

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

**Origin:** Commission  
**References:** Article 14(1) and (2)(c)  
**Subject:** CJEU Case C-235/18 *Vega International*: Fuel cards – follow-up  
(Document taxud.c.1(2023) – Working paper No 1067)

1. The VAT Committee **almost unanimously** notes, in line with the case C-235/18 *Vega International*<sup>1</sup> of the Court of Justice of the European Union (CJEU), that where fuel is supplied to a cardholder under a fuel cards scheme that falls under Article 14(1) of the VAT Directive, the supply made by the fuel card issuer shall not qualify as a supply of goods to the fuel cardholder but as a supply of a financial service.
2. Where fuel is supplied under a fuel cards scheme falling under Article 14(2)(c) of the VAT Directive, the VAT Committee agrees by **almost unanimity** that there shall be a supply of fuel to the fuel card issuer without there being a requirement of a transfer to that fuel card issuer of the right to dispose of the fuel as owner.

For a fuel cards scheme to fall under Article 14(2)(c) of the VAT Directive, the VAT Committee **almost unanimously** agrees that all of the following conditions shall be met:

- 1) a transfer of ownership of the fuel in the sense of the formal legal title is made to the fuel card issuer (intermediary);
- 2) the supplies to and by the fuel card issuer (intermediary) are similar;
- 3) an agreement exists between the commission agent and the principal.

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

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To comply with each of these conditions, the VAT Committee **almost unanimously** agrees that the fuel cards scheme shall at minimum meet the following criteria:

*Condition 1): transfer of the ownership of the fuel in the sense of formal legal title*

- a) The parties bear the risk of non-payment at their respective deemed-delivery or delivery stage being the mineral oil company at the level of the fuel card issuer and the fuel card issuer at the level of the fuel card holder.
- b) The contractual risk of damage to the fuel cardholder is borne by the fuel card issuer, such that in the event material defects in the fuel result in damage to the fuel cardholder (e.g., in the form of engine damage caused by the fuel supplied), that cardholder shall assert all contractual claims including product related ones to the fuel card issuer, and not to the mineral oil company.
- c) The parties independently set the price at each leg of the chain at the level of the mineral oil company and at the level of the fuel card issuer respectively.
- d) By confirming each individual supply within the framework of its contractual agreements with the mineral oil company and the fuel cardholder, the fuel card issuer decides on the conditions of the purchase including the quality, quantity, place and time and confirms that the fuel cardholder is allowed to access the fuel directly.

*Condition 2): the supply to and by the fuel card issuer are similar*

- a) The fuel card issuer does not alter the fuel delivered by the mineral oil company.

*Condition 3): an agreement exists between the intermediary and the principal*

- a) The fuel card issuer is supplying on behalf of the mineral oil company or purchasing on behalf of the fuel card holder and the chosen structure is reflected in their agreement. The agreement explicitly refers to a supply of fuel and ancillary services, not to the granting of credit or the administration of fuel supplies.
- b) The agreement reflects the economic reality. At the fuel station, the fuel cardholder demonstrates the existence of the agreement by using a means of an identification card (e.g., a fuel card) issued by the fuel card issuer.
- c) The fuel card issuer is paid for its services to its principal (the mineral oil company or the fuel cardholder).

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3. The VAT Committee **almost unanimously** agrees that the criteria convened for applicability of Article 14(2)(c) of the VAT Directive in the absence of transfer of ownership shall be without prejudice for any prior characterisation by Member States of fuel supplied to a cardholder under a fuel cards scheme as being a supply of goods under Article 14(1) of the VAT Directive. To that end, the VAT Committee **almost unanimously** agrees that these guidelines shall not apply retrospectively.