at every stage but where it is the user of the electric vehicle and not the intermediary company who has the right to decide on matters such as quantity, time of purchase and charging location as well as how the electricity is to be used.
- 35 The Supreme Administrative Court therefore finds that it is necessary to request a preliminary ruling from the Court of Justice of the European Union.

**Questions**

- 36 The Supreme Administrative Court requests, in light of the background set out above, an answer to the following questions.

*Question 1:* Does a supply to the user of an electric vehicle consisting of the charging of the vehicle at a charging point constitute a supply of goods under Articles 14(1) and 15(1) of the VAT Directive?

*Question 2:* If the answer to Question 1 is in the affirmative, is such a supply then to be deemed to be present at all stages of a chain of transactions which include an intermediary company, where the chain of transactions is accompanied by a contract at every stage, but only the user of the vehicle has the right to decide on matters such as quantity, time of purchase and charging location, as well as how the electricity is to be used?