

Fuel card transactions: supply of goods or financial service? (1/21/19)

On 15 May 2019, the Court of Justice of the European Union (CJEU) issued ruling C-235/18 Vega International on the VAT treatment of a transaction in which a company makes its fuel cards available to another company (business partner). This article explores the CJEU findings and their practical application.

The main proceedings and preliminary questions

Austrian company Vega International is engaged in the direct transport of commercial vehicles (trucks and buses) from the factory to the customer. Fuel cards are used for refuelling the transported vehicles through Vega International subsidiaries in various countries, including Poland (Vega Poland).

Vega International provides all companies within the Vega group with fuel cards from different suppliers. The subsidiaries (including Vega Poland) fill the vehicles with fuel using personalised fuel cards issued to their drivers. The fuel card transactions are processed centrally by the parent. Vega International receives invoices from fuel suppliers for fuel supplies with VAT and issues invoices at the end of each month to its subsidiaries (including Vega Poland) for the fuel provided to them, with a surcharge of 2%. The subsidiaries either pay those invoices or set them off against invoices they have issued to the parent.

The Polish tax authority refused a refund of input tax to Vega International on the fuel purchases made with the fuel cards on the grounds that this case is covered by CJEU ruling C-185/01 Auto Lease Holland, which provides for treating an agreement on fuel management as financing its purchase, not as a supply of fuel. Applying this ruling means that instead of a supply of goods, Vega International has provided Vega Poland with an exempt financial service under article 135(1)(b) of Council Directive 2006/112/EC.

CJEU findings

The CJEU says that according to its settled case law, the term “supply of goods” includes all transfers of tangible property that one party to a contract makes to the other party, handing over the right to deal with that property as its owner. So it all comes down to assessing whether it is Vega International or Vega Poland that acquires the right to deal with the fuel as its owner.

In the case of Auto Lease Holland, the CJEU said that a person that buys fuel directly at a filling station and decides why the purchase is made and how that fuel will be used should be recognised as dealing with the fuel as its owner.

The CJEU says that the case of Vega International is covered by the findings made in the case of Auto Lease Holland when it comes to interpreting the term “supply of goods.”

Assessing the facts and circumstances of the case leads to the conclusion that Vega International does not possess the fuel for which they seek a VAT refund, and Vega Poland buys the fuel directly from suppliers, chooses the purchase procedure and the supplier of fuel at filling stations, the quality, quantity and type of fuel, and the timing of the purchase. So according to the CJEU, the fuel that Vega Poland fills at those stations is not supplied to Vega International, and the parent does not make an onward supply of the fuel

to the subsidiary. Vega International provides a service and is not, therefore, allowed to deduct the input tax on the fuel purchases.

In assessing whether Vega International's service should be considered an exempt financial service, the CJEU says the phrase "credit granting and credit negotiation" should be interpreted broadly, and it cannot be restricted to loans from banks or financial institutions. The CJEU finds that Vega International's provision of fuel cards to Vega Poland is considered a financial service of granting credit under article 135(1)(b) of Council Directive 2006/112/EC. The 2% surcharge that Vega International receives from Vega Poland should be considered a service fee.

We are aware of some Latvian companies making fuel cards available to other entities, so this CJEU ruling is likely to affect the input tax deduction procedures in companies that treat their provision of fuel cards as fuel supplies and deduct input tax.