

VAT Treatment of Fuel Card Transactions – Submission to EU Member States for consideration when seeking an EU wide common approach in the VAT Committee

This document has been prepared by a stakeholder group consisting of representatives of the European Fuel Card sector such as Fleet Cards Europe (FCE), FuelsEurope, IRU, Bft, UPEI, VdA, DKV Mobility, Eurowag, UTA/Edenred, E100, Fleetcor, Shell and BP, and supported by 4 members of the EU Commission’s VAT Expert Group, who had been involved in the preparation of a paper (the “VEG Paper”) presented to the VAT Committee at its meeting on 28 March 2022 (together: the “Stakeholder Group”).

Introduction

Following the VAT Committee meeting on 21 October 2022 (which had discussed the VAT Committee Working Paper 1046¹), the EU Commission held a virtual meeting on 24 November 2022 with the Stakeholder Group.

At that meeting, the Commission asked the Stakeholder Group to provide further input on how the supply of fuel under the “buy/sell” fuel card model (being the most prevalent model in the fuel card sector) could, based on certain criteria, be equated to a supply of goods to and by the Fuel Card Issuer² under Article 14(2)(c) of the VAT Directive, being “the transfer of goods pursuant to a contract under which commission is payable on purchase or sale”.

As previously outlined to the Commission in various submissions and during the 24 November meeting, the Stakeholder Group’s view is that supplies of fuel under the buy/sell model should be considered a supply of goods under Article 14(1) of the Directive. This is the approach which, in the Stakeholder Group’s view, most closely follows the wider legal and commercial reality of a fuel card transaction³. However, as an alternative¹ solution, and based on certain criteria, the same VAT treatment can be achieved under Article 14(2)(c), which is an autonomous concept of VAT and must be applied consistently throughout the EU without being restricted by (non-VAT) legal requirements in any Member State.

Common objectives

The Stakeholder Group has actively engaged with the Commission on this topic as it is keen to find a solution that achieves the common objectives for all stakeholders – the Commission, Member States, Fuel Card sector and the wider business community. These key objectives are:

- that the CJEU decisions (in particular *Vega Intern*.⁴) are respected and dealt with appropriately for the Fuel Card sector;
- that the business models in the Fuel Card sector - which are treated for VAT purposes as supply of fuel through the supply chain – are preserved, particularly the most prevalent buy/sell model, thereby facilitating efficient use of vehicle fleets and fuel consumption;
- to counteract VAT evasion and fraud by preserving the existing business models, which provide a robust audit trail for the matching of VAT inputs and outputs;
- that there is consistency of treatment for VAT purposes between traditional fuel card transactions and electrical vehicle (“EV”) charging transactions; and,

¹ CJEU Case C-235/18 *Vega Intern*.

² The terms fuel card, Fuel Card Issuer, Fuel Card User and Mineral Oil Company used in this paper are consistent with the meaning outlined on page 8 of the VEG Paper

³ For more details of how fuel cards typically operate in practice, please refer to “Operational Aspects” in the Appendix to this paper as well as page 11 and 12 of the VEG Paper

⁴ Case C-235/18

- that there is legal certainty for the Fuel Card sector (issuers and users) across the EU.

It is clear to us that these objectives are not mutually exclusive and that the business models can and (where certain conditions are met) *should* continue to be treated as a supply of fuel through the chain for VAT purposes.

Equating the buy/sell model with the VAT-only concept of Article 14(2)(c)

We have carefully considered Working Paper 1046 and believe that there is a supply of goods in the buy/sell model under the VAT only concept of Article 14(2)(c) where the following conditions are met:

- the parties explicitly agree that they are supplying or purchasing fuel (and are not granting credit or providing a fuel administration service etc.);
- the parties independently set the price at each leg of the chain, i.e., at the level of the Fuel Card Issuer;
- the parties bear the risk of non-payment at each delivery stage;
- the contractual risk of damage to the Fuel Card User is borne by the Fuel Card Issuer, such that in the event that material defects in the fuel cause damage to the customer (e.g., in the form of engine damage caused by the fuel supplied), the Fuel Card User shall assert all contractual claims including product related ones to the Fuel Card Issuer, and not the Mineral Oil Company;
- at the fuel station, the Fuel Card User demonstrates he/she is acting on behalf of the Fuel Card Issuer, and is authorised to do so, by using a means of an identification card (e.g., a fuel card) issued by the Fuel Card Issuer;
- by confirming each individual supply within the framework of its contractual agreements with the Mineral Oil Company and the Fuel Card User, the Fuel Card Issuer decides on the conditions of the purchase including the quality, quantity, place and time and confirms that the customer is allowed to access the fuel on behalf of the Fuel Card Issuer.

Looking at the fuel card arrangements from the perspective of an average consumer (i.e. the Fuel Card User), and given the specific practical steps involved (such as the agreed validation/acceptance and invoicing process), we as a group are strongly of the opinion, that if the above conditions are fulfilled, this model must be treated for VAT purposes, as a supply of fuel through the supply chain.

Conclusion

If the above approach and conditions are consistently applied across the EU, the objectives of all stakeholders would be met, as:

- the CJEU decision in *Vega Intern.* is respected and dealt with appropriately for the Fuel Card sector;
- the predominant business models in the Fuel Card sector are preserved, benefitting both businesses and Member States;
- there is an alignment with the guidelines adopted by the VAT Committee on EV charging; and
- the required legal certainty for the Fuel Card sector across the EU is short term achieved.

In the longer term and from a wider business perspective, the Stakeholder Group is of the opinion that, in order to ensure consistency of approach across all sectors and minimise the need for further input from the CJEU on the interpretation of Article 14(1) in the case of chain transactions, further legislative updates from the Commission and Member States are required.

However, in the short term, we call on all Member States to adopt the criteria set out above as conditions for a supply of goods through the chain under the buy/sell model in the Fuel Card sector.

Appendix - Background to the Fuel Card sector

Importance:

- The value of the European fuel card market is significant, estimated to be worth over €221 billion in 2017 and projected to reach over €322 billion by 2025.
- The fuel card sector operates on a cross-jurisdictional basis, meaning that an EU-wide solution is required.
- From the Fuel Card User's perspective, fuel cards enable efficient cost control across their fleet allowing access to consistent wholesale pricing; facilitate composite invoicing which simplifies input VAT deduction, refund procedures, administrative and tax audit processes by tax authorities; and avoid individual drivers managing payments for the fuel required to operate their vehicle.
- From Member States' perspective, fuel cards provide a clear and robust audit trail for matching VAT inputs and outputs, counteracting evasion and fraud, and ensuring taxation at the place of supply.
- Fuel cards are increasingly used in the context of electric vehicle ("EV") charging, meaning it is important that the VAT treatment of transactions involving traditional fuels is consistent with that of EV charging, which was clarified in the Commission's Working Paper 1012.

Operational aspects:

The following features are typically present in the operation of a fuel card in practice:

- The Fuel Card Issuer enters into separate contracts with the Mineral Oil Company (i.e. its supplier) and the Fuel Card User (i.e. its customer).
- The Fuel Card Issuer agrees separate pricing with the Mineral Oil Company and the Fuel Card User.
- Through its agreements with multiple suppliers, the Fuel Card Issuer creates a network of delivery points ("acceptance points") at which their customers can purchase goods and services from the Fuel Card Issuer. This network is therefore perceived by the Fuel Card User as a network of acceptance points accessible through their agreement with the Fuel Card Issuer rather than a network offer of Mineral Oil Companies or service stations. This network is known and easily identifiable to the Fuel Card User via the internet, in various apps for mobile devices, fleet management systems, certain vehicle software components, and with the logo of the Fuel Card Issuer being visible at the acceptance point. The Fuel Card Issuer's logo is therefore a clearly visible signal to the drivers that they can purchase fuel from the Fuel Card Issuer at the particular service station.
- A crucially important component of the fuel card arrangement is the validation and invoicing process. When a driver identifies himself at the acceptance point by presenting the fuel card, the Fuel Card Issuer verifies whether all requirements for the supply of fuel using that card are met. Where this is the case, this enables the purchase of the fuel in the name and on account of the Fuel Card Issuer. The check includes both an identity check of the Fuel Card User and a comparison of the place, date of supply and the type of product, e.g. diesel, carburetor fuel or car wash, with the content of the contract agreed with the Fuel Card User as well as a check of the delivery volume. An exact verification of the price is not required at the time of the check due to the conditions agreed between the Fuel Card Issuer and the Fuel Card User.
- In certain stations there may be additional validation steps in order to use the fuel card. This includes the use of automated fuel pumps which, in the same way as normal service stations, form part of the network of delivery points of the Fuel Card Issuer.

In the case of automated fuel terminals, validation of the area and product offer of application and confirmation of supply by the Fuel Card Issuer takes place as described above immediately when

the fuel card is inserted into the fuel terminal. In addition, in some EU countries, petrol/diesel terminals for transport vehicles and buses must be unlocked before refueling. The terminal is unlocked after the driver of the vehicle has presented a valid fuel card, for example, to the petrol station staff and the Fuel Card Issuer has digitally confirmed that the Fuel Card User is authorised to purchase the goods on behalf of the Fuel Card Issuer. However, regardless of whether the validation takes place before or after the fueling of the vehicle, the Fuel Card User is nonetheless already aware of the particular service station being part of the network of acceptance points, by virtue of the Fuel Card Issuer's logo, as outlined above. Therefore, the VAT treatment of the supply of the fuel should be the same in either case.

VEG Paper



Presentation - VEG
fuel cards subgroup -