

Tax authority's guidance on tax treatment of fuel card transactions 3/35/21

On 21 May 2019 we informed MindLink.lv readers about [Ruling C-235/18 Vega International issued by the Court of Justice of the European Union \(CJEU\)](#) on VAT treatment where a company provides its subsidiaries registered for VAT in various EU member states with fuel cards for various fuel suppliers and arranges payments between those subsidiaries (the actual consumers of fuel) and the actual suppliers. Based on this CJEU ruling, the Latvian State Revenue Service (SRS) has issued guidance on the VAT and excise treatment of fuel card transactions. This article explores their opinion on applying tax rules to fuel card transactions.

A supply of services or a supply of fuel?

In its guidance the SRS has attempted to separate transactions with a fuel card that are treated for its issuer as supplies of services, from transactions being considered supplies of fuel. In the guidance, a fuel card is taken to mean an instrument for identifying a person at a filling station and for recording transactions, not for performing the payment function. A fuel card allows its user to receive fuel and other goods or services at filling stations operated by the card issuer's business partners.

Supply of goods

The guidance states that a fuel card issuer's activity is treated as a supply of goods to the card user if the agreement between them determines the following aspects:

- What filling stations or what brand stations the card user can buy goods at;
- The price or principles for setting it;
- The type of goods (the issuer applies so-called product restriction levels on specified types of goods the user can receive with the card);
- Restrictions on use (the right to set volume limits and the card issuer can prevent supplies of particular goods by rejecting a certain transaction through the issuer's online authorisation);
- Apportionment of substantial risks - in the case of performance disruption, the card issuer assumes all of the user's claims for damages under their agreement. The user cannot file a claim directly against the supplier (the fuel seller operating at a filling station);
- The card issuer retains legal title to the fuel until the card user has fully paid for the fuel purchase.

The guidance states that conducting such activity does not require the card issuer to hold a special fuel retail permit (licence) if fuel is supplied from the place of business stated on the licensed fuel seller's special fuel retail permit (licence) and the seller allows fuel to be filled in the card issuer's name and on his behalf. There must be an agreement between the licensed fuel seller and the card issuer on fuel purchases and onward sales. The card issuer's income should arise from the difference between the fuel seller's acquisition cost and the price of fuel sold to the card user.

Supply of services

The card issuer's activity is treated as a supply of services to the card user if according to CJEU Ruling C-235/18 the following circumstances exist at the same time:

- The card user's acquisition of goods (fuel) occurs directly from the supplier (the fuel company);
- The user is the only one to decide on methods for buying goods (the place, volume or quality of supply, the time of acquisition, and how the goods will be used);
- The user bears all costs associated with product (fuel) purchases;
- The card issuer's activity is limited to providing the financing instrument (card) to its user for fuel purchases.

The risk and the solution

Admittedly, the line between supplies of goods and supplies of services is blurred. If fuel is directly filled from its seller, it is difficult to prove that legal title was in fact initially transferred to the card issuer and how the parties ensure that the fuel seller makes supplies in the card issuer's name and on his behalf. Also, in practice the card issuer's restrictions on using the card are not sufficiently substantial to claim that the card user does not decide on the place, volume or quality of supply, the time of acquisition, or how the goods will be used. And all costs associated with product purchases are in practice always borne by the card user.

We therefore believe that fuel card transactions involve a high risk that the SRS will reclassify the card issuer's supplies of goods to its users as a financial service. To help taxpayers protect themselves from potential tax liabilities and their implications when it comes to transactions involving fuel cards or charge cards for electric vehicles, we recommend seeking the SRS's approval for each taxpayer's business model and obtaining an advance ruling on the tax treatment of each taxpayer's card transactions.