

26 January 2022

## Introduction

### About FCE

Fleet Cards Europe (FCE) is a not-for-profit association (ASBL) established in Belgium in 2021 with the aim of representing the independent fleet/fuel card sector in Europe.

Our membership base includes key independent players in this market which are headquartered and operate across the continent. FCE members represent a major share of the fuel cards market. Approximately a quarter of all fuelings in the B2B segment in Europe are purchased by fuel cards issued by the members of FCE.<sup>1</sup>

For further information, please contact the FCE Secretariat at [fleetcardseurope@humbrophy.com](mailto:fleetcardseurope@humbrophy.com)

Our membership includes:



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<sup>1</sup> Source: GlobalData, May 2021

## Analysis

### FCE position

In the context of the ongoing discussion within the VAT Committee concerning Vega International and the respective CJEU judgement, this document intends to clarify, from the point of the FCE members, how the card issuers operate, the purpose of fuel cards and how the contractual arrangements work among the parties involved. The FCE would like to contribute to the discussion of the VAT Committee before the deliberations are finalized and guidelines are issued by the VAT Committee.

#### 1. The Vega case as reference case for the VAT treatment of the fuel card business

FCE members are convinced that the Vega case should not serve as a reference case for the fuel card business, taking into account a number of key reasons listed below:

1. The business of FCE members (fuel card issuers) differ substantially from the situation in the Vega case. By way of background, Vega International was not a fuel card issuer, but a customer of a fuel card issuer. Vega International did not supply the fuel (supply of goods) to its subsidiary but instead applied a mere cost allocation (supply of service). Consequently, it claimed the input VAT not within the Polish VAT assessment procedure, but in the refund procedure. Vega International was not authorised, to issue third party fuel cards to its own subsidiary companies (Vega Poland). Therefore, Vega Poland was not entitled to make purchases on behalf of the fuel card issuer.
2. In the case C-526/13 Fast Bunkering Klaipėda, the CJEU disregarded the intermediary and assumed a direct supply from the first to the last party in the chain. The VAT Committee unanimously decided and issued a guideline that the decision had to be construed narrowly.<sup>2</sup>
3. The number of judges involved in the Vega decision (three) indicates that the CJEU did not consider this to be a particularly complex or important matter, in which case the CJEU would sit in in a Grand Chamber of 15 judges.

The FCE is of the opinion that based on the three aspects mentioned above, it should be concluded that the decision made in the Vega International case should not allow for any generalisation or conclusions to be drawn beyond the facts that were subject to the decision and specific to that particular case.

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<sup>2</sup> 1 Document B – taxud.c.1(2016)7297391 – 911

## 2. Conclusions of the VAT Committee

Following the decisions of the CJEU and as outlined by the European Commission WP 1020 for the discussion of the Value Added Tax (VAT) Committee, the decisive criterion is to whom the right to dispose of the fuel as the owner was transferred. The document also outlines that "If in the factual circumstances of a given case it can be established that the right to dispose of the fuel as the owner is actually transferred to the supplier of the fuel cards, it could be concluded that the latter supplies the goods – fuel – to the card users. To come to such a conclusion, all of the following elements should be considered:

- Who takes the final decision as to the choice of the service station where the fuel can be supplied,
- Who takes the decision as to the quality, quantity (through e.g. limit for each card) and type of fuel to be used,
- Who decides as to the time of purchase,
- How to use the fuel.

In addition, certain contractual arrangements, such as the assignment to the fuel card supplier of all material risk in the event of execution failures or the reservation of ownership right by the latter might have a bearing on the final assessment."

As already mentioned, the Vega International case dates back to 2012. At that point in time, article 36a relating to intra-community resellers had not yet been part of the Directive 2006/112 EC<sup>3</sup>. The article relates to the place of supply of the goods and accepts the existence of the chain transactions; the text acknowledges that in case of chain transactions, the intermediary does not physically handle the goods that are resold.

Based on the above, FCE members note the following:

- The fuel card issuers, having agreed on supply arrangements with suppliers, agree to supply the customers at those particular service stations or toll roads that are part of their network

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<sup>3</sup> Article 36a

1. Where the same goods are supplied successively and those goods are dispatched or transported from one Member State to another Member State directly from the first supplier to the last customer in the chain, the dispatch or transport shall be ascribed only to the supply made to the intermediary operator.
2. By way of derogation from paragraph 1, the dispatch or transport shall be ascribed only to the supply of goods by the intermediary operator where the intermediary operator has communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported.
3. For the purposes of this Article, 'intermediary operator' means a supplier within the chain other than the first supplier in the chain who dispatches or transports the goods either himself or through a third party acting on his behalf.
4. This Article shall not apply to the situations covered by Article 14a.

(“acceptance points”), but not at stations or toll roads for which no acceptance has been agreed upon. For customers, it is clear which suppliers are an acceptance point, as they clearly display the brand logo of a fuel card issuer at the petrol station.

- When it comes to the quality of fuel, it is understood that fuel in the EU is subject to quality standards, e.g., EN 590 for gasoil. Fuel not meeting these quality standards must not be sold.
- Each fuel card that is issued has a limit, as agreed with the customer. The fuel card is issued to specific vehicles and customised for the fuel that is required for that particular vehicle. Mileage data must be provided as part of the authorisation process.
- Card can be issued which restrict the point in time it can be used, for example, on specific days of the week or during certain hours.
- Fuel when provided to the transport industry is used to power motor vehicles.
- In case of defective fuel, the fuel card issuer is liable to the customer, not the suppliers. Payment related aspects are to be clarified between the contractual parties, i.e, the suppliers have to revert to the fuel card issuer, and the fuel card issuer in turn to the customer. There are two clear separate contractual agreements in place.
- The General Terms and Conditions of fuel card issuer typically includes clauses on the reservation of ownership according to which ownership is reserved up to the complete fulfilment of claims.

The strong position of the fuel card issuer in the chain, as detailed in the criteria set forth above, makes it clear that it is the fuel card issuer that has been transferred the right to dispose of the fuel from its supplier so that the fuel card issuer can in turn transfer that right to its customer.

Overall, and noting that the fuel card issuer, with the provision of consumption data, provides additional value to its customers, the situation is comparable to that in the area of electromobility, for which the VAT Committee in WP No. 1012 - discussed at the 118th meeting of the VAT Committee - stated that this business model is underpinned by a chain transaction.

### **3. For the context: functioning of the fuel card**

The road transport industry, i.e., haulier companies and other operators running road vehicle fleets, is in need of a solution allowing its personnel to refuel or recharge vehicles and to acquire toll road access in a way that is easy to manage and that is limited to mobility-related products. This means:

- The personnel refuelling vehicles and using toll roads should not need to carry cash, also for security reasons.
- The invoicing should be simple and reduce potential administrative burdens so that all transactions of a fleet within a given timeframe are bundled in one consolidated invoice. The

invoice flow needs to bypass the personnel on the road, noting that completeness and integrity of the invoices are key.

- The invoices need to be complete and include all mandatory information mentioned in the art. 226 of Directive 2006/112/EC. By contrast, receipts issued at petrol stations, e.g., do not include the mandatory address information of the recipient.
- The invoices should facilitate a manageable process as regards the refund of input VAT (mechanism of Directive 2008/9 EC). The bundling of transactions in one consolidated invoice serves that purpose and eases the administrative burden on both the road transport industry and the tax administrations involved.
- In addition to bundled consolidated invoices, the road transport industry seeks information on consumption data etc. to manage consumption costs, ensure security and encourage smart driving. Only fuel card issuers can provide this key data, which is also a critical tool in enabling more sustainable transport.

Agreements between fuel card issuers and their partners (mineral oil companies/petrol station operators and toll road operators) define and frame that at the moment of the supply the fuel card issuer becomes the owner of the fuel. Fuel card issuers have also agreements with their customers, based on which the fuel card issuers offer their customers the possibility to be supplied with fuel at a defined station. Fuel card issuers store the required customer master data that the suppliers of goods do not have and that allows complete invoices to be issued. In this business model, fuel cards, when used by the customer, and provided a transaction is authorised, ensure the following:

- Identify the customer as the entity being authorised to trigger a supply, including transfer of title from the supplier to the fuel card issuer;
- Allow the fuel card issuer to allocate a transaction as a supply of goods/services to the customer and to supply that customer, including transfer of title.

Therefore, the fuel card issuer (not the issuer's partner/supplier) is solely responsible for the delivery of the fuel. As regards payment for the goods, the partner/supplier must revert to the fuel card issuer and not to the customer. To have safeguards in place if customers default on payments, fuel card issuers agree on the reservation of ownership on the goods supplied with their customers. The fuel card issuer can be either dependent or independent of mineral oil companies. Fuel cards are issued to B2B customers either as physical plastic cards with a magnet strip, as mobile phone apps or as on-board units (in the toll area). As regards VAT, fuel card issuers submit VAT returns at the place where the goods have been supplied.

The current model of fuel card operation is crucial not only for traditional fuel but also for the supply of alternative fuels, as the supply chain and the contractual chain is the same. For example the proposal for a Regulation of the European Parliament and of the Council on the deployment of

alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council directly refers to the business model of the fuel card issuers:

*"7.5 ... Operators of publicly accessible refuelling stations may provide hydrogen refuelling services to customers on a contractual basis, including in the name and on behalf of other mobility service providers..."*

It would be very helpful to have a consistent legal assessment and interpretation for the same product, regardless of the type of fuel supplied. The solid interpretation would be also important when enabling the decarbonisation of transport.

The FCE would welcome the opportunity to engage the European Commission, the members of the VAT Committee and other stakeholders to further clarify all essential aspects relevant for the fuel cards issuers.

Kind regards,

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