

Annex

Settlement of Accounts, Billing

T&C - BGC

V 8.00

Document Management

Document History

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1 Scope of Settlement

Settlement of accounts and billing includes, but is not limited to, the following:

- a) determination of monetary balances per clearing period and balance group,
- b) determination of monetary balances for a clearing period per balance group,
- c) determination of clearing fee,
- d) preparation of statements of account for each market participant (BGR),
- e) payment transactions.

2 Basis for the Settlement of Accounts

Components of the settlement of accounts for a market participant prepared by the BGC are:

- Imbalance energy price:
Monthly sum of the quarter-hour imbalance energy volume purchased or delivered multiplied by the corresponding quarter-hour imbalance energy price broken down by purchase and delivery per balance group.
- Price of the additional settlement mechanism:
Monthly sum per balance group of consumption quantities subject to charges and the quantity generated multiplied by the monthly price of the additional settlement mechanism.
- Clearing fee
- Taxes

3 Billing, Reverse Charge and Payment Transactions

- a) Payments are made by direct debit or direct credit transfers. Market participants are sent invoices for a period ending on a date defined by the BGC. The VAT ID number must be notified to the BGC.
All invoices are issued in euro with value added tax if the revenue is subject to taxation pursuant to the Austrian Value Added Tax Act. These taxes and any other future taxes and charges due on activities of the BGC or related to these activities are invoiced by the BGC in addition to the fee and must be paid by the market participant.
- b) If a foreign market participant does not operate a permanent establishment in Austria, the invoices for energy purchases by a foreign market participant are issued without value added tax, because this revenue is not taxable in Austria. Market participants are responsible for tax payments due in their countries of domicile and shall hold the BGC harmless and non-actionable in this respect.
- c) For credits balances determined by the BGC for the delivery of energy by a foreign market participant without a permanent establishment in Austria, the BGC applies the reverse charge mechanism pursuant to § 19 (1c) in conjunction with § 3 (13) Value Added Tax Act 1994, as amended: The BGC withholds the value added tax and transfers it to the tax authorities.
- d) Every market participant is under the obligation to immediately notify the BGC in writing, i.e. within 14 days at the latest, of the establishment or dissolution of a permanent establishment or the establishment or discontinuation of a registered office in Austria. If no notification is

made, the market participant shall hold the BGC fully harmless and nonactionable should the tax authorities raise claims against the BGC.

- e) Invoice amounts are payable on the due date stated on the invoice and will be collected by SEPA business-to-business direct debit order processes. Credit and debit transfers are transacted by the BGC in accordance with the value date T+3. The invoices for the first clearing may also be issued for advance payments on the estimated invoice amount.
- f) Every market participant must notify the BGC of an account with a bank within the EU or in Switzerland used for payment transactions and which has a functionality that permits it to be used for the execution of SEPA business-to-business direct debits, also taking into account the due dates and payment deadlines pursuant to T&C-BGC, including all Annexes. A market participant may refuse to open an account with certain banks only for objectively justified reasons. Every market participant must give the BGC or its agent a SEPA business-to-business direct debit mandate for this account in favor of an account of the BGC or its agent and ensure that its account has sufficient cover on the due date. Credit transfers are transferred from the BGC's account to the account of the market participant.

4 Right to Raise Objections

The market participant has the option of raising an objection with the BGC in writing against invoices within 10 banking business days, calculated from the date of the invoice. This right does not release the market participant from the obligation to pay the invoice, which it believes to be incorrect and requires clarification. If the objection is not filed within the period stated, the invoice shall be binding. The BGC must correct faulty invoices within the two subsequent billing periods. Such corrections to invoices shall be notified separately.

5 Adjustments to Payments on Account

The BGC reserves the right to adjust the amount of the payment on account on the basis of the available settlement data for the balance group.

6 Netting of Counterclaims

Generally, netting against counterclaims is excluded.

Only the BGC is permitted to do so if the market participant is at risk of imminent insolvency. Furthermore, netting against claims of the contractual parties is permitted if such claims are legally linked to amounts owed that are to be netted and have been recognized by a court of law or by the BGC.

7 Changes to the Legal Basis

Should there be changes to the underlying legal framework, in particular, with respect to value added tax law in Austria, the invoices are issued in accordance with the currently valid legal provisions until the Annex "Settlement of Accounts, Billing" has been amended to the new legal situation.

8 Billing Components and the Obligation to Submit a Statement to Establish a Taxable Event

8.1. Introduction

Pursuant to § 1 in conjunction with § 2 (2) of the Regulation on the Prevention of VAT Fraud (*UStBBKV - BGBl. II No. 369/2013*) in the case of transactions relating to the supply of gas and electricity to an entrepreneur whose main activity in relation to the acquisition of these commodities is their resupply and whose own consumption of these commodities is of minor importance, the VAT shall be paid by the recipient of the service if the recipient is an entrepreneur. In connection with the aforementioned *UStBBKV*, the Federal Ministry of Finance has published information on its website regarding a provision on doubtful circumstances recognized by the Ministry, according to which, in the event of doubt as to whether a service within the meaning of § 2 *UStBBKV* is given in specific cases, the service provider and the service recipient mutually agree that the tax liability is transferred to the service recipient, with a written statement of the service recipient being deemed sufficient proof. A presentation of the invoice components used by the BGC, and the provisions required for the implementation of the *UStBBKV* are presented here to make it easier to understand the invoices issued.

8.2. Obligation to Submit a Statement to Establish a Taxable Event

Every contractual party is under the obligation to give a statement on whether it is subject to the provisions of § 1 in conjunction with § 2 (2) *UStBBKV* or to § 3 (13) and (14) as well as § 19 (1) lit c or subject to § 3a (6) and (7) Value Added Tax Act. The statement must be supplied to the BGC by completing the relevant form within 14 days after being requested to do so by the BGC, with the post stamp being decisive for compliance with this deadline. Should a contractual partner fail to meet this obligation, the BGC will as a rule assume in the case of a BGR with a permanent establishment in Austria that it is subject to the provisions of § 1 in conjunction with § 2 (2) *UStBBKV*. This provision does not apply to companies without a permanent establishment in Austria.

8.3. General Presentation of Invoice Types

The presentation below is an overview of the invoicing procedures for the invoice types used by the balance group coordinator (BGC) and is designed to give the contractual partners an understanding of how invoices are composed and make it easier to verify their correctness.

8.3.1. Invoice Type "Delivery of Imbalance Energy – BGR to BGC" ("ELF")

Item per balance group of the BGR; imbalance energy quantity ("AE") must be stated on the invoice in kWh.

The item contains imbalance energy per settlement period, which was supplied by the BGR and, in the case of a **positive imbalance energy price ("AEP") per quarter hour**, means revenues for BGR and costs for BGC.

Includes imbalance energy per settlement period supplied by BGV and, in the case of a **negative imbalance energy price ("AEP") per quarter hour**, means costs for the BGR and revenues for the BGC (explanation: this is a "disposal service" and therefore classified as an "other service" within the meaning of § 3a VAT Act (*UStG*), which is why it is not energy delivery within the meaning of § 1 in conjunction with § 2 (2) *UStBBKV*).

8.3.2. Invoice type "Purchase of imbalance energy - BGR from BGC" ("EBZ")

Includes imbalance energy per settlement period purchased from the BGR and, in the case of a **positive AEP per quarter hour**, it means costs for the BGR and revenues for the BGC. Includes imbalance energy per settlement period purchased from the BGR and, in the case of **negative AEP per quarter hour**, it means revenues for the BGR and costs for the BGC. (Explanation: this is a "disposal service" and therefore an "other service" within the meaning of § 3a VAT Act and not energy delivery within the meaning of § 1 in conjunction with § 2 (2) *UStBBKV*).

8.3.3. Invoice type "Invoice ZAM to BGR for manual frequency restoration reserves (mFRR)" (ZAM¹)

This price is used to pass on mFRR costs to the BGR's commercial balance groups by generation and consumption quantities. (Explanation: this is classified as an "other service" in the meaning of § 3a VAT Act and therefore, it is not an energy delivery in the meaning of § 1 in conjunction with § 2 (2) *UStBBKV*).

8.3.4. Invoice type "Clearing Fee pursuant to § 12 Settlement Agencies Act (Federal Law Gazette I 121/2000 Art. 9) in conjunction with the Clearing Fee Regulation (Federal Law Gazette II No. 480/2012)"

Item per balance group of the BGR; the trade/consumption volume is given in kWh on the invoice.

The assessment basis is trade and consumption turnover of the BGR per settlement period, which means costs for the BGR and income for the BGC.

(Explanation: this is classified as an "other service" in the meaning of § 3a VAT Act and therefore, it is not an energy delivery in the meaning of § 1 in conjunction with § 2 (2) *UStBBKV*).

8.4. Invoice BGR (Explanation: energy delivery as main activity)

8.4.1. Resident for taxation purposes in cases subject to § 1 in conjunction § 2 (2) *UStBBKV*

¹ Additional settlement mechanism mFRR ("zusätzlicher Abrechnungsmechanismus für Tertiärregelleistung, ZAM")

The following applies to contractual partners who have given a written statement to the BGC using the corresponding form stating that they are subject to § 1 in conjunction with § 2 (2) *UStBBKV*.

- a. **Deliveries and other services for payment, BGC delivers energy to BGR (AEP):**
 - i. In the case of a positive price, the "reverse charge" mechanism pursuant to § 19 (1d) VAT Act in conjunction with § 1 in conjunction with § 2 (2) *UStBBKV* shall apply; in this case, the recipient of the service (BGR) is responsible for paying the tax (reverse charge).
 - ii. In the case of a "disposal service" (negative energy price), 20% value added tax is charged.
- b. **Deliveries and other services for payment, BGR delivers energy to BGC (AEP):**
 - i. In the case of a positive price, the "reverse charge" mechanism pursuant to § 19 (1d) VAT Act in conjunction with § 1 in conjunction with § 2 (2) *UStBBKV* applies; in this case, the recipient of the service (BGC) is responsible for paying the tax (reverse charge).
 - ii. In the event of a negative price, 20% VAT will be charged (explanation: it is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- c. **Price of the additional settlement mechanism (other service for payment), BGR pays BGC (P-ZAM):**
 - i. In the case of a positive price (P-ZAM), 20% VAT will be charged (explanation: it is an "other service" and NOT a DELIVERY pursuant to § 3a VAT Act).
- d. **Clearing Fee pursuant to § 12 Settlement Agencies Act (Federal Law Gazette I 121/2000 Art. 9) in conjunction with the Clearing Fee Regulation (Federal Law Gazette II No. 480/2012):**

This is an "other service" and NOT a DELIVERY pursuant to § 3a VAT Act.

8.4.2. Residents for taxation purposes outside the scope of application of § 1 in conjunction with § 2 (2) *UStBBKV*

The explanations below apply to contractual partners that have given written statements to the BGC stating that they are not subject to § 1 in conjunction with § 2 (2) *UStBBKV*.

- a. **Deliveries and other services for payment, BGC delivers energy to BGR (AEP):**
 - i. In the case of a positive price (AEP), 20% VAT is charged pursuant to § 3 VAT Act; in this case, 20% VAT is generally charged, because a secondary activity is not covered by *UStBBKV*.
 - ii. In the case of a negative price (AEP), 20% VAT is charged pursuant to § 3a VAT Act; in this case, 20% VAT is generally charged, because it is an "other service".
- b. **Deliveries and other services for payment, BGR delivers energy to BGC (AEP):**
 - i. In the case of a positive price (AEP), 0% VAT is charged, and the "reverse charge" mechanism pursuant to § 19 (1d) VAT Act in conjunction with § 1 in conjunction with § 2 (2) *UStBBKV* applies; in this case, the recipient of the service (BGC) is responsible for paying the tax (reverse charge).
 - ii. In the case of a negative price (AEP), 20% VAT is charged (explanation: it is an "other service" and NOT a DELIVERY pursuant to § 3a VAT Act).
- c. **Price of the Additional Settlement Mechanism ("Other Service" for Payment), BGR pays BGC (P-ZAM):**
 - i. In the case of a positive price (P-ZAM), 20% VAT is charged (explanation: it is an "other service" and NOT a DELIVERY pursuant to § 3a VAT Act).

- d. **Clearing Fee pursuant to § 12 Settlement Agencies Act (Federal Law Gazette I 121/2000 Art. 9) in conjunction with the Clearing Fee Regulation (Federal Law Gazette II No. 480/2012):**

This is an "other service" and NOT a DELIVERY pursuant to § 3a VAT Act.

8.4.3. Non-residents for taxation purposes (explanation: contractual partners from other EU countries and CH are not subject to the *UStBBKV*)

- a. **Deliveries and other services for payment, BGC delivers energy to BGR (AEP):**
- i. In the case of a positive price (AEP), 0% VAT is charged and the "reverse charge" mechanism pursuant to § 19 (1) c VAT Act applies; provided there is NO permanent establishment in Austria, tax liability is transferred to the recipient of the service.
 - ii. In the case of a negative price (AEP), 0% VAT is charged, and the "reverse charge" mechanism pursuant to § 3a (6) and (7) VAT Act applies (explanation: this is a "disposal service", because the energy consumed by the BGR additionally includes payment for the BGR – 0% RC, as the recipient of the service has its registered office outside of Austria).
- b. **Deliveries and other services for payment, BGR delivers energy to BGC (AEP):**
- i. In the case of a positive price (AEP), 0% VAT is charged, because the reverse charge mechanism pursuant to § 19 (1c) VAT Act applies; provided there is NO permanent establishment in Austria, the recipient of the services (BGC) must pay the taxes due and 0% VAT is charged.
 - ii. In the case of a negative price (AEP), 0% VAT is charged, because the reverse charge mechanism pursuant to § 3a (6) and (7) VAT Act applies (explanation: in this special case, the reference is to a "disposal service", because the purchase of energy by the BGC additionally includes a fee for the BGC; therefore, 0% VAT is charged pursuant to the reverse charge mechanism referred to in § 3a (6) VAT Act.
- c. **Price of the Additional Settlement Mechanism ("Other Service" for payment), BGR pays BGC (P-ZAM):**
- i. In the case of a positive price (P-ZAM), 0% VAT is charged, because the reverse charge mechanism pursuant to § 3a (13) and (14) VAT Act applies (explanation: this is an "other service", and NOT a DELIVERY of energy – 0% VAT is charged referring to the reverse charge mechanism, because the recipient of the service has its registered office outside of Austria).
- d. **Clearing Fee pursuant to § 12 Settlement Agencies Act (Federal Law Gazette I 121/2000 Art. 9) in conjunction with the Clearing Fee Regulation (Federal Law Gazette II No. 480/2012):**
- This is an "other service" and NOT a DELIVERY of energy; therefore, the reverse charge mechanism pursuant to § 3a (6), (7) VAT Act applies.

8.5. Settlement, Grid Operators

As a rule, the assumption is that grid operators in Austria are subject to § 1 in conjunction with § 2 (2) *UStBBKV*; any departure from this assumption must be notified in a written statement by the grid operator to the BGC. Therefore, grid operators are considered residents for tax purposes and subject to § 1 in conjunction with § 2 (2) *UStBBKV*.

8.5.1. Integrated Grid Operators

A grid operator is considered an integrated grid operator (GO) when the supplier and the grid operator are the same legal entity, and therefore, "main activity" is assumed (in this context, a reference is made to the published letter of the industry association "Österreichs E-Wirtschaft" sent to the Federal Ministry of Finance dated 2 December 2013 regarding the interpretation of the *UStBBKV* by the energy industry in Austria).

8.5.2. Unbundled Grid Operator

A grid operator (GO) is considered to be an unbundled GO when the supplier and the grid operator are independent/autonomous legal entities, and therefore "main activity" is assumed (in this context, a reference is made to the published letter of the industry association "Österreichs E-Wirtschaft" sent to the Federal Ministry of Finance dated 2 December 2013 regarding the interpretation of the *UStBBKV* by the energy industry in Austria).

8.5.3. Grid Operator with a Special Agreement NOT pursuant to § 1 in conjunction with § 2 (2) *UStBBKV*

When the GO explicitly states that it wants settlement that differs from the above forms, the GO must notify the BGC of this by sending a written statement. In this case, the grid operator is classified as a resident for tax purposes not subject to § 1 in conjunction with § 2 (2) *UStBBKV*.

8.6. Special Case (APG Special Balance Group)

Settlement for the special balance group APG must be recorded separately in writing. In this case, the grid operator is classified as a resident for tax purposes not subject to § 1 in conjunction with § 2 (2) *UStBBKV*.

9 Transitional Provisions

This Annex "Settlement of Accounts, Billing", Version 8 takes effect as of 1 January 2019.