EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

taxud.c.1(2021)7229659 – EN

Brussels, 19 October 2021

VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1020

CASE LAW

ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

ORIGIN:	**Commission**
REFERENCES:	**Articles 2(1) and 135(1)(b)**
SUBJECT:	**CJEU Case C-235/18 *Vega International*: Fuel cards**

1. INTRODUCTION

The Commission services wish to discuss with the VAT Committee issues arising from the ruling of the Court of Justice of the European Union (CJEU) in case C-235/18 *Vega International*[1] in respect of the treatment of the provision of fuel cards under the VAT Directive[2], including whether the conclusions drawn by the CJEU are applicable in circumstances which differ from the facts of the case. The dispute revolved around the VAT treatment of supplies of fuel cards provided by a parent company to its subsidiaries.

For the sake of legal certainty, it is highly desirable to reach a common and consistent position on the consequences derived from the judgment of the CJEU in this case. The issues at stake in this judgment have been also evoked by some Member States (see Annex). That followed the presentation of selected CJEU cases made by representatives of the VAT Expert Group at the 118th meeting of the VAT Committee on 16 November 2020[3].

2. THE CIRCUMSTANCES OF CASE C-235/18

The case at hand involved an Austrian company, Vega International Car Transport and Logistics, transporting commercial vehicles from factories to customers. That service is provided via several subsidiaries of Vega International with registered offices in different Member States. Vega International organises and manages the supply of fuel cards, issued by different fuel suppliers, to all subsidiaries. Fuel suppliers invoice Vega International for the supply of fuel including local VAT. Vega International passes on the costs of the fuel together with a surcharge of 2% to its subsidiaries, including Vega Poland. Those subsidiaries are permitted to offset the cost of invoices relating to the use of the fuel cards by that of invoices issued to the Austrian company or to settle those invoices within one to three months of their receipt.

3. THE QUESTION REFERRED TO THE CJEU

The Polish tax authorities refused to refund local VAT to Vega International, who brought an action for annulment of that decision before the Regional Administrative Court. That court dismissed Vega International's action as unfounded. Vega International then brought an appeal against that judgment before the Polish Supreme Administrative Court.

The Supreme Administrative Court referred the following question to the CJEU for a preliminary ruling:

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1 CJEU, judgment of 15 May 2019 in case C-235/18 *Vega International Car Transport and Logistic*, EU:C:2019:412.

2 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006). Another case that concerned a supply of fuel cards, but with the focus on the obligations of the Member States to provide for the possibility of adjusting tax improperly invoiced is case C-48/20 *P. (Cartes de carburant)*, EU:C:2021:215.

3 Working paper No 1008 *Selected CJEU cases with impacts on businesses operating in the EU Single Market – issues evoked by the VAT Expert Group – right of deduction and supply chains*.

"*Does the concept referred to in Article 135(1)(b) of [Directive 2006/112] include transactions consisting in the provision of fuel cards and in negotiating, financing and accounting for the purchase of fuel using those cards, or can such complex transactions be considered to be chain transactions the primary purpose of which is the supply of fuel?*"

The referring court therefore asked in essence whether the provision of fuel cards by a parent company to its subsidiaries, enabling those subsidiaries to refuel the vehicles they transport may be classified:

- as a service of granting credit which is exempt from VAT on the basis of Article 135(1)(b) of the VAT Directive or
- as giving rise to a chain transaction comprising successive supplies of goods as defined in Article 14(1) of the Directive, in particular successive supplies of fuel.

4. THE CJEU'S JUDGMENT

The point of departure of the CJEU's reasoning was the notion of a supply of goods under Article 14(1) of the VAT Directive. This provision defines a supply of goods as the transfer of the right to dispose of tangible property as owner.

The CJEU recalled that according to settled case-law, the concept of a supply of goods under the VAT Directive does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law, but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were its owner[4].

The CJEU noted that Vega International does not dispose of the fuel as if it were the owner. That fuel is purchased by Vega Poland directly from the suppliers and at its sole discretion. Accordingly, Vega Poland decides on, in particular, the fuel purchasing arrangements in so far as it may choose, from among the service stations of the suppliers indicated by Vega International, which service station to refuel at and may freely decide on the quality, quantity and type of fuel, as well as when to purchase and how to use it[5].

The CJEU found therefore that Vega International actually confines itself to providing its Polish subsidiary, by means of fuel cards, with a simple instrument enabling it to purchase the fuel, thereby playing no more than an intermediary role in the purchase transaction concerning that product. Consequently, since no supply of goods, namely fuel, was made by Vega International, that company cannot claim a refund of the VAT paid on the invoices issued to it and relating to the refuelling carried out by Vega Poland at petrol stations[6].

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4 The CJEU in this context invoked judgments of 8 February 1990, *Shipping and Forwarding Enterprise Safe*, C-320/88, EU:C:1990:61, paragraph 7; of 14 July 2005, *British American Tobacco and Newman Shipping*, C-435/03, EU:C:2005:464, paragraph 35; of 21 February 2006, *Halifax and Others*, C-255/02, EU:C:2006:121, paragraph 51; of 3 June 2010, *De Fruytier*, C-237/09, EU:C:2010:316, paragraph 24; and of 18 July 2013, *Evita-K*, C-78/12, EU:C:2013:486, paragraph 33.

5 *Vega International*, paragraph 36.

6 Idem, paragraphs 38 and 39.

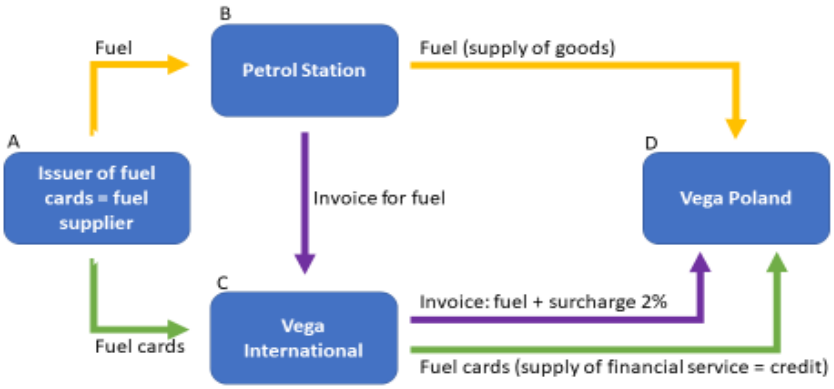
As the supply carried out by Vega International to its Polish subsidiary does not constitute a supply of goods in the sense of Article 14(1) of the VAT Directive, it was found to constitute a supply of services within the meaning of Article 24(1) of the Directive[7], which provides that any transaction which does not constitute a supply of goods, constitutes a supply of services.

The services supplied by Vega International to Vega Poland consist in financing in advance the purchase of fuel. The CJEU found that Vega International was in these circumstances acting in the same way as an ordinary financial or credit institution. This led the CJEU to find that the supply by Vega International of fuel cards to Vega Poland qualifies as a genuine financial transaction which is akin to the granting of credit for the purposes of Article 135(1)(b) of the VAT Directive and which is eligible for the exemption under this provision[8].

The CJEU therefore concluded that "*…Article 135(1)(b) of Directive 2006/112 must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, the provision of fuel cards by a parent company to its subsidiaries, enabling those subsidiaries to refuel the vehicles they transport, may be classified as a service granting credit which is exempt from VAT as referred to in that provision.*"[9].

5. THE COMMISSION SERVICES' ANALYSIS

The graphic representation of the CJEU's findings in *Vega International* is as follows:



The main consequences of the judgment can be summarised as follows:

- The provision of fuel cards for consideration is an exempt financial service consisting in the granting of credit, which implies no input VAT recovery right for costs directly attributable to these services.
- Qualification as exempt services may influence the (pro rata) VAT recovery right on general costs incurred.

7 Idem, paragraph 41.
8 Idem, paragraphs 49 and 50.
9 Idem, paragraph 51.

- Taxpayers that do not qualify as the actual recipients of the fuel are not entitled to a refund of the VAT charged on that fuel.

The CJEU's judgment in *Vega International* raises questions as to:

- the qualification of the different supplies at stake for the purposes of the application of the VAT Directive and
- the scope of the judgment, i.e. as to whether under particular circumstances the issuers of fuel cards and the suppliers of the cards should be considered to supply goods rather than services.

The correct interpretation of the judgment is very important as it will impact the analysis of the place of supply, right to deduction, right to refund and entitlement to exemption of taxpayers such as issuers of cards, fuel suppliers, service station operators and their clients. The judgment may be also relevant for leasing companies.

5.1. Qualification of different supplies at stake for VAT purposes

5.1.1. Supply of a financial service

What stems clearly from *Vega International* is that the supply made for consideration between Vega International and Vega Poland (C and D) constitutes a supply of an exempt financial service consisting in the granting of credit in the sense of Article 135(1)(b) of the VAT Directive.

Vega International receives invoices issued by the fuel suppliers establishing the supply of fuel with VAT. Subsequently, at the end of each month, Vega International passes on the costs of the fuel together with a surcharge of 2% to its subsidiaries, including Vega Poland. It is then for the subsidiaries either to offset the invoices relating to the use of the fuel cards with invoices issued to the Austrian company or to settle those invoices within one to three months of their receipt. The surcharge of 2% constitutes a payment for the service provided to subsidiaries[10].

As regards the nature of the service supplied by Vega International, the CJEU notes that the transactions exempted under Article 135(1)(b) of the VAT Directive are defined in terms of the nature of the services provided and not in terms of the person supplying or receiving the service, so that the application of those exemptions is not dependent on the status of the entity providing those services[11]. The CJEU went on to indicate that, in particular, 'the granting and the negotiation of credit' must be interpreted broadly, so that its scope cannot be limited only to loans and credit granted by banking and financial institutions[12].

The CJEU invoked in this context the principle of equal treatment of taxable persons. If the granting by a bank of financing for a purchase were exempt from VAT, while the financing provided by an economic operator not having the particular status of a financial

10 Idem, paragraphs 47 and 48.
11 Idem, paragraph 41.
12 Idem, paragraph 45.

or banking sector entity for the same purchase were subject to VAT, the principle of equal treatment would be infringed upon[13].

This led the CJEU to conclude that the provision by Vega International of fuel cards to Vega Poland constitutes a genuine financial transaction which is akin to the granting of credit for the purposes of Article 135(1)(b) of the VAT Directive.

The qualification of the supply made by Vega International to Vega Poland as a supply of a financial service is a logical consequence of the finding that there was no supply of goods, in the case at hand – of fuel, to Vega International. If fuel was never supplied to Vega International, the latter could not supply it further in the chain to Vega Poland.

The CJEU's decision in *Vega International* is coherent with its reasoning in a case concerning fuel supplies to vessels used for navigation on the high seas – *Fast Bunkering*[14] and in a case concerning a fuel management agreement concluded between a leasing company and its clients – *Auto Lease Holland*[15]. The former judgment is discussed shortly in the following section, in the latter the CJEU found that the fuel management agreement was not a contract for the supply of fuel, but rather a contract to finance its purchase. A leasing company (Auto Lease) did not purchase the fuel in order subsequently to resell it to the lessee; the lessee purchased the fuel, having a free choice as to its quality and quantity, as well as the time of purchase. Auto Lease was actually found to have acted as a supplier of credit vis-à-vis the lessee.

5.1.2. Supply of fuel – scope of the judgment

The CJEU's judgment in *Fast Bunkering* was subject to discussions at the 107th meeting of the VAT Committee on 8 July 2016[16]. The case concerned fuel originating from outside the EU and stored under customs warehousing arrangements in Lithuania being supplied to vessels used for navigation on the high seas. The fuel on which payment of import VAT had been suspended was delivered to these vessels by the company Fast Bunkering Klaipėda. Upon receivnig an order, the fuel was taken from the customs depot by Fast Bunkering Klaipėda which also carried out all the necessary formalities and loaded into the vessels' fuel tanks. The orders for fuel sent to Fast Bunkering Klaipėda were not, however, issued by the operators of these vessels. Instead, those orders came from intermediaries established in various Member States which acting in their own name, bought the fuel and sold it to the vessel operators. It was also to those intermediaries that Fast Bunkering Klaipėda invoiced its supplies.

As, in this case, the fuel had been supplied directly to operators of vessels who were entitled to dispose of it as owners and the intermediaries had at no time been in a position to dispose of the quantities supplied, the CJEU concluded that no matter the transfer of ownership to the intermediaries, the actual supply of fuel was made by the economic operator, Fast Bunkering Klaipėda, to those vessel operators.

In its reasoning in *Vega International*, the CJEU, similarly as in *Fast Bunkering* and in *Auto Lease Holland*, considered to whom the right to dispose of the fuel as owner was

13 Idem, pargraph 46.
14 CJEU, judgment of 3 September 2015 in case C-526/13, *Fast Bunkering Klaipėda*, EU:C:2015:536.
15 CJEU, judgment of 6 February 2003 in case C-185/01, *Auto Lease Holland*, EU:C:2003:73.
16 See Working paper No 907.

transferred[17]. Having found that the fuel was purchased by Vega Poland directly from the suppliers at its sole discretion[18], the CJEU concluded that the supply of fuel was delivered directly to Vega Poland.

In this context, a question arises as to the scope of the judgment. It is the question whether a company, such as *Vega International,* managing the supply of fuel cards issued by different fuel suppliers, might be considered under certain circumstances as supplying goods – fuel – rather than a financial service of granting credit. Such different circumstances may occur where chain deliveries are at stake. In this system, each company purchases the goods from the preceding company in the chain and subsequently transfers the legal property of the goods to the next party in the chain, including the full power to dispose of the goods as owner.

As mentioned above, the starting point for the CJEU's considerations in *Vega International* is the analysis as to whom the right to dispose of the fuel as owner was transferred. If in the factual circumstances of a given case it can be established that the right to dispose of the fuel as owner is actually transferred to the supplier of the fuel cards, it could be concluded that the latter supplies the goods – fuel – to the card users. To come to such a conclusion, all of the following elements should be considered:

- Who takes the final decision as to the choice of the service station where the fuel can be supplied,
- Who takes the decision as to the quality, quantity (through e.g. limit for each card) and type of fuel to be used,
- Who decides as to the time of purchase,
- How to use the fuel.

In addition, certain contractual arrangements, such as the assignment to the fuel card supplier of all material risk in the event of execution failures or the reservation of ownership right by the latter might have a bearing on the final assessment.

In particular, in a situation where the card issuer/supplier operates at the same time service stations at which refuelling of vehicles takes place the qualification of such a supply as a supply of goods could be defended. In this case an assessment should be carried out as to whether the transaction at stake should qualify as a single supply or as several supplies. Working paper No 1012[19] discussed at the 118th meeting of the VAT Committee could provide some guidance in this respect.

5.2. Sales and purchase commissionaire contracts

In its judgment in *Vega International*, the CJEU has not referred to Article 14(2)(c) of the VAT Directive, according to which the transfer of goods pursuant to a contract under which commission is payable on purchase or sale must be regarded as a supply of goods.

[17] *Vega International*, paragraph 31 and the following.

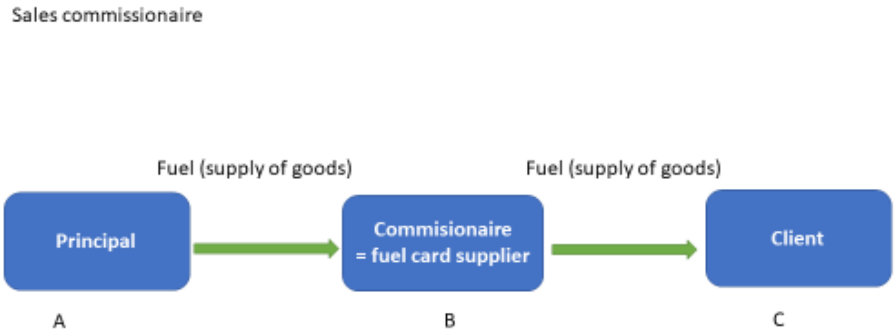
[18] Vega Poland could choose, from among the service stations of the suppliers indicated by Vega International, which service station to refuel at and could freely decide on the quality, quantity and type of fuel, as well as when to purchase and how to use it.

[19] This Working paper concerns VAT rules applicable to transactions related to the charging of electric vehicles.

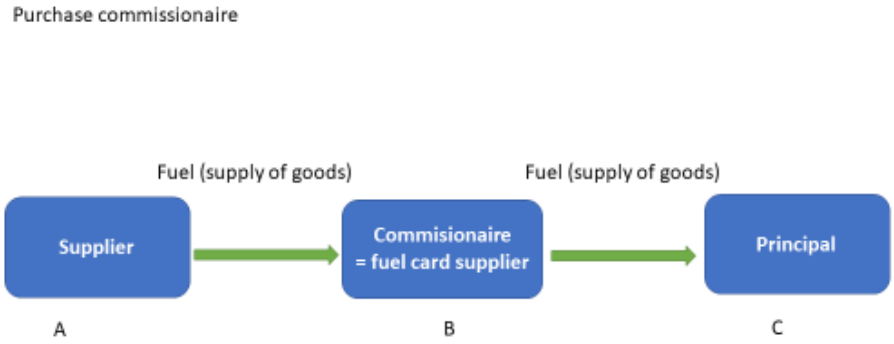
This omission is significant as it seems that the issuance and operation of fuel cards are often based on sales or purchase commissionaire contracts[20].

Under these contracts the company issuing or supplying the fuel cards intervenes in the performance of fuel supplies as a commissionaire acting in its own name in front of third parties but on behalf of a principal with whom the issuing/supplying company has obligations by virtue of a commission contract. According to Article 14(2)(c) of the VAT Directive, under these contracts the following supplies of goods (fuel) would take place:

- Supply by a principal to a commissionaire who acts before a third party in its own name but on behalf of the principal pursuant to a sales commissionaire contract;



- Supply to a principal by a commissionaire who acts before a third party in its own name but on behalf of the principal pursuant to a purchase commissionaire contract.



5.3. Vouchers

The facts in *Vega International* concerned the period from April to June 2012[21], with the CJEU's judgment being issued on 15 May 2019.

It should be noted that by 1 January 2019, the Voucher Directive[22] had to be transposed by Member States into their national law. The new rules apply only to vouchers issued after

[20] See D. Gómez, G. Echevarría Zubeldia, *European Union-The VAT Conundrum of Fuel Cards: Thoughts on the ECJ Judgment in Vega International*, International VAT Monitor, 2019 (Vol. 30), No. 6.

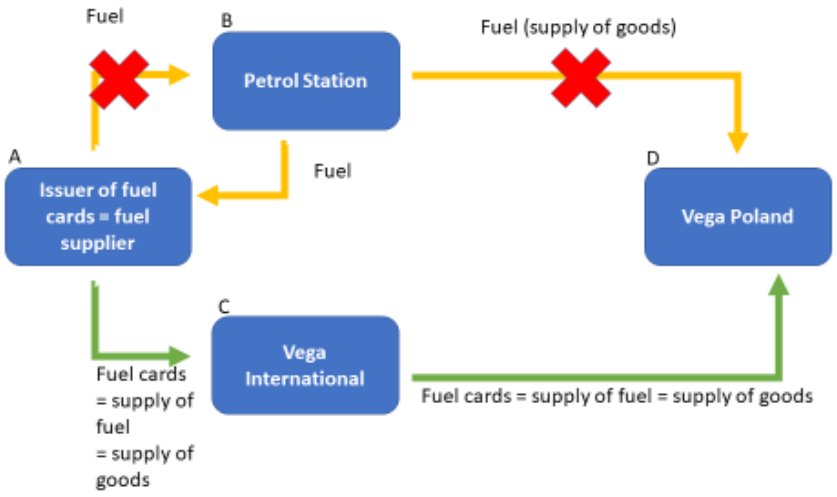
[21] *Vega International*, paragraph 15.

31 December 2018 and have no impact on the legislation and interpretation previously adopted by the Member States.

In the context of these new rules, it should be considered whether a fuel card actually qualifies as a single purpose voucher in the sense of Article 30a of the VAT Directive as introduced by the Voucher Directive. This provision defines a 'voucher' as an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services and where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument. According to the same provision, a 'single-purpose voucher' is a voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services, are known at the time of issue of the voucher.

According to Article 30b(1) of the VAT Directive, each transfer of a single-purpose voucher made by a taxable person acting in his own name must be regarded as a supply of the goods or services to which the voucher relates. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher accepted as consideration or part consideration by the supplier must not be regarded as an independent transaction.

Where therefore a fuel card qualifies as a single purpose voucher, its supply should be regarded as the supply of the fuel to which the card relates. In such circmstances, the chain of transations as considered in *Vega International* would be illustrated as follows.



Using a voucher in a taxable transaction can have consequences for the taxable amount, the time of transaction and even, in certain circumstances, the place of taxation. Working papers No 983 and 993 discussed by the VAT Committee at the 114th and 116th meetings

[22] Council Directive (EU) 2016/1065 of 27 June 2016 amending Directive 2006/112/EC as regards the treatment of vouchers (OJ L 177, 1.7.2016, p. 9).

deal with a number of questions raised following the implementation of the Voucher Directive, including the questions relating to exempt services incorporated into a voucher and the interaction between the rules for intermediaries and the voucher rules. While a case-by-case analysis of the factual circumstances at stake is clearly needed, both papers set some criteria for such an analysis.

5.4. Conclusions

From the above considerations, the following can be concluded:

- In order to determine the character of a supply in the case of transactions relating to supply of fuel through the use of fuel cards, it is necessary to consider to whom the right to dispose of the fuel as owner was transferred.

- If it can be established that the said right to dispose of the fuel as owner is transferred to the issuer or supplier of a fuel card, the latter may be considered as supplying goods (fuel).

- The circumstances to be taken into account while carrying out the above assessment include verification as to:

    - Who takes the final decision as to the choice of the service station where the fuel can be supplied,
    - Who takes the decision as to the quality, quantity (through e.g. limit for each card) and type of fuel to be used,
    - Who decides as to the time of the purchase,
    - How to use the fuel.

- Where fuel cards constitute a mere instrument to structure the fuel supply under a purchase or sales commissionaire contract in which the commissionaire acts in its own name but on behalf of a principal, supplies received and delivered by the commissionaire, in principle, should qualify as supplies of goods (fuel).

- Since 1 January 2019, where a fuel card qualifies as a single purpose voucher, its supply should in any event be regarded as a supply of fuel to which the card relates.

6. DELEGATIONS' OPINION

The delegations are requested to give their opinion on the issues raised.

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ANNEX 1

Denmark

Case C-235/18, Vega International, and agenda points 5.1 and 7.2 of 118th meeting of the VAT Committee

Referring to working papers No 1008 and No 1012 and to the discussions under agenda point 5.1 and 7.2 at the meeting the Danish Tax Agency would like to express the view that the VAT Committee should discuss the correct interpretation and implementation of the judgment of the CJEU in C-235/18, Vega International.

The issues

We especially se two issues arising from the judgment:

Firstly, the use of credit cards issued by petrol companies when used be customers at service stations not operated by the petrol company, but by others e.g. owners of associated service stations or sister companies. As we understand it then often it would follow from the contracts between the parties that the fuel is sold from the owner of the associated station/the sister company to the petrol company having issued the card and that the fuel is resold by the petrol company having issued the card to the customer. Our own initial analysis is that it follows from the reasoning of the Court in C-235/18, Vega International, that civil law should be disregarded and that for VAT purposes the fuel should be considered supplied directly from the owner of the service station to the customer. The reason being that the petrol company having issued the card has not disposed of the fuel as an owner. On the other hand, we can see that such an approach could lead to unfortunate consequences.

Secondly, the use of credit cards issued by so-called fuel card companies whose business model seem akin to the mobility operators dealt with in working paper No 1012. At first glance the only differences seem to be that fuel card companies sell – at least from a civil law perspective – fuel, not electricity, and that plastic cards are used by fuel card companies. Again here our own initial analysis is that it follows from the reasoning of the Court in C-235/18, Vega International, that civil law should be disregarded and that for VAT purposes the fuel should be considered supplied directly from the owner of the service station to the customer. The reason being that the petrol company having issued the card has not disposed of the fuel as an owner. On the other hand, we also here can see that such an approach could lead to unfortunate consequences.

The way forward

We se two possible ways forward which could possibly be combined.

The first possible way forward is the approach suggested by the VAT Expert Group in working paper No 1008, namely that the VAT Expert Group prepares an analytical paper with the Commission services which the Commission and delegations of Member States can take into consideration during an subsequent discussion in the VAT Committee.

The second possible way forward is the approach taken by the Commission services in preparing working document No 1012, namely that the Commission enter into exchanges with the petrol station sector and fuel card sector in order to understand the business models involved.

The Danish delegation can support both possible ways forward.

ANNEX 2

Latvia

Questions to the VAT Committee regarding the application of value added tax to activities carried out by fuel card issuers, classifying their activities as the supply of services or the supply of goods (fuel)

The Republic of Latvia wishes to propose to the advisory committee for value added tax (hereinafter referred to as 'VAT') matters to discuss the question as to whether, with certain criteria in place, it might be deemed that fuel card issuers carry out supplies of fuel rather than provide a service.

In accordance with the provisions of Article 2(1)(a)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter referred to as 'Directive 2006/112'), the supply of goods and the supply of services for consideration within the territory of a Member State by a taxable person acting as such shall be subject to VAT.

Article 14(1) of Directive 2006/112 determines that 'supply of goods' shall mean the transfer of the right to dispose of tangible property as owner. It follows from the wording of the said norm that the concept of the supply of goods shall not only apply to the transfer of goods in the form stipulated by the laws of the respective state, but also include all transfer transactions performed by one person with tangible property, by which this person grants the right to another person to dispose of this property as owner. This consideration correlates with one of the goals of Directive 2006/112, i.e., to establish the common VAT system based on the common definition of transactions subject to VAT[1].

In turn, in accordance with Article 24(1) of Directive 2006/112, 'supply of services' shall mean any transaction which does not constitute a supply of goods.

The Court of Justice of the European Union (hereinafter referred to as the 'CJEU') adjudged in its Judgement of 15 May 2019 in Case C-235/18 that Article 135(1)(b) of Directive 2006/112 is to be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, the provision of fuel cards by a parent company to its subsidiaries, enabling those subsidiaries to refuel the vehicles they transport, may be classified as a service granting credit which is exempt from VAT as referred to in that provision.

Although the CJEU Judgement in Case C-235/18 specifies that the interpretation of the said legal norm shall be applicable 'in circumstances such as those of the case in the main proceedings', it can be nonetheless assumed that the economic content and essence of the transaction which constitutes the distribution of fuel cards and the purchase of fuel, using a fuel card, cannot change depending on whether these transactions take place between a parent company and its subsidiaries or between non-related persons.

However, it can be seen from the CJEU Judgement of 18 March 2021 in Case C-48/20, wherein the transaction involving a fuel card issuer was examined as well, how taxpayers

[1] CJEU Judgement in Case C-435/03, para. 35

perceive such transactions, namely, that, in their opinion, if fuel cards are used in a transaction, the consumer receives the supply of fuel, i.e., a supply of goods is carried out.

In assessing the said case-law of the CJEU, it is to be concluded that to qualify activities carried out by a fuel card issuer, it is crucial to determine the person whom the merchant selling fuel transfers the right to dispose of goods (fuel) as owner.

Taking into account the application of the CJEU Judgement in Case C-235/18, activities carried out by a fuel card issuer shall be deemed the supply of a service to a fuel card user with the following circumstances in place:

– the purchase of goods (fuel) is carried out by the fuel card user directly from the supplier (merchant selling fuel);

– the fuel card user is the only person who decides on the methods of purchasing goods (place, volume, quality, time of purchase and method of using goods);

– the fuel card user covers all costs related to the purchase of goods (fuel);

– activities carried out by the fuel card issuer are restricted to the provision of a funding instrument (fuel card) to the fuel card user for purchasing fuel.

Thus, if the aforementioned conditions are met, activities carried out by the fuel card issuer between the merchant selling fuel and the fuel card user, which imply the provision of fuel cards, shall be classified as the supply of a service to the latter.

However, after becoming acquainted with the information provided by other Member States, it is to be concluded that certain Member States consider that the CJEU Judgement in Case C-235/18 does not apply to all transactions performed by fuel card issuers. In interpreting the CJEU Judgement in Case C-235/18, activities carried out by fuel card issuers shall be classified also as supplies of goods, considering that a fuel card issuer directly determines:

– the place, i.e., petrol stations at which customers can purchase goods;

– the price, i.e., fuel card issuers agree with customers on the price for which they can purchase goods from fuel card issuers;

– the type of goods, i.e., fuel card issuers use the so-called goods restriction levels for certain types of goods which the customer can receive using a fuel card;

– the amount, i.e., fuel card issuers determine the amount which the customer can use using a fuel card (the so-called limit for each card);

– the right to dispose when purchasing goods with a fuel card, i.e., the fuel card issuer may prohibit the purchase of certain goods rejecting a certain transaction by the fuel card issuer’s online authorisation;

– the material risk, i.e., in the event of execution failures, all customer’s claims for the compensation of losses must be addressed to the fuel card issuer. The customer cannot

pursue a claim directly against the supplier. Further on, all fuel card issuer's claims for the compensation of losses are addressed to the supplier;

– the reservation of ownership right, i.e., it is agreed with the customer that the fuel card issuer remains the owner of goods until the full payment is made therefor (reservation of ownership right).

Of course, this interpretation can be rejected, for example, recognising that:

– the place might mean the free choice of a fuel card user — at which petrol station the purchase of fuel will take place (of course, from among the chains of petrol stations which will accept his fuel card as a payment method, based on the agreement of the chain of petrol stations with the issuer);

– the type of goods might mean that the fuel card user will decide himself which type of fuel he will refuel his vehicle with, i.e., gas or diesel fuel, gas or petrol. If the vehicle operates using only one type of fuel, the fuel card user will have already selected the type of fuel, with which the vehicle will be refuelled, when purchasing the fuel card intended for the particular type of fuel;

– the amount might mean that the fuel card user will decide himself for how many litres of fuel his vehicle will be refuelled in at a time. The card fuel issuer will never determine how much fuel can be purchased for the vehicle at a time.

The aforementioned situation clearly shows that the business activities carried out by fuel card issuers in the European Union within the context of VAT application, based on equivalent criteria, are classified differently, causing competition distortion in the single market of the European Union.

Taking into account the aforementioned, for the purposes of ensuring the single application of the VAT system, it would be necessary to receive confirmation that:

a) fuel card issuers do not carry out supplies of goods (fuel) in any circumstances;

b) or that there are particular circumstances and particular criteria (describing them in detail), in which it might be deemed that card fuel issuers nonetheless carry out supplies of fuel rather than provide a financial service exempt from VAT.

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