

EV charging: VAT battle lines are forming

Scott Harwood explains how the charging of electric vehicles is creating uncertainty when it comes to the VAT rules

When new technology or innovative business models appear in the marketplace, it often takes time for the VAT rules to catch up, and the charging of electric vehicles (EVs) looks set to be no exception.

According to industry estimates, there are already more than one million full EVs on the road in the UK, plus a further 655,000 plug-in hybrids. Although vehicles that can use charging points currently make up only 5% of all vehicles, that proportion is rapidly growing and demand for car charging is sure to grow with it.

While the market remains relatively new, some important issues have already come to light related to the VAT position of EV charging, identifying likely areas of complexity and potential dispute. Businesses that provide, use or are involved in the supply chain of EV charging should check their VAT position and ensure they are prepared for how things are likely to evolve in the coming months and years.

Three points of uncertainty

Information emerging from the courts and HMRC is beginning to show where the key VAT disputes are likely to arise.

1. Why aren't businesses generally entitled to recover VAT on the costs of charging EVs, including those used by employees travelling for business?

HMRC's policy on VAT recovery on EV charging costs, first announced in 2021, is considerably less generous than that for petrol or diesel vehicles. For example, when employees use their own vehicles for business trips, HMRC allows the employer to recover VAT on mileage claims submitted by employees using a petrol or diesel vehicle but does not permit them to recover VAT incurred by employees when charging an EV at home. HMRC stated in January 2022 that it would review its policy on VAT recovery for EVs, but has yet to provide any amended guidance.

Interestingly, after protests by the Chartered Institute of Taxation, HMRC finally agreed in late 2023 that reimbursement payments made to employees for the costs of charging a company EV at home are no longer a taxable benefit, but did not adopt a similar stance for VAT.

2. What rate of VAT should apply to electricity bought through public charging points?

Currently, charging EVs at a private address can benefit from the 5% reduced rate of VAT that applies to domestic supplies of electricity, but charging vehicles at public charge points is subject to VAT at the standard rate of 20%. HMRC's position has raised concerns from a number of bodies, including the Environmental and Climate Change Committee in the House of Lords, that EV drivers who do not have access to

a charging point powered by their own domestic electricity supply will pay more for their motoring costs, thus discouraging the take-up of EVs. Nevertheless, HMRC has so far insisted that it will not reconsider this policy.

HMRC is also yet to provide guidance on how to distinguish between domestic and public charging in some borderline situations – e.g. for using EV charging facilities at holiday accommodation, caravan parks or in communal parking areas for private residents.

3. Who is liable to account for VAT on EV charging and how? What happens when access to charging points is provided via an agent or through a network of suppliers and intermediaries, or when supplies related to EV charging are made across international borders?

The Court of Justice of the European Union (CJEU) has already considered some VAT issues emerging from this new market in the EU, making the following broad findings.

The fee for using a public charging point is payment for a supply of electricity for VAT purposes, and the provision of basic onsite payment and connection facilities for the charging point form part of an overall supply of electricity by the operator of the charging point.

Other related services, such as a subscription to a network of charging points that also provides supporting information (e.g. on prices and availability, route planning, etc.) and a payment account covering facilities offered by third party providers, are likely to be regarded as a separate supply from the electricity. The CJEU has also suggested that, while contractually acting as agent between the charging point owner and the customer, the network operator would make two supplies for VAT purposes – one of network services and another of the electricity itself. These charges might be subject to VAT in different jurisdictions if the charging point and the customer are not located in the same country.

However, these rulings are not binding in the UK, and it remains to see how HMRC and the domestic courts will interpret the application of the UK VAT rules when similar disputes inevitably arise.

Who will be affected?

These issues show that VAT on EV charging is likely to be a major issue for commercial operators of charging points, and will also have an impact on a range of other stakeholders who use or receive income from them. As well as the individual EV users and their employers, there could also be VAT implications for landowners, including social landlords, as well as holiday park operators, hospitals or universities with charging points installed on their property.

What action should be taken?

There are no hard and fast answers to these three points of uncertainty as yet, so now is a good time to check and protect your business's VAT position.

Firstly, you should establish whether you receive income from or have significant expenditure on EV charging, or if you provide or receive any related services. Employers may wish to quantify their potential lost VAT recovery on expense claims from employees using their EV for business travel, in anticipation of making a claim should HMRC keep its promise to relax its rules on that point. It may also be a good opportunity to review the best car scheme model for the business, with VAT efficiency firmly in mind.

Those who feel particularly strongly about this issue may even wish to join the many stakeholders currently lobbying HMRC for a VAT system for EVs that is more consistent with that for other vehicles. Surely the time has come for a level playing field for EV users across all relevant taxes, regardless of where they charge their vehicles?

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