CJEU rules on recharges for fuel card use: a VAT exempt financial service rather than supply of fuel

On 15 May 2019, the Court of Justice of the European Union (CJEU) delivered its judgment in the Vega International case (C-235/18) on intercompany recharges made for fuel purchased through fuel cards. In line with an earlier but much contested ruling, the CJEU considers that there is no chain of supplies of fuel in such case. The provision of fuel cards is rather considered a VAT exempt service of granting credit.

Facts

The Vega group transports commercial vehicles from car factories to the customer. An Austrian group entity, Vega International, provides fuel cards (from different suppliers) to all subsidiaries of the group, who operate the transport services. Vega International is invoiced by suppliers for fuel used (using applicable VAT at fuel station’s location). It subsequently re-charges these costs to its subsidiaries with a 2% surcharge.

Vega International recovered the Polish VAT it incurred on Vega Poland’s fuel expenses. However, the refund was rejected by the Polish VAT authorities, who argued that it was not Vega International but Vega Poland that was the actual recipient of fuel from the supplier. In fact, the Polish VAT authorities argued that Vega International was only providing an exempt service of granting credit, covered by article 135(1)(b) of the European VAT Directive.
The question referred to the CJEU was essentially whether the granting of fuel cards can be considered an exempt service, or a complex supply with the delivery of goods as its main element, and where VAT could be recovered by Vega International.

CJEU decision

The CJEU first reached the conclusion that Vega International only granted its subsidiaries the means to purchase fuel (through the fuel cards), and thus only acted as an intermediary. As the subsidiaries were sole decision-makers regarding the purchase of fuel (quantity, quality, type, fuel station, etc.) and were integrally supporting the fuel costs, Vega International could not be considered as holding the right to dispose of any tangible property as owner. The CJEU thereby confirmed its *Auto-Lease Holland* case law, which dates back to 2005. Consequently, since Vega International was not the recipient of goods, it could not be considered as the supplier of goods to its subsidiaries. As there was no actual supply to Vega International, it was not in position to recover VAT in Poland.

Under the circumstances of the case, Vega International was therefore considered to be rendering a service, namely the granting of fuel cards to its subsidiaries (Vega Poland in the case at hand), which enabled the consumption of fuel for the rendering of vehicle transport services. This service qualifies as VAT exempt credit services according to article 135(1)(b) of the VAT Directive. In this matter, the CJEU considered that the notion of “granting and negotiating of credit” should apply based on the nature of the transaction, namely that the subsidiaries were given a payment delay for fuel purchases. The fact that this was not provided as a loan by a credit institution was irrelevant.

Impact

The fact that the CJEU rules out the qualification of the fuel card scheme as a chain of fuel supplies does not come as a surprise to VAT practitioners, given the previous ruling in the Auto Lease Holland case. However, this conclusion is at odds with the way that fuel card schemes are typically exercised.

The CJEU did not consider in any way the assimilation to supplies of goods, or the transfer of goods, following a contract under which commission is payable on purchase or sale (article 14 (2) c of the VAT Directive, implemented in article 13 of the Belgian VAT Code, also called the “commissionaire fiction”). In Deloitte’s view, this could have led to a significantly different and more practical outcome.

In the current situation, businesses operating fuel card or similar schemes, as well as companies recharging costs incurred under such schemes, should review their contractual arrangements thoroughly, as financial consequences of incorrect classification can be significant. Apart from denying VAT recovery for the intermediary (i.e. Vega International), which is considered not to have received a supply of goods, VAT deduction could also be denied towards the other parties.
in the chain, as they do not hold a VAT invoice from the actual supplier.

Contacts

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