

# **Annex to the General Terms**

## **“Settlement of Accounts and Billing”**

V 7.00

## Document Management

### Document History

<b>Version</b>	<b>Status</b>	<b>Date</b>	<b>Supervisor</b>	<b>Reason for Amendment</b>
V 1.00	Approved	13 Sep. 2001	ECG	Appendix to Official Notice of 13 Sep. 2001, G BKA 02/01
V 2.00	Approved	20 Dec. 2002	ECG	Appendix to Official Notice of 20 Dec. 2002, G BKA 09/02
V 3.00	Approved	17 Feb. 2004	ECG	Appendix to Official Notice of 17 Feb. 2004, G BKA 01/04
V 4.00	Approved		ECG	Reverse Charge
V 5.00	Approved	31 Jan. 2011	ECG	Clause 4 Period for Appeals
V 6.00	Approved	21 Dec. 2011	ECG	Appendix to Official Notice of 21 Dec. 2011
V 7.00	Approved	18 Dec. 2013	ECA	Appendix to Official Notice of 18 Dec. 2013

Note: This translation of the German text "Anhang Abrechnung und Rechnungslegung" serves only as information.

## Table of Contents

<b>1</b>	<b>Settlement of Accounts - Scope .....</b>	<b>5</b>
<b>2</b>	<b>Basis for the Settlement of Accounts .....</b>	<b>5</b>
<b>3</b>	<b>Billing, Reverse Charge and Settlement of Payments .....</b>	<b>5</b>
<b>4</b>	<b>Right to Object.....</b>	<b>6</b>
<b>5</b>	<b>Adjustments to Deposit Payments .....</b>	<b>6</b>
<b>6</b>	<b>Netting of Counterclaims .....</b>	<b>6</b>
<b>7</b>	<b>Changes to the legal framework .....</b>	<b>6</b>
<b>8</b>	<b>Billing Components and Obligation to File a Declaration to Ascertain the Taxation Situation .....</b>	<b>7</b>
8.1.	Introduction.....	7
8.2.	Obligation to File a Declaration to Ascertain the Taxation Situation .....	7
8.3.	General Description of Types of Invoices .....	7
8.3.1.	Invoice Type "Delivery of Imbalance Energy BGR to BGC" (ELF).....	7
8.3.2.	Invoice Type "Consumption of Imbalance Energy BGR from BGC ("EBZ").....	8
8.3.3.	Invoice Type "Clearing Fee pursuant to § 12 Clearing Agent Act (Federal Law Gazette I 121/2000 Art. 9) in conjunction with the Clearing Fee Regulation (Federal Law Gazette II No. 480/2012)" .....	8
8.4.	Settlement of Accounts BGR (Explanation: with energy supplying as the principal business activity) .....	8
8.4.1.	Residents for Taxation Purposes in Cases subject to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation .....	8
8.4.2.	Residents for tax purposes outside the Scope of § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation .....	9
8.4.3.	Non-residents for tax purposes (explanation: contractual partners from another EU member state and Switzerland are not subject to the Anti-VAT Fraud Regulation) .....	10
8.5.	Settlement of Accounts – Grid Operators.....	11
8.5.1.	Integrated Grid Operators .....	11
8.5.2.	Unbundled Grid Operators.....	11
8.5.3.	Grid operators with a special agreement NOT pursuant to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation .....	11



8.6. Special Case (Special Balance Group APG)..... 11

**9 Transitional Provisions..... 11**

## **1 Scope of the Settlement of Accounts**

The settlement of accounts and billing cover the following activities:

- a) The determination of balances per clearing period and balance group,
- b) The determination of balances for one billing period per balance group,
- c) The determination of the clearing fee,
- d) The preparation of the settlement of accounts for each market participant (BGR),
- e) Settlement of payments.

## **2 Basis for the Settlement of Accounts**

The components for the settlement of accounts of a market participant that the BGC carries out are:

- Clearing price 1  
Monthly sums of the quarter-hour imbalance<sup>1</sup> energy volume consumed and/or delivered multiplied by the corresponding quarter-hour clearing price 1 broken down by consumption and delivery per balance group.
- Clearing price 2  
Monthly sum of the consumption volume subject to charges per balance group and quarter-hour multiplied by the monthly clearing price 2.
- Clearing fee
- Taxes

## **3 Billing, Reverse Charge and Settlement of Payments**

- a) The settlement of payments is done by automatic debit order or credit transfer. The market participants are sent invoices by a date specified by the Balance Group Coordinator (BGC). The value added tax ID number must also be notified to the BGC. Every invoice is issued in euro with value added tax (VAT) if the revenue is taxable and VAT must be paid pursuant to Austrian VAT laws. This tax and any other future taxes or charges which may fall due because of or relating to the activities of the BGC will be invoiced by the BGC in addition to the fee and must be paid by the market participant.
- b) When a foreign market participant does not operate a permanent business establishment in Austria, the invoices for energy withdrawn by such foreign market participant are issued without value added tax, because these revenues are not subject to tax in Austria. The market participant is responsible for the proper payment of any taxes due in its home country and must hold the BGC non-actionable and harmless in this respect.
- c) For credit transfers made by the BGC for the delivery of energy of a foreign market participant without a permanent business establishment in Austria, the BGC must apply the reverse-charge mechanism pursuant to § 19 para. 1c in conjunction with § 3 para. 13 VAT Act 1994, as amended: the BGC retains the value added tax and transfers it to the tax authorities.

---

<sup>1</sup> "Imbalance energy (*Ausgleichsenergie*): means the difference between the amount of energy scheduled and the amount actually fed in or out by a balance group during each defined measurement period, where the energy per measurement period may be either metered or calculated." (EIWOG Definition) "Balancing energy (*Regelenergie*): means energy used by TSOs (TSO= Transmission System Operator) to perform balancing." (ENTSO-E Definition)

- d) Every market participant is under the obligation to notify the BGC immediately, i.e. at the latest within 14 days, in writing when it sets up or closes a permanent business establishment in Austria. If this notification is not sent, the market participant shall hold the BGC fully non-actionable and harmless should the tax authorities make any claims on the BGC.
- e) The amounts billed are due on the dates specified on the invoice and are automatically debited from the account by SEPA business-to-business direct debit order. Credit transfers and debit orders are settled by the BGC with value date T+3 (transaction date plus 3 days). The invoices may also be issued for the first clearing as deposit payments for the estimated invoice amount.
- f) Every market participant must notify the BGC of its account with a credit institution in the EU or Switzerland to be used for payment transfers and whose banking systems are technically capable of executing SEPA business-to-business direct debit orders taking into consideration the due dates and payment periods pursuant to the General Terms including all of its Annexes. The accounts with the account-holding banks may only be closed for objective reasons. Every market participant must set up a SEPA business-to-business direct debit mandate for this account in favor of the BGC or the party it has charged and shall ensure that its account has sufficient cover on the due date. Credit transfers are done from the BGC account to the account of the market participant.

#### **4 Right to Object**

The market participant may raise an objection to the invoice by sending a written objection to the BGC within 10 banking workdays running as of the invoice date. This right to object does not release the market participant from the obligation to pay the invoice subject to resolution of the objection. If the objection is not raised in time, the invoice shall be deemed binding. The BGC must correct invoices with errors within the two subsequent billing periods. A separate notice on any subsequent billing must be sent.

#### **5 Adjustments to Deposit Payments**

The BGC retains the right to adjust the amount of the advance payment based on the settlement data available for the balance group.

#### **6 Netting of Counterclaims**

The netting of counterclaims is excluded as a rule. It is only permitted for the BGC in the event of imminent insolvency of a market participant. Furthermore, netting is permitted with and against claims of the contractual parties with a legal connection to the liabilities to be netted and which have been ascertained by a court or acknowledged by the BGC.

#### **7 Changes to the Legal Framework**

If there are changes to the legal framework, especially to the Austrian VAT Act, the invoice shall be issued directly in accordance with legal provisions until the Annex "Settlement of Accounts and Billing" is adapted to the new legislation.

## **8 Billing Components and Obligation to File a Declaration to Ascertain the Tax Status**

### **8.1. Introduction**

Pursuant to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation<sup>2</sup> (Federal Law Gazette II No. 369/2013) value added tax is due on revenues from the supply of gas and electricity to a company whose main business activity in connection with the purchase of such commodities consists of reselling these and whose own consumption of such commodities is of minor importance, with such VAT being payable by the recipient of the service if the recipient is a company. The Federal Ministry of Finance disclosed on its website a recognized procedure for cases of doubt in connection with the Anti-VAT Fraud Regulation regarding whether or not a service in the meaning of § 2 Anti-VAT Fraud Regulation is deemed given and under which the performing party and the receiving party may ascertain by mutual consent that the tax due is to be paid by the receiving party; in such case, a written declaration of the receiving party shall suffice as proof. To make it easier to understand the invoices, a description is given below of the invoice components used by the BGC as well as the relevant provisions for the implementation of the Anti-VAT Fraud Regulation.

### **8.2. Obligation to File a Declaration to Ascertain the Tax Status**

Every contractual partner is under the obligation to file a declaration to ascertain if it is a case as defined in § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation or if it subject to § 3 paras. 13 and 14 as well as § 19 para. 1 lit c or § 3a paras. 6 and 7 VAT Act. This declaration is to be filed with the BGC using the corresponding forms within 14 days of being requested to do so by the BGC, with the postal stamp being decisive for compliance with this deadline. If the contractual partner fails to comply with this requirement, the BGC will as a rule assume in cases of a BGR with a permanent business establishment in Austria that the BGR is subject to the procedure for cases of doubt in relation to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation. This provision does not apply to companies without a permanent business establishment in Austria.

### **8.3. General Description of Types of Invoices**

The descriptions below give an overview of the features of the invoice types used by Balance Group Coordinator (BGC) and inform the contractual partners how the invoices are prepared to make it easier for them to check the invoices.

#### **8.3.1. Invoice Type "Delivery of Imbalance Energy BGR to BGC" (ELF<sup>3</sup>)**

Position per balance group of the BGR; the imbalance energy ("IE") volume is stated on the invoice in kWh.

---

<sup>2</sup> Umsatzsteuerbetrugsbekämpfungsverordnung, UStBBKV

<sup>3</sup> ELF = Energielieferung, energy supply

The position contains imbalance energy per settlement period delivered by the BGR and in the case of a **positive clearing price ("CLP 1") per quarter-hour** this means proceeds for the BGR and costs for the BGC.

Imbalance energy per settlement period delivered by the BGR and in the case of a **negative clearing price ("CLP 1") per quarter-hour** this means costs for the BGR and proceeds for the BGC (Explanation: this context refers to a "disposal service", and therefore, to an "other service" in the meaning of § 3a VAT Act, and for this reason, no delivery of energy is given in the meaning of § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation).

### **8.3.2. Invoice Type "Consumption of Imbalance Energy BGR from BGC ("EBZ<sup>4</sup>")**

Contains imbalance energy per settlement period consumed by the BGR and in the case of a **positive CLP 1 per quarter-hour** this means costs for the BGR and proceeds for the BGC.

Contains imbalance energy per settlement period received by the BGR and in the case of a **negative CLP 1 per quarter-hour** this means proceeds for the BGR and costs for the BGC. (Explanation: this context refers to a "disposal service", and therefore, to other services in the meaning of § 3a VAT Act, and for this reason, no delivery of energy is given in the meaning of § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation).

At present, the invoice for consumption contains the position **clearing price 2 ("CLP 2"); this is the consumption-linked cost-sharing price** per balance group of the BGR; in the case of a positive CLP 2, this means costs for the BGR and proceeds for the BGC; in the case of a negative CLP 2, it means proceeds for the BGR and costs for the BGC. The expenses of the BGR for CLP 2 are contingent on the volume consumed but independent of its imbalance energy volume.

### **8.3.3. Invoice Type "Clearing Fee pursuant to § 12 Clearing Agent Act (Federal Law Gazette I 121/2000 Art. 9) in conjunction with the Clearing Fee Regulation (Federal Law Gazette II No. 480/2012)"**

Position per balance group of the BGR; trading/consumption volume on the invoice is stated in kWh.

The basis of calculation is the trading and consumption volume of the BGR per settlement period; this means costs for the BGR and proceeds for the BGC.

## **8.4. Settlement of Accounts BGR (Explanation: with energy supplying as the principal business activity)**

### **8.4.1. Residents for Taxation Purposes in Cases subject to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation**

The sections below apply to contractual partners who have declared to the BGC by written statement using the corresponding form that their case is subject to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation.

---

<sup>4</sup> Energiebezug, energy consumption

- a. **Deliveries and other services provided for a fee; BGC delivers energy to BGR (CLP1):**
  - i. In the case of a positive price, the reverse charge mechanism applies pursuant to § 19 para. 1d VAT Act in conjunction with § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation; in this case, the recipient of the services (BGR) is responsible for the taxes due (reverse charge)
  - ii. In the case of a "disposal service" (negative energy price), 20% VAT are invoiced.
- b. **Consumption-linked cost-sharing price (other services for a fee); BGR delivers to BGC (CLP2):**
  - i. In the case of a positive price (CLP 2), 20% VAT is invoiced (Explanation: this is deemed "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
  - ii. In the case of a negative price (CLP 2), 20% VAT are invoiced (explanation: this is considered an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- c. **Deliveries and other services for a fee; BGR delivers energy to BGC (CLP 1):**
  - i. In the case of a positive price, the reverse charge mechanism pursuant to § 19 para. 1d VAT Act in conjunction with § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation applies; in this case, the recipient of the services (BGC) is responsible for the taxes due (reverse charge)
  - ii. In the case of a negative price 20% VAT are invoiced (Explanation: this is deemed "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- d. **Clearing Fee pursuant to § 12 Clearing Agent 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 considered an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).

#### **8.4.2. Residents for tax purposes outside the Scope of § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation**

The explanations below apply to contractual partners who have declared to the BGC by written statement that they are not subject to the cases to which § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation applies.

- a. **Deliveries and other services for a fee; BGC delivers BGR (CLP1):**
  - i. In the case of a positive price (CLP1) 20% VAT are invoiced pursuant to § 3 VAT Act; in this case, the invoice is issued with 20% VAT, because ancillary services are specified in the Anti-VAT Fraud Regulation
  - ii. In the case of a negative price (CLP 1), 20% VAT are invoiced pursuant to § 3a VAT Act; in this case, the invoice is normally issued with 20% VAT, because it is an "other service".
- b. **Consumption-linked cost-sharing price (other services for a fee); BGR delivers to BGC (CLP2):**
  - i. In the case of a positive price (CLP 2), 20% VAT are invoiced (Explanation: this is deemed an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
  - ii. In the case of a negative price (CLP 2), 20% VAT are invoiced (Explanation: this is deemed an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- c. **Deliveries and other services for a fee; BGR delivers energy to BGC (CLP 1):**
  - i. In the case of a positive price (CLP1) 0% VAT is invoiced; the reverse charge mechanism pursuant to § 19 para. 1d VAT Act in conjunction with § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation applies; in this case, the recipient (BGC) is responsible for the taxes due (reverse charge)

- ii. In the case of a negative price (CLP1), 20% VAT is invoiced (Explanation: this is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- d. **Clearing Fee pursuant to § 12 Clearing Agent 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 deemed an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).

#### **8.4.3. Non-residents for tax purposes (explanation: contractual partners from another EU member state and Switzerland are not subject to the Anti-VAT Fraud Regulation)**

- a. **Deliveries and other services for a fee; BGC delivers energy to BGR (CLP1):**
  - i. In the case of a positive price (CLP1), 0% VAT is invoiced, the reverse charge mechanism pursuant to § 19 para. 1c VAT Act applies; if there is NO permanent business establishment in Austria, the recipient is responsible for the taxes due.
  - ii. In the case of a negative price (CLP1), 0% VAT is invoiced and the reverse charge mechanism pursuant to § 3a paras. 6 and 7 VAT Act applies (Explanation: refers to a "disposal service", because the receipt of energy by the BGR additionally contains a fee for the BGR – 0% reverse charge because the recipient of the service has its registered place of business outside of Austria).
- b. **Consumption-linked cost-sharing price (other services for a fee); BGR delivers to BGC (CLP2):**
  - i. In the case of a positive price (CLP2), 0% VAT is invoiced and the reverse charge mechanism pursuant to § 3 paras. 13 and 14 VAT Act applies (Explanation: refers to an "other service" and NOT A DELIVERY of energy – 0% reverse charge because the recipient of the service has its registered place of business outside of Austria).
  - ii. In the case of a negative price (CLP2), 0% VAT is invoiced and the reverse charge mechanism pursuant to § 3a paras. 6 and 7 VAT Act applies (Explanation: this refers to an "other service" and NOT A DELIVERY of energy – 0% reverse charge because the recipient of the service has its registered place of business outside of Austria).
- c. **Deliveries and other services for a fee; BGR delivers energy to a BGC (CLP 1):**
  - i. In the case of a positive price (CLP1), 0% VAT is invoiced and the reverse charge mechanism pursuant to § 19 para. 1c VAT Act applies; if there is NO permanent business establishment in Austria, the obligation to pay taxes is also transferred to the recipient (BGC) and 0% is invoiced.
  - ii. In the case of a negative price (CLP1), 0% VAT is invoiced and the reverse charge mechanism pursuant to § 3a paras. 6 and 7 VAT Act applies (Explanation: in this special case, the reference is to a "disposal service", because the receipt of energy by the BGC additionally contains a fee for the BCO; therefore 0% reverse charge is invoiced pursuant to § 3a paras. 6 and 7 VAT Act).
- d. **Clearing Fee pursuant to § 12 Clearing Agent 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 deemed an "other service" and NOT A DELIVERY of energy, therefore, the reverse charge mechanism pursuant to § 3a paras. 6, 7 VAT Act applies.

## **8.5. Settlement of Accounts – Grid Operators**

The usual assumption is that grid operators in Austria are subject to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation; a deviation from this must be notified to the BGC by the grid operator in writing. Grid operators are therefore deemed residents for taxation purposes in cases to which § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation applies.

### **8.5.1. Integrated Grid Operators**

An integrated grid operator ("GO") is considered as such when the supplier and grid operator are the same legal entity; therefore, a principal business activity the assumption made (In this context, a reference is made to the published letter sent by Austrian power industry to the Federal Ministry of Finance of 02 Dec. 2013 regarding the interpretation of the Anti-VAT Fraud Regulation by Austria's power industry).

### **8.5.2. Unbundled Grid Operators**

An unbundled grid operator is considered as such when the supplier and grid operator are independent/autonomous entities; therefore, the assumption of principal business activity is made (in this context a reference is made to the published letter by Austrian power industry sent to the Federal Ministry of Finance of 02 Dec. 2013 regarding the interpretation of the Anti-VAT Fraud Regulation by Austria's power industry).

### **8.5.3. Grid operators with a special agreement NOT subject to § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation**

Should a grid operator explicitly desire deviating treatment, the grid operator must notify this deviation by sending a written statement to the BGC. In such case, the grid operators are deemed residents for taxation purposes outside the scope of application of § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation.

## **8.6. Special Case (Special Balance Group APG)**

The settlement for the Special Balance Group APG must be defined separately in writing. In such case, the grid operator is deemed a resident for taxation purposes outside the scope of application of § 1 in conjunction with § 2 no. 2 Anti-VAT Fraud Regulation.

## **9 Transitional Provisions**

- 9.1. This Annex "Settlement of Accounts and Billing" in the version 7.0 applies as of 1 January 2014; the provisions of clause 3 only as of 1 February 2014. As regards clause 3, clause 3 of Version 6.0 of Annex "Settlement of Accounts and Billing" applies until 31 January 2014.
- 9.2. The provisions of clause 8 only apply to revenues after 31 December 2013. With respect to revenues until 31 December 2013, these are subject to the applicable legal provisions also in the case of subsequent invoices and final invoices.