VAT Expert Group

Issues arising from recent judgments of the Court of Justice of the EU
CJEU Case C-235/18 *Vega International*: Fuel Cards

Contents

- **Introduction**
- Fuel card business models and operational aspects
- Vega International Decision
- Suggested VAT Guidelines for Fuel Card Sector
- Conclusion

Background

- In February 2021, the VAT Expert Group (“VEG”) submitted observations to the EU Commission on selected cases of the Court of Justice of the EU (“CJEU”), including Vega International (C-235/18). These observations were reflected in the VAT Committee Working Paper 1008 and selected members of the VEG presented this working paper at the VAT Committee meeting held on 19 April 2021.
- Following that meeting, and subsequent discussions with Member States (MS), the EU Commission prepared a working paper specifically on the topic of Vega International and fuel cards: VAT Committee Working Paper No 1020 - “CJEU Case C-235/18 Vega International: Fuel cards”. This was discussed at the VAT Committee meeting on 22 November 2021.
- Working Paper No 1020 was presented by the Commission at the VEG meeting on 29 November 2021 and VEG members were invited to express their views. After an exchange of thoughts, the Commission requested that the VEG prepare a paper outlining the main business models to be presented to the Commission, which the Commission and delegations of Member States can take into consideration during a subsequent discussion on this topic at the VAT Committee.
- In preparing this paper, the VEG undertook consultations with numerous stakeholders in the fuel card sector (including mineral oil companies, Fuel Card Issuers and users of fuel cards), which operate across the EU. In addition, we also considered the many valuable submissions which the EU Commission received from stakeholders operating in the fuel card sector.

Importance of this topic

Importance of the Fuel Card Sector in the Single Market

- The fuel card sector operates across the EU and most fuel cards can be used in multiple Member States. They are widely used to facilitate transactions involving fuel and other vehicle-related goods and services.
- With over 70 million commercial vehicles in circulation, Europe is the largest continental market for commercial vehicles in the world. Approximately a quarter of all vehicles in Europe are used for commercial purposes. A document entitled “Fuel Cards: Facts & Figures” published by UPEi in February 2021 valued the European fuel card market size at over €221 billion in 2017 and projected it to reach over €322 billion by 2025.
- It is therefore clear that fuel cards play a crucial role in supporting freedom of trade and movement which is a cornerstone of the Single Market. This importance should continue notwithstanding the growth of e-mobility vehicles, as many fuel cards can now be used for charging electric vehicles. The dual use of fuel cards (fuel and EV charging) plays an important role in the transformation process of the EU to a more environmentally friendly society, in line with the EU’s Green Deal Agenda.
- Accordingly, as discussed further below, it is important that the VAT treatment of e-mobility and fuel card transactions be aligned in order to future proof the business models in these sectors and to support the goals of the EU Commission’s Green Deal Agenda.

VAT treatment as a chain transaction

- There has been general acceptance by both tax administrations and businesses on the VAT treatment of transactions involving fuel cards. These transactions were accepted to be chain transactions comprising successive supplies of goods (e.g., fuel) and other vehicle-related services (e.g. carwash, tolls) to and by the Fuel Card Issuer. Any change to this accepted treatment would remove many of the benefits of fuel card usage for Fuel Card Users and Tax Administrations, as discussed further below.

Benefits of Chain Transaction treatment for Fuel Card Users

- The VAT treatment of fuel card transactions as chain transactions is one of the key reasons for the widespread use of fuel cards throughout the EU. This treatment:
  - Avoids the driver en-route having to collect and check a large number of invoices in different countries
  - Enables the Fuel Card User to receive periodic invoices and supporting data for multiple transactions to support its entitlement to input VAT deduction (refueling of large vehicles such as trucks usually exceeds the limit for simplified invoices)
  - Enables the Fuel Card User to benefit from wholesale pricing terms agreed with the Fuel Card Issuer
  - Enables efficient cost control, vehicle performance and cost management
  - Avoids drivers from having to carry different currencies or payment methods for these purposes.

Importance of this topic (cont'd)

Benefits of Chain Transaction treatment for Tax Authorities

- The traditionally accepted VAT treatment as a chain transaction also brings significant benefits for tax administrations. These include:
  - The VAT input and output follows the legal contracting and commercial invoicing flow
  - Clear and robust audit trail due to consolidated invoices, leading to a reduced risk of fraudulent activity and safeguarding VAT revenues for Member States
  - Consistency with the principle of taxation in the Member State of consumption – i.e. where the delivery of the fuel takes place
  - Consistency of approach with the VAT treatment of e-mobility transactions (as mentioned in slide 4 and addressed in further detail in due course)

Potential Impact of Vega International (if incorrectly applied to the fuel card sector)

- While it addresses a very specific scenario (rather than fuel card transactions more generally), the Vega International judgment has introduced uncertainty which is impacting the fuel card sector and is already leading to VAT neutrality issues and high VAT compliance costs for trading parties involved. This in turn has:
  - An impact on competition and the Single Market.
  - A knock-on effect to other sectors (e.g., retail and manufacturing) which heavily rely on the efficient and timely delivery of goods within the EU.
  - A consequential potential impact on other chain transactions

- In the VEG's view, Vega International must be viewed solely in the context of the very specific facts that applied in that case (which are outlined further in this paper). The same applies to the Auto Lease Holland CJEU case, which also had a very specific fact pattern. Adopting a wider application of those judgments would ignore the legal and commercial reality of how most Fuel Card Issuers operate and would ignore the very specific facts of Vega International which are not a feature of the common fuel card models.
- When these specific facts are taken into account, it should, in the VEG's view, be clear that fuel card transactions can (and indeed should) continue to be treated as chain supplies for VAT purposes.

Way forward

- The VEG welcomes the Commission and VAT Committee discussing this important topic which has a potentially significant impact for businesses across the EU. We appreciate that Member States wish to obtain clarity on this topic, and this is also the wish of businesses which operate in the fuel card sector, or which otherwise rely on fuel cards on a daily basis in carrying on their business. We therefore recommend that clear guidelines be agreed by the VAT Committee which clarify the treatment of fuel cards as chain transactions (where certain conditions are met).
- We set out on the next slide the key objectives and principles that should underpin these guidelines.

Objectives for a way forward

Way forward

The VEG is of the view that the VAT Committee should recognise that the *Vega International* decision should not influence the well-established concept of a chain transaction in the fuel card sector or indeed any other sector.

Decided cases such as *Fast Bunkering Klaipeda* case, C-526/13, *Auto Lease Holland, C-185/01,* and *Vega International, C-235/18,* should be considered (as the VAT Committee has done in relation to Fast Bunkering) as cases specific to their particular facts and to have no wider application.

By adopting this approach, the following key principles and objectives should be met.

1. Protect VAT Neutrality in the Fuel Card sector

It is important to promote the smooth operation of fuel card transactions both domestically and on a cross-border basis within the EU and to safeguard existing and commercially well-functioning business models through achieving:

- legal certainty (by providing clear criteria); and,
- a uniform EU-wide approach.

This will ensure VAT neutrality for businesses and safeguard VAT revenues for Member States.

2. Ensure Alignment with e-Mobility

As previously mentioned, fuel cards are increasingly used in the e-mobility sector. It is therefore important to ensure that the VAT treatment of fuel cards aligns with the VAT treatment of the e-mobility sector.

In this regard, the VEG notes and welcomes the VAT Committee's guidelines from its 118th meeting of 19 April 2021 (finalised in December 2021) which state that the Committee unanimously agreed that in a typical value chain for the charging of electric vehicles, there is a supply of electricity from the Charge Point Operator ("CPO") to the eMobility Provider ("eMP") and from the eMP to the driver.

The VEG considers that applying the guidelines unanimously agreed by the VAT Committee in respect of electricity charging (which respects the legal and commercial relationship between the parties) should lead to the same conclusion that fuel card transactions constitute a chain transaction.

3. Protect VAT Neutrality for Other Chain Transactions

While this paper focusses on the VAT treatment of fuel card transactions, the principles at stake potentially have much wider implications for other chain transactions. It is important to note that it has been confirmed by Order of the CJEU in the case of *Koela-N EOOD* (C-159/14) that in order to have a chain transaction for VAT purposes, there is no requirement for the intermediate party (or parties) in the chain to take physical possession of the goods. Indeed, if taking physical possession were to be a requirement for chain transactions, this would have implications for a wider range of transactions, such as limited risk distributor ("LRD") sales models, drop shipments etc. It is, therefore, important that the VAT Committee's deliberations take account of the broader picture and bear in mind the specific fact pattern of *Vega International.*

Contents

Introduction

Fuel card business models and operational aspects

Vega International Decision

Suggested VAT Guidelines for Fuel Card Sector

Conclusion

Fuel Card models

- Members of the VEG engaged in discussions with a broad range of operators and associations in the fuel card sector in order to understand how fuel cards operate.
- We identified two main models as to how fuel cards typically operate: (1) Buy/Sell model, and (2) Commissionaire model. We present the key features of these two models on slides 9 and 10. They are not the only two models (for example, there are potential hybrid models between the two) or indeed there could be multiple parties in the chain. In addition, we summarise the key features of how fuel cards operate in practice as well as the differences between fuel cards and credit cards.
- Based on our discussions, the accepted practice has been to treat supplies using fuel cards as chain transactions for VAT purposes and it is the strong preference of the VEG and stakeholders to continue this treatment. In respect of supplies of goods, the technical VAT provisions may differ between either model (i.e., a supply of goods under Article 14(1) of the VAT Directive in the scenario of a buy/sell model and a supply of goods under Article 14(2)(c) in the case of a commissionaire model for goods and Article 28 for services) but the net effect should be the same.

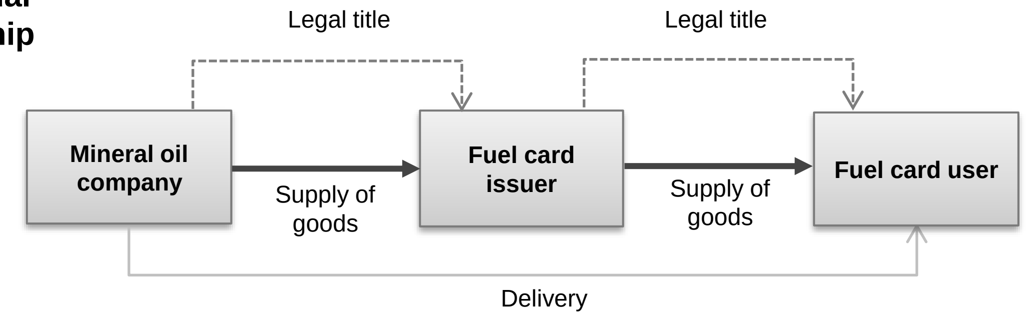
- In discussing the various fuel card business models, we have defined the following key terms for clarity:
  - **Fuel Card:** A Fuel Card can generally be described as a secure identification and loyalty card that authorises the purchase of fuels, vehicle-related services (e.g. vehicle wash) and on-road services such as tolls and road taxes. For ease of reference, we refer to supplies of “fuel” in this paper, but the principles that apply should equally apply to other goods and services which are purchased using a fuel card. The term “fuel card” refers not only to traditional plastic fuel cards but equally to other functionally similar means of authorising and processing transactions on behalf of the Fuel Card Issuer, including digital fuel cards, mobile phone apps, and on-board units (OBU).
  - **Fuel Card Issuer:** The entity which issues and operates the Fuel Card. Fuel Card Issuers may in some cases be subsidiaries of Mineral Oil Companies or may be independent entrepreneurs. The Fuel Card Issuer will enter into separate contracts with the Mineral Oil Company and the Fuel Card Users.
  - **Mineral Oil Company:** The entity owning the Fuel at the service/petrol station immediately prior to it being filled into the tank. In some cases, this could be a service station operator which is legally independent of the Mineral Oil Company.
  - **Fuel Card User / Customer:** The person or legal entity which purchases the fuel. This will commonly be a taxable person for VAT purposes. The Fuel Card User will typically provide the Fuel Card to an individual (i.e. the drivers) who is authorised to use it to purchase the Fuel where the relevant terms and conditions are met.
  - **Commissionaire:** Is an intermediary transferring goods or services pursuant to a contract under which commission is payable on purchase or sale. To illustrate the model, we refer to a purchasing commissionaire in the subsequent pages, but the principles equally apply to a selling commissionaire.

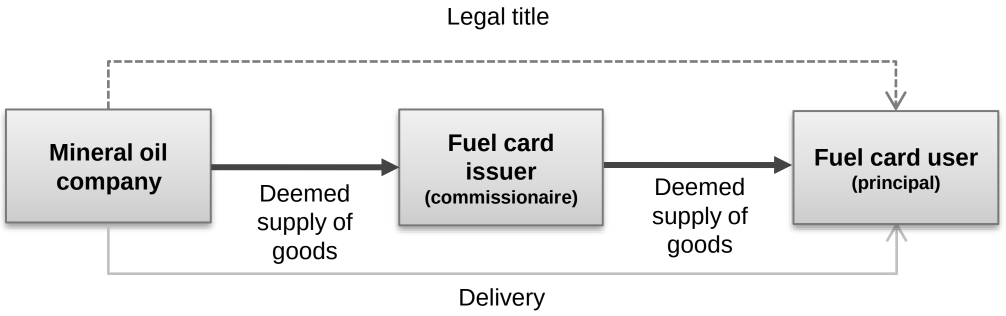
Comparison of main Fuel Card Models*

1. Buy/Sell Model- Illustration

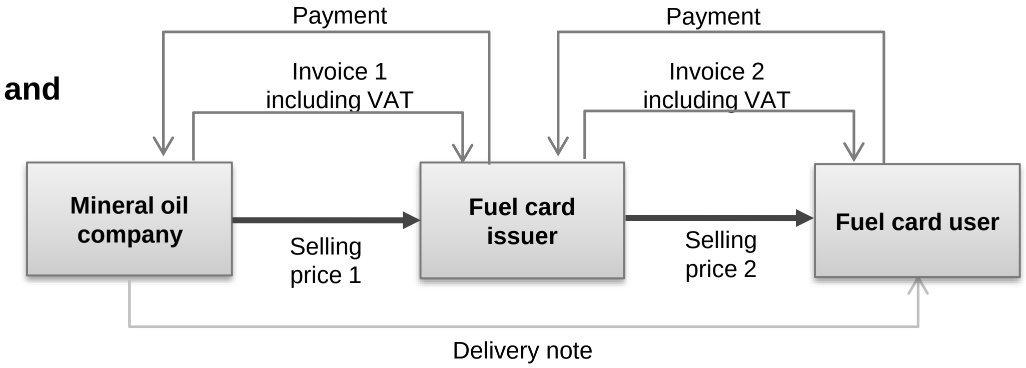
2. Commissionaire Model - Illustration

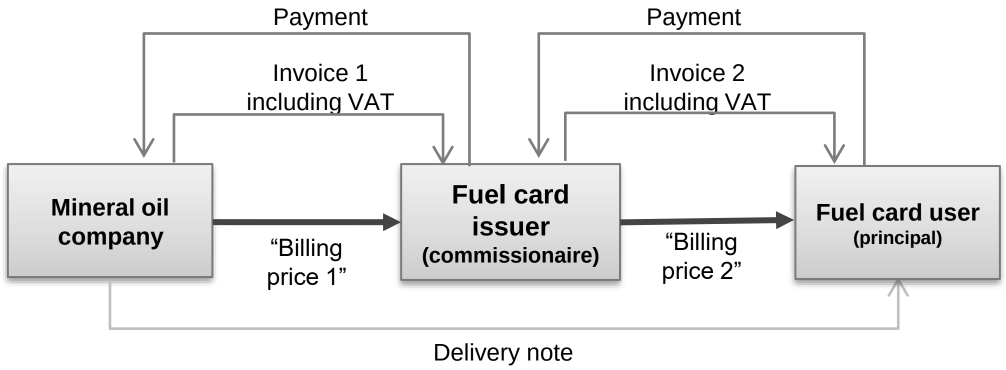
Contractual relationship





Invoicing and payment





- Please note, it is also possible to have more than 3 parties involved in a fuel card supply chain

Comparison of main Fuel Card Models (cont'd)

Buy/Sell Model – Key Features

- The Mineral Oil Company sells (i.e. transfers legal title) of the fuel to the Fuel Card Issuer.
- The Fuel Card Issuer sells (i.e. transfers legal title) the Fuel to the Fuel Card User.
- Physical delivery of the Fuel takes place directly from the Mineral Oil Company to the Fuel Card User.
- The Fuel Card typically has no payment function and only serves the purpose of identifying the Fuel Card User as the person legitimately acting in the name of the Fuel Card Issuer. By using the Fuel Card at acceptance points with whom the Fuel Card Issuer has a commercial arrangement in place, generally an authentication process is initiated electronically (see more details on slide 12), the Mineral Oil Company knows that the supply of fuel is provided to the Fuel Card Issuer. Based on an independent arrangement between the Fuel Card Issuer and the Fuel Card User, the Fuel Card Issuer is supplying that fuel to the Fuel Card User.

Commissionaire Model – Key Features

- The Fuel Card User appoints the Fuel Card Issuer as its buying agent (commissionaire);
- The Fuel Card Issuer (as commissionaire) acts as purchasing agent of the Fuel Card User, but does not take legal title to the Fuel.
- The Fuel Card Issuer (as commissionaire) will negotiate terms with the Mineral Oil Companies and will remit any volume discounts obtained to the Fuel Card User (or at least be transparent as to what the discounts are).
- The Fuel Card Issuer signs a contract with the Mineral Oil Company (or Service Station Operator) to purchase the fuel in its name for the account of the Fuel Card User.
- Periodically (usually once a month) the Fuel Card Issuer issues a summary invoice of all supplies of fuel made to its Fuel Card User - principal. Said monthly invoices are usually paid by direct debit upon their presentation. In other words, the commercial transactions have ordinary payment deadlines.

How Fuel Cards Typically Operate in Practice

Regulatory Requirements

Fuel Card Issuers must generally meet the requirements for a business supplying fuel including commercial terms, in-country VAT registrations, VAT invoicing obligations, and, in countries where required (e.g., Poland), a properly obtained oil trading licence.

Pricing

Fuel Card Users are not charged the list/pump price displayed at the fuel station, but are charged a price separately agreed with the Fuel Card Issuer. In the Buy/Sell model, the Fuel Card User typically does not have visibility of the prices agreed between the Fuel Card Issuer and the Mineral Oil Company (which again will typically differ from the pump price displayed at the fuel station). In the Commissionaire model, the commission may or may not be disclosed depending on the commercial arrangements and local VAT invoicing requirements and commercial/civil law.

Limitations on use of Fuel Cards

The Fuel Card may be used at the points of sales in the Fuel Card Issuer’s network (“acceptance points”) as means of identification which authorises the Fuel Card User to purchase the fuel in the name of the Fuel Card Issuer. The Fuel Card User is able to use the fuel card only in line with the agreed terms and conditions and therefore cannot use the Fuel Card at locations or for goods or services not covered by these terms.

Furthermore, Fuel Card Users are generally not permitted by the Fuel Card Issuer to hand over the fuel cards issued to them to third parties because, amongst other things, this could lead to unforeseen VAT registration and deduction issues.

Means of Authorisation rather than Means of Payment

The Fuel Card generally does not provide a means of payment but serves as an authorisation to verify that the user is acquiring fuel through arrangements with the Fuel Card Issuer. A Fuel Card therefore generally operates differently from a credit card or other payment cards. A further comparison of the differences between a Fuel Card and a credit card is set out on page 13.

How Fuel Cards Typically Operate in Practice (cont'd)

Liability in the event of payment or performance default

In the Buy/Sell model, each supplier typically bears the risk for payment default in respect of their specific transactions. Furthermore, in the event of a performance default (e.g., damage to the engine caused by the purchased fuel) the Fuel Card User must typically claim potential damages from the Fuel Card Issuer and the Fuel Card Issuer, in turn, from the Mineral Oil Company. The Fuel Card User cannot seek recourse from the Mineral Oil Company directly.

In the Commissionaire model, the risk of payment and performance default will typically depend on the exact contractual terms agreed between the parties.

Authorisation process

A crucial part of the operation of Fuel Cards is the authorisation process. The Fuel Card Issuer can disallow the purchase of the fuel in his name and for his account, e.g., by blocking the fuel card.

The Fuel Card User (and its drivers) are aware of the locations and conditions under which the fuel card can be used prior to making a purchase. The Fuel Card Issuer's logo will be visible at the service station at which the driver is seeking to use the card. It is known and visible at the point of sale that the Fuel Card User purchases the fuel through their account with the Fuel Card Issuer. This is made clear by the online authorisation of the fuel card used, by printing on the Fuel Card - "customer purchases the fuel in the name and for the account of the Fuel Card Issuer" or by similar documentation provided to the Mineral Oil Company for the purpose of verifying fuel card transactions.

Upon positive authorisation of the requested transaction by the Fuel Card Issuer, under the Buy/Sell model, a sales contract is concluded between the Mineral Oil Company (or service provider) and the Fuel Card Issuer, and a separate sales contract is concluded between the Fuel Card Issuer and Fuel Card User, on the basis of the respective framework agreements outlined above.

Invoicing Procedure

In both the Buy/Sell and Commissionaire models, VAT invoicing operates as follows:

- The Mineral Oil Company issues a VAT invoice to the Fuel Card Issuer typically in the form of a consolidated invoice for each invoicing period.
- The Fuel Card Issuer separately issues its own periodic consolidated VAT invoice to the Fuel Card User for each country for all authorised fuel deliveries (and other purchased goods and services) under its own agreed terms with the Fuel Card User.
- The respective invoices are independent of each other in terms of billing periods and payment terms, as they are respectively based on separate and independent bilateral agreements between the Mineral Oil Company and Fuel Card Issuer and between the Fuel Card Issuer and its Fuel Card User.
- The Fuel Card User receives only a delivery receipt documenting the amount and type of fuel (or other goods or services) acquired (which would be insufficient for VAT deduction purposes).

Differences between Fuel Cards and Credit Cards

Fuel Cards

Fuel Card Issuer:

- Acts either as a buyer/seller of goods and services or as a commissionaire (dependent on the contractual arrangements)
- Usually reserves transfer of ownership until full payment received (in buy/sell model)
- EBA/Financial Regulatory Authority licence not required
- Not subject to EBA/ Financial Regulatory Authority supervision - PSD2 provides an exception for Fuel Card Issuers

Fuel Card User:

- Acts in the name and on behalf of the Fuel Card Issuer when purchasing fuel in a buy/sell arrangement
- Does not receive a tax invoice at the “point of sale”, only a delivery note
- Receives their tax invoice from the Fuel Card Issuer both under the buy/sell arrangement and commissionaire structure

Other Features:

- The Fuel Card usually has no payment function, only has an authorization function
- Use is restricted to the purchase of goods and/or services relevant to road transport, e.g., fuel, electricity, lubricants, car wash, road tolls, parking fees, etc. These limitations are communicated to the Fuel Card Users and set out in the relevant contracts, as well as enforced by technical restrictions

Credit Cards

Credit Card Issuer:

- Not the seller/supplier of goods and services purchased using the credit card
- Credit Card Issuer never takes ownership of the supplied goods
- In the event of failings in the goods or services purchased, the Credit Cardholder sues the seller, not the Credit Card Issuer (which only provides a financing function)
- EBA/Financial Regulatory Authority license required
- Subject to the supervision by the EBA/ Financial Regulatory Authority - no applicable exemption under PSD2

Credit Cardholder:

- Acts on their own behalf
- Receives their tax invoice from the seller of goods and services rather than from the Credit Card Issuer
- Receives debit notification and account statements from the Credit Card Issuer

Other Features:

- Card has a payment function
- Used for the purchase of a wide range of goods and/or services (not limited by relevance to road transport)

Contents

Introduction

Fuel card business models and operational aspects

Vega International Decision

Suggested VAT Guidelines for Fuel Card Sector

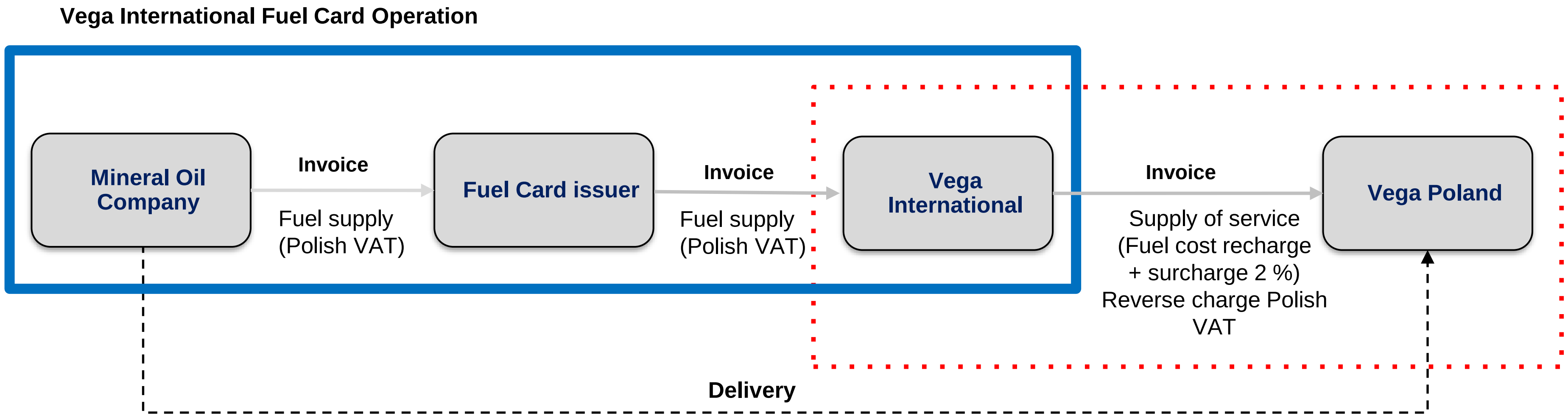
Conclusion

Vega International fact pattern

The CJEU's conclusion that Vega Poland (rather than its parent company Vega International) was the party acquiring the right to dispose as owner of the fuel using the fuel cards provided to Vega International and that Vega International was merely supplying credit to Vega Poland must be considered in the context of the specific facts and arrangements between the two companies. The VEG has analysed the CJEU judgment as well as the facts from the referring Polish courts. Once these facts are specified, it is clear**,** in the VEG's view**,** that there were fundamental differences between how Vega International operates and how Fuel Card Issuers typically operate. The key facts of the case are summarised below.

- Vega International sought to reclaim VAT on fuel purchases in Poland through the 2008/9/EC Refund Directive. Vega International was not registered for VAT in Poland.
- Vega International provided vehicle transportation services with Vega Poland acting as its subcontractor. The driver was employed either by Vega International or by Vega Poland – in the latter case Vega Poland (Vega PL) was acting as subcontractor.
- The fuel cards were given by Vega International to the drivers – either its own drivers or Vega Poland's drivers.
- Under an agreement dated January 2008, Vega International "made the cards available to Vega PL" and stated that the cost of the acquired fuel would be settled on a monthly basis. It was not stated that Vega International would be selling (re-selling) fuel to Vega Poland.
- Under the above agreement it was stated that Vega International buys fuel for the needs of all Vega group companies in order to achieve the best available prices. Per article 1.2 of this agreement, Vega International contacts and negotiates prices with international petrol companies, provides financial guarantees, settles invoices, provides initial financing of fuel acquisitions and toll payments, provides VAT refund compliance services, completes monthly settlements of transactions documented with the fuel cards. This was summarised by the CJEU as follows *"[Vega International] organises and manages the supply of fuel cards, issued by different fuel suppliers, to all its subsidiaries".*
- Vega International collected invoices and periodically charged Vega Poland for the cost (of fuel and tolls) plus a 2% margin. Vega Poland charged Vega International for the subcontracted transportation services. Based on art. 2.3. of the November 2008 agreement, Vega International invoices Vega Poland "for all transactions related to fuel cards and charges a fee for the above-mentioned services [referred to in article 1.2] in amount of 2%". Therefore, the court decided that 2% is not a trade margin but a service fee.
- The value of the fuel on the invoices issued by Vega International to Vega Poland was equal to the price paid to the fuel supplier.
- Vega International did not apply for a licence for petrol trading in Poland.
- Vega International charged Vega Poland for services supplied from its Austrian VAT registration and reverse charge Polish VAT was applied by Vega Poland. Therefore, Vega International was in its own view buying fuel in Poland and supplying services to Vega Poland. Consequently, Vega International did not charge Vega PL for a supply of fuel, but the price paid for the fuel was included in the service fee.
- Based on the above, the general conclusion of the Polish courts – which was upheld by the CJEU – was that Vega Poland was buying fuel to provide its transportation services to Vega International. Vega International was not charging Vega PL for a supply of fuel but for the services and cost of (financing) of fuel which was just a cost component and was presented in such a way.

Vega International fact pattern



Contents

Introduction

Fuel card business models and operational aspects

Vega International Decision

Suggested VAT Guidelines for Fuel Card Sector

Conclusion

Principles for a way forward

- The VEG recommends that the VAT Committee establish clear criteria which can be consistently applied across the 27 EU Member States.
- This is important to promote the smooth operation of the fuel card sector both for domestic and cross-border transactions in the EU and to safeguard existing and commercially well-functioning business models through achieving:
  - legal certainty – clear criteria
  - uniform EU approach
  - ensure VAT neutrality for business
  - safeguard VAT revenues for Member States
- It is important to allow trading parties to chose their own contractual set up (whether that be through a buy/sell or commissionaire model), which supports the current accepted VAT principles that there is a purchase and sale or deemed supply under a commissionaire model of the fuel by the Fuel Card Issuer.

Proposed Criteria

Buy/Sell Model

A supply of fuel to and by the Fuel Card Issuer should be deemed to exist (under the provisions of Article 14(1) of the Directive where the following conditions are met):

- The Fuel Card Issuer and its Fuel Card User have concluded an agreement for the sale of fuel (and other vehicle related goods and services), under which the Fuel Card Issuer sells to its Fuel Card Users in its own name and for its own account.
- From the mineral oil company/service station operator, the transaction is recognisably in the name and for the account of the Fuel Card Issuer. This requirement would be fulfilled by the driver presenting the fuel card which has sufficient data to enable the Fuel Card User to act as authorised representative of the Fuel Card Issuer.
- The Fuel Card Issuer agrees (by authorising the transaction upon presentation of the fuel card) to the purchase and resell the fuel in its own name and for its own account.
- The amount and payment terms have been agreed separately at each leg of the chain between the respective parties, with the respective supplier or reseller at each delivery stage bearing the risk of non-payment.
- In the event of any warranty or consequential damage claim (e.g. engine damage resulting from the purchased fuel), the legal claim of the Fuel Card User would be against the Fuel Card Issuer in the first instance, which is its supplier, and the legal claim of the Fuel Card Issuer would be against the Mineral Oil Company (or service station operator), which is in turn the supplier thereof.

Commissionaire Model

A supply of fuel to and by the Fuel Card Issuer (for VAT purposes) should also be deemed to exist where the Fuel Card Issuer acts as buying agent of the Fuel Card User (or selling agent of the Mineral Oil Company) but does not take legal title to the Fuel – Article 14.2c.

- The Fuel Card Issuer and its Fuel Card User have concluded an agreement for the procurement of a supply of fuel (and other vehicle related goods and services), under which the Fuel Card Issuer agrees to purchase in its own name for the account of the Fuel Card User (principal).
- From the Mineral Oil Company/service station operator's perspective, the transaction is recognisably for the account of the Fuel Card Issuer. This requirement would be fulfilled by the driver presenting the fuel card which has sufficient data to enable the Fuel Card User to act as authorised representative of the Fuel Card Issuer (the latter acting in the name and for the account of the Fuel Card User.
- The Fuel Card Issuer agrees (by authorising the transaction upon presentation of the fuel card) to the purchase of the fuel in its own name but for the account of the Fuel Card User.
- In the event of any warranty or consequential damage claim (e.g. engine damage resulting from the purchased fuel), the legal claim of the Fuel Card User is against the Mineral Oil Company, which is its supplier, but contractually maybe against the Fuel Card Issuer (who in turn would act against the Mineral Oil Company).

Both the Buy/Sell model and Commissionaire model are equally valid models. The VAT treatment of each model as a chain transaction should be respected in each case.

Contents

Introduction
Fuel card business models and operational aspects
Vega International Decision
Suggested VAT Guidelines for Fuel Card Sector
Conclusion

Conclusion

- The Vega International Case is outside the generally accepted and applied fuel card business models and operations. The conclusions of that case should not be applied to the main fuel card business models.
- Fuel card models generally operate on the basis that there is purchase and resale of the fuel by the Fuel Card Issuer for VAT purposes (regardless of whether, legally, the Fuel Card Issuer is acting as a principal or commissionaire). This treatment should be safeguarded based on clear and consistently applied criteria which support the VAT neutrality principles and safeguard VAT revenues for Member States while safeguarding existing business models.
- The concept of 'freedom of contract' allows trading parties to freely structure their commercial arrangements. By doing so and looking into practice, the "buy – sell" (or deemed buy/sell) approach is clearly the dominant and easiest model for the industry and Member States.
- A "buy-sell" approach for VAT purposes is also applied in situations where a commissionaire model has been agreed, as the treatment of the transactions from a VAT point of view is equal.
- It is also important to align the approach for fuel cards with the approach for e-mobility, as in future it will be common to have dual cards (covering fuel and EV charging) and indeed these are already in existence today. Dual cards will play an important role in the transformation of the EU to a more environmentally-friendly society in line with the European Commission´s Green Deal Agenda.
- Particularly as e-mobility is a vibrant and fast evolving sector, with new business models regularly appearing, it is necessary to stay in close and ongoing contact with policy stakeholders to reflect on, reconsider and align today's VAT treatment to the future commercial developments and apply it consistently across the EU to allow the sector to grow in line with the "European Green Deal".
- Therefore, we encourage the VAT Committee to follow the approach it took in response to the Fast Bunkering Klaipeda case, C-526/13 (VAT Committee Guidelines resulting from the 107th meeting of July 8th 2016, document B – taxud.c.1(2016)7297391 – 911), and unanimously agree in a Guideline that the Vega decision must be narrowly construed.
- In addition, in order to ensure neutrality and legal certainty for the fuel card sector across the EU, and to also safeguard VAT revenues for Member States, we urge the VAT Committee to agree on a common position for the VAT treatment of fuel card operations - as chain transactions - in the EU, as this reflects the commercial reality, allows the sector to operate across the 27 EU Member States in a consistent and efficient way, and ensures taxation in the Member State of Consumption, where the fuelling takes place.