



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

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**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER No 1046**

**CASE LAW**

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

<b>ORIGIN:</b>	<b>Commission</b>
<b>REFERENCES:</b>	<b>Articles 2(1) and 135(1)(b)</b>
<b>SUBJECT:</b>	<b>CJEU Case C-235/18 <i>Vega International</i>: Fuel cards – follow-up</b>

## **1. INTRODUCTION**

The Commission services wish to continue discussions on issues arising from the ruling of the Court of Justice of the European Union (CJEU) in case C-235/18 *Vega International*<sup>1</sup> in respect of the treatment of the provision of fuel cards under the VAT Directive<sup>2</sup>. Another case that concerned the supply of fuel cards, but with focus on the VAT liability and on the obligations of the Member States to provide for the possibility of adjusting tax improperly invoiced is case C-48/20 *P*<sup>3</sup>. In that case however, the CJEU did not carry out any detailed analysis of the supplies carried out by the fuel card provider.

The purpose of the discussion on *Vega International* will be to agree on the conclusions to be drawn on the issues stemming from that ruling for the application of the VAT Directive to the supplies of fuel cards. For the sake of legal certainty, it is very important 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 had been evoked by some Member States following the presentation of selected CJEU cases made by the representatives of the VAT Expert Group at the 118<sup>th</sup> meeting of the VAT Committee on 16 November 2020<sup>4</sup>. Further to that, the Commission services prepared a paper for the VAT Committee to discuss at its 119<sup>th</sup> meeting on 22 November 2021<sup>5</sup>. In a follow-up to this discussion, the VAT Expert Group was asked to look further into various business models for the supply of fuel cards. The outcome of their work was presented to the VAT Committee at its 120<sup>th</sup> meeting on 28 March 2022<sup>6</sup>. The present paper draws from the aforementioned papers, presentations and discussions based on them.

## **2. CASE C-235/18: BACKGROUND AND THE CJEU’S JUDGMENT**

As previously set out<sup>7</sup>, the case in question concerned an Austrian company, Vega International Car Transport and Logistics, transporting commercial vehicles from factories to customers. That service was provided via several subsidiaries of Vega International with registered offices in different Member States. Vega International organised and managed the supply of fuel cards, issued by different fuel suppliers, to all its subsidiaries. Fuel suppliers invoiced Vega International for the supply of fuel including local VAT. Vega International was passing on the costs of the fuel together with a surcharge of 2% to its subsidiaries, including Vega Poland. Those subsidiaries were permitted to offset the

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

<sup>2</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

<sup>3</sup> CJEU, judgment of 18 March 2021, case C-48/20 *P (Cartes de carburant)*, EU:C:2021:215.

<sup>4</sup> 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*.

<sup>5</sup> See Working paper No 1020 *CJEU Case C-235/18 Vega International: Fuel cards*.

<sup>6</sup> See presentation of the 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*, available at [0. Public Documents Repository - VAT - Library \(europa.eu\)](https://ec.europa.eu/taxation-customs/public-documents/vat-repository/vat-library/europa.eu).

<sup>7</sup> Working paper No 1020.

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.

The Polish tax authorities refused to refund local VAT to Vega International, which therefore 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 to the CJEU for a preliminary ruling questions aimed at clarifying 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 VAT Directive, in particular successive supplies of fuel.

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 that party were its owner<sup>8</sup>.

The CJEU noted that Vega International did not dispose of the fuel as if it were the owner. That fuel was in fact purchased by Vega Poland directly from the suppliers and at its sole discretion. Accordingly, it was Vega Poland which decided, in particular, on the fuel purchasing arrangements in so far as it was able to 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<sup>9</sup>.

The CJEU found therefore that Vega International actually confined 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 could not claim a refund of the VAT paid on the

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<sup>8</sup> 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.

<sup>9</sup> *Vega International*, paragraph 36.

invoices issued to it and relating to the refuelling carried out by Vega Poland at petrol stations<sup>10</sup>.

As the supply carried out by Vega International to its Polish subsidiary did 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<sup>11</sup>, which provides that any transaction which does not constitute a supply of goods, constitutes a supply of services.

The service supplied by Vega International to Vega Poland was seen to 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 qualified as a genuine financial transaction which was akin to the granting of credit for the purposes of Article 135(1)(b) of the VAT Directive and eligible for the exemption under this provision<sup>12</sup>.

### **3. VAT EXPERT GROUP'S FINDINGS REGARDING BUSINESS MODELS**

As mentioned above, the Commission services provided a preliminary analysis of the judgment in Working paper No 1020, which was discussed at the 119<sup>th</sup> meeting of the VAT Committee. In view of remarks made by delegations<sup>13</sup>, it was decided that more information was needed as to the business models applied by the fuel cards suppliers in order to understand to which extent Vega International's model is unique or similar to the models applied by other operators active in this sector. The VAT Expert Group took up this work consisting in the collection of sector-specific information and the analysis thereof. The outcome of the work was presented to the VAT Committee at its 120<sup>th</sup> meeting on 28 March 2022.

The VAT Expert Group basically concludes that the business model of Vega International is outside the generally accepted and applied fuel card business models and that the conclusions of that case should not be applied to the main fuel card business models. The VAT Expert Group also emphasises the need to align the approach for fuel cards with the approach towards e-mobility, as in future it will be common to have dual cards, covering fuel and EV charging, which already exist today. It therefore pleads for the VAT Committee to agree on a common position for the VAT treatment of fuel card operations as chain transactions which, in their view, reflects the commercial reality, and which would allow the sector to operate across the internal market in a consistent and efficient way and ensure taxation in the Member State of consumption, where fuelling takes place.

The VAT Expert Group identified two main models as to how fuel cards typically operate. These are the buy/sell model and the commissionaire model. They characterised these models as follows.

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<sup>10</sup> Idem, paragraphs 38 and 39.

<sup>11</sup> Idem, paragraph 41.

<sup>12</sup> Idem, paragraphs 49 and 50.

<sup>13</sup> Working paper No 1042 *Minutes of the 119<sup>th</sup> meeting*.

#### Buy/sell model

- *“The Mineral Oil Company sells (i.e. transfers legal title) 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

- *“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”<sup>14</sup>.*

The VAT Expert Group explained that other models may exist as well, such as hybrid models or models involving more parties in the chain of transactions.

#### **4. THE COMMISSION SERVICES’ ANALYSIS**

The characteristics of the dominant business models, as set out by the VAT Expert Group, do not seem to diverge in a substantial manner from the model operated by Vega International with the exception of the element of intra-group supplies between Vega

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<sup>14</sup> See slide 9 of that presentation.

International and Vega Poland. It is, however, unclear to which extent the fact that the supplies of fuel cards were carried out between companies in the same corporate group influenced the CJEU's assessment.

The analysis of the CJEU in *Vega International* focused on the transfer made to the fuel card supplier of the right to dispose of the fuel as owner. The CJEU found that in the factual circumstances of the case the fuel card supplier - Vega International - did not dispose of the fuel as if it were the owner. That fuel was rather purchased by Vega Poland from the fuel suppliers directly and at its sole discretion. As pointed out in Working paper No 1020, this approach is coherent with the one taken by the CJEU in *Fast Bunkering*<sup>15</sup>, in which the CJEU found that the fuel had been supplied by the company Fast Bunkering Klaipėda directly to operators of vessels who were entitled to dispose of it as owners and not by the intermediaries who at no time had been in a position to dispose of the quantities supplied. The CJEU concluded therefore that the actual supply of fuel was made by the economic operator, Fast Bunkering Klaipėda, to the vessel operators.

Similarly, in the **buy/sell model** as described by the VAT Expert Group, the fuel card issuer does not seem to dispose of the fuel as if it were the owner at any time. The fuel seems rather to be purchased by the fuel card users at their discretion directly from the mineral oil companies. The contractual arrangements between the mineral oil companies, fuel card issuers and the fuel card users, as described by the VAT Expert Group in their presentation, do not change this assessment. As pointed out by the CJEU, the concept of a "supply of goods" is objective in nature and applies without regard to the purpose or results of the transactions concerned<sup>16</sup>. If the fuel is not delivered to the fuel card issuer, the latter cannot transfer it further to the fuel card user. What the fuel card issuer therefore does is to finance the purchase of fuel by the fuel card users.

Applying the reasoning set out by the CJEU in *Vega International*, we would therefore have to conclude that the supply of fuel cards under the buy/sell model in principle constitutes a supply of financial services consisting in financing of the purchase of fuel. As mentioned above, such would be the principle, while a case-by-case analysis would allow possibly to take into account specific circumstances linked to different business models, which might have an impact on the assessment from the VAT point of view. In the factual circumstances of *Vega International*, such specific circumstances impacting the overall assessment might have been linked to the fact that the supply of fuel cards was made between the mother company and its subsidiaries.

As regards the transfer of the right to dispose of the fuel as owner, the purely factual assessment of the **commissionaire model** would not be different. However, with reference to the transfer of goods pursuant to a contract under which commission is payable on purchase or sale, **Article 14(2)(c) of the VAT Directive introduces a fiction that such transfers constitute supplies of goods**. This provision implies that when a sale or purchase is effected through an intermediary acting in his own name but on behalf of the principal (his client), there will be two taxable supplies, even if the good, which is the object of the transactions is handed over directly by the first supplier to the last buyer.

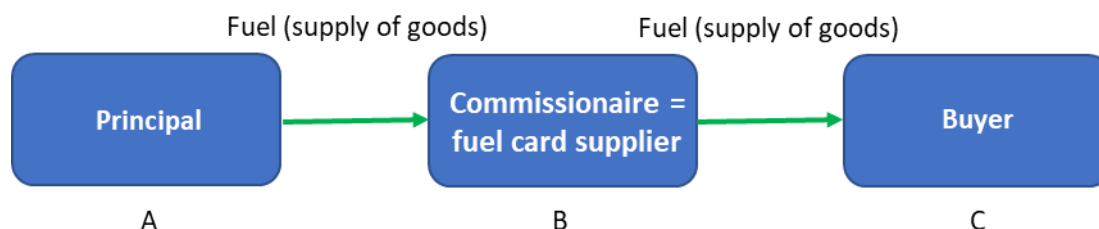
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<sup>15</sup> CJEU, judgment of 3 September 2015 in case C-526/13, *Fast Bunkering Klaipėda*, EU:C:2015:536.

<sup>16</sup> See *Vega International*, paragraph 28.

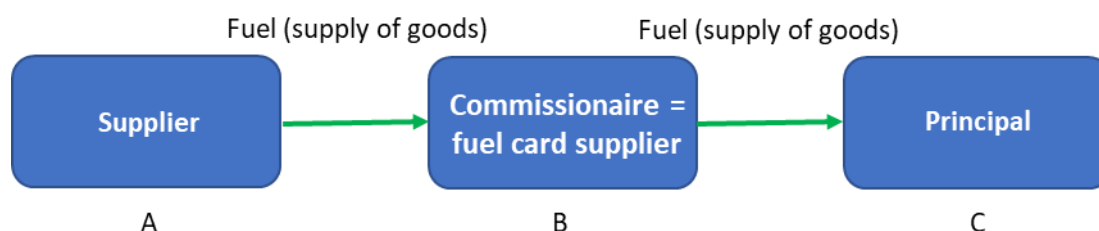
In the case of a **sales commissionaire contract**, from the VAT point of view, therefore the principal makes a taxable supply of fuel to the commissionaire and the commissionaire in turn makes a taxable supply of fuel to the buyer (fuel card user).

Sales commissionaire



In the case of a **purchase commissionaire contract**, the fuel supplier effects a taxable supply of fuel to the commissionaire and the latter makes a taxable supply of fuel to the principal (who in this case is the fuel card user).

Purchase commissionaire



Therefore, under the sales and purchase commissionere contracts, whereby:

- the commissionaire acts in its own name, but on behalf of a principal and
- the commission is payable on purchase or sale,

the supplies to and from the commissionaire, who is a fuel card supplier, qualify as supplies of goods (fuel) and not services.

## 5. CONCLUSIONS

From the above considerations, the following can be concluded as regards the VAT treatment of the supplies of fuel cards:

- As decided by the CJEU, 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 is 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 the goods concerned (fuel).
- Such a transfer of the right to dispose of the fuel as owner does not seem to take place under the buy/sell model for the supply of fuel cards, as described by the VAT Expert Group in its presentation made to the VAT Committee at its 120<sup>th</sup> meeting.
- Where fuel cards constitute a mere instrument to structure the fuel supply under a purchase or sales commissionaire contract, whereby 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 a supply of goods (fuel).

## **6. DELEGATIONS' OPINION**

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

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