

VAT treatment of fuel card transactions and similar agency transactions 3/43/23

In September 2023, the EU VAT Committee published guidelines¹ on how to assess the VAT treatment of fuel card transactions, which had been dealt with earlier by the Court of Justice of the European Union (CJEU) in its ruling C-235/18 Vega International. The CJEU ruled that the Austrian company's transaction of issuing fuel cards to other companies for fuel purchases, which was invoiced as a supply of fuel, qualifies as a service of granting credit that is exempt from VAT.

The ruling has raised a lot of practical questions, including whether all sales in which the buyer (agent) named on the invoice is not actually disposing of the goods as owner, should be treated as financing transactions and not sales.

While the VAT Committee has analysed the substance of transactions and drawn up the guidelines specifically for the fuel cards trade, we believe the principles for assessing transactions can be extended to other industries when their structure according to their economic substance is the same or very similar.

The VAT directive

In analysing the VAT treatment, the VAT Committee relies on Directive 2006/112/EC, in particular articles 14(1) and 14(2)(c), which define a supply of goods. Article 14(1) states that a "supply of goods" means a transfer of the right to dispose of tangible property as owner. The CJEU finds that the fuel card issuers (agents) in fuel card transactions are not disposing of the goods as owners, as they are not in a position to affect the quality or volume of fuel or the date of purchase. This is the reason why the CJEU ruled that a supply of goods never took place.

The VAT Committee focuses on article 14(2)(c), which states that a "supply of goods" also means a transfer of goods in performing an agreement under which commission is payable on purchase or sale. So the VAT Committee finds that fuel card transactions qualify as sales if they are consistent with commissionaire transactions mentioned in article 14(2)(c), where the transfer of ownership to the agent is recognised as formal.

If a fuel sale is to fall under article 14(2)(c), the VAT Committee finds it must satisfy at least the following minimum conditions:

1. Legal ownership of fuel passes to the fuel card issuer:

- The fuel card issuer (agent) takes the risk associated with the expected supply of goods if the end customer fails to pay, while the fuel seller takes the risk of the fuel card issuer failing to pay.
- The fuel card issuer takes the risk of damages if the fuel card holder (end customer) suffers a loss through buying an inferior product.
- An independent pricing policy operates at each stage of the supply, i.e. the agent has discretion in setting the price for the end customer.
- The fuel card issuer (agent) approves each transaction under the agreement with the fuel seller and the fuel card holder, so the fuel card issuer makes decisions about the conditions for onward sales, including quality, place of sale and time of supply, as well as confirming that the fuel card holder may receive the acquired goods directly from the seller.

1. The acquisitions and onward supplies which the fuel card issuer makes as agent are similar:

- The fuel card issuer makes no changes to the fuel supplied by the fuel seller.

1. There is an agreement between the undisclosed agent (commissionaire) and the principal on whose account the agent buys goods or enters into transactions with third parties:

- The fuel card issuer supplies goods to the end customer in the fuel seller's name, but buys goods in the name and on behalf of the fuel card holder, and their contracts provide for this arrangement. The contract clearly indicates supplies of fuel and other related services, but does not mention granting credit or administering fuel supplies.
- The agreement matches the economic substance of the transaction. At the filling station, the fuel card holder shows the fuel card issued by the fuel card issuer under the terms of the agreement.
- The fuel card issuer receives an agency fee from either the fuel seller or the fuel card holder.

The VAT Committee has almost unanimously decided that if the transaction meets these criteria, then a supply of goods is considered to have taken place under article 14(2)(c).

We should add that the VAT Committee says the guidelines should not be made retrospective. So, when it comes to entering into new agency agreements, it's advisable to pay attention to their terms and conditions to ensure proper VAT treatment.

Remember that the VAT Committee was set up to promote uniform application of the directive across the EU; it has only advisory capacity and no legislative power. However, the Latvian State Revenue Service relies on the VAT Committee's recommendations in assessing complex VAT treatment matters. So, when entering into sales agreements where your company acts as agent, it's worth inserting certain terms to avoid the risk of the Latvian tax authority reclassifying the transaction as a financial service.

¹Document B – taxud.c.1 (2023)9993327 – 1068