

# The application of value added tax on supply of fuel made with fuel cards



November 2022

## Executive Summary

- In late 2021, DG TAXUD of the European Commission appointed a task force within the EU VAT Expert Group to conduct an analysis on the issues arising from the Vega International judgment. **The findings**, presented in March 2022, **stated that fuel card issuers (FCIs) purchase and resell fuel through a chain transaction and that this occurs under both a buy/sell business model** (by far the most prevalent) **and a commissionaire business model** (rarely applicable).
- In clear contradiction to this, [Working Paper 1046](#) prepared by **DG TAXUD** for the EU VAT Committee meeting of 21 October 2022, concludes that under **the buy/sell business model there is no transfer which enables the FCI to dispose of the good supplied (fuel) as an owner**.
- However, the judgment of the CJEU in the case of Vega International cannot be used as a reference ruling on the VAT assessment of transactions in the fuel card business. **The CJEU did not assess the VAT treatment of a (classic) fuel card business** (i.e., chain transaction). **Rather, the court exclusively assessed a situation that fundamentally differs from the fuel card business**, namely the direct purchase of fuel by a third party (Vega Poland), which when using the fuel card was not authorised by the FCI to act in the FCI's name and on its behalf.
- **Additionally, in December 2021, the European Commission issued VAT guidelines on the recharging of electric vehicles. These guidelines confirm that this represents a supply of goods in a chain transaction.** In the light of this precedent, it would be inconsistent to treat classic fuels differently to electricity in the context of e-mobility as the models through which a vehicle is refuelled or recharged are essentially the same, thus confirming the Commission's proposal as presented in [Working Paper 1012](#).
- **The buy/sell business model underpins many business sectors where there is central purchasing.** If the buy/sell structure in the area of purchasing fuel with fuel cards is challenged, the question needs to be asked whether such interpretation of the notion of “supply” as per Article 14 (1) of the EU VAT Directive would be “contagious” and impact upon the treatment of other sectors.

## EU VAT Committee (Art. 398 of Directive 2006/112/EC)

In early 2022, DG TAXUD appointed a task force within the EU VAT Expert Group to conduct an analysis on the issues arising from the Vega International judgment. **The findings**, presented at the EU VAT Committee's 120<sup>th</sup> meeting, held on 28 March 2022, **unequivocally stated that FCIs purchase and resell fuel through a chain transaction and that this occurs under both a buy/sell business model** (by far the most prevalent) **and a commissionaire business model** (rarely applicable).

Contrary to the above, however, in [Working Paper no. 1046](#), which DG TAXUD prepared for the 121<sup>st</sup> meeting of the EU VAT Committee of 21 October 2022, **DG TAXUD reached the conclusion that under the buy/sell business model** - the fact patterns of which were described by the EU VAT Expert Group in their analysis - **there is no transfer which enables the FCI to dispose of the good supplied (fuel) as an owner**. Under the commissionaire model, however, there is a deemed supply of goods (fuel) where goods are transferred pursuant to a contract under which commission is payable on purchase or sale.

In view of the above, **the key question is: does a transfer of the right to dispose of fuel as an owner take place, meaning that FCIs do in fact supply goods (fuel) as owners under the well-established buy/sell business model in addition to the commissionaire model?**

## The buy/sell chain transaction model

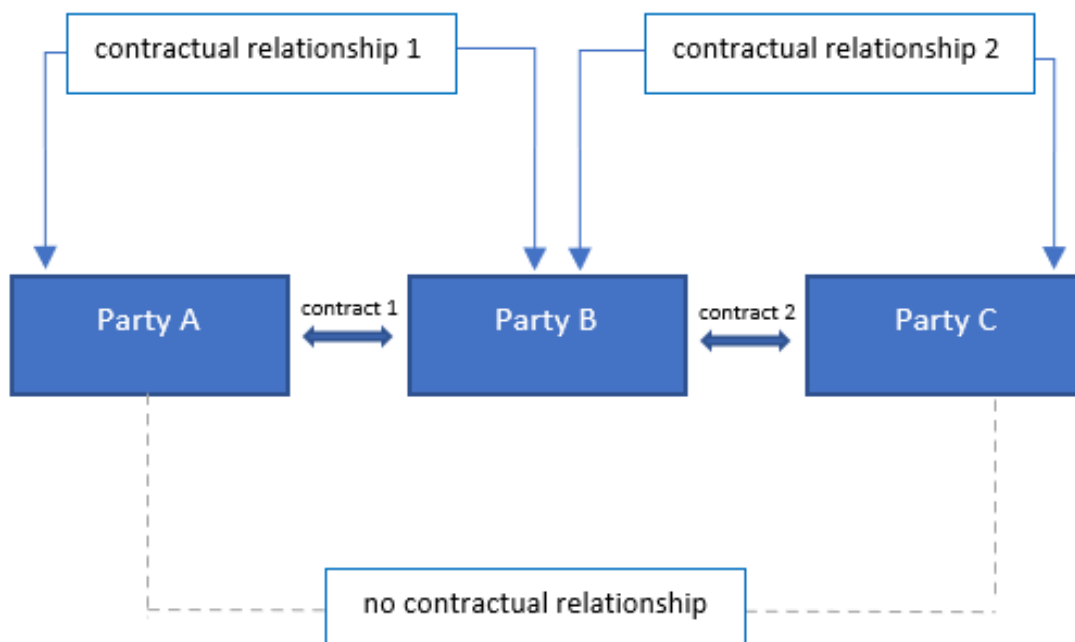


Figure 1.1. Overview of the buy/sell chain transaction model



In principle, a supply of goods under the buy/sell model exists when there is a transfer of the ability to dispose of a tangible good like an owner. That means the recipient must be in the position to dispose of the good at its discretion, in particular to use and sell it as if being the owner of the respective good. Moreover, a transfer of the power to dispose of tangible property as owner does not require that the party to whom the property is transferred must physically possess or that it must be physically transported to and/or received by that party<sup>1</sup>.

In this context, the transfer of the capacity to dispose of a tangible good like an owner does not require that the purchaser physically disposes of the good, but rather has the right to take decisions which are capable of affecting the legal situation of the property concerned, including, inter alia, to sell it<sup>2</sup>.

At the level of a FCI the power of disposal over the acquired fuel products is based on the ability to make decisions that affect the legal situation of the relevant good, *e.g.*, the decision to resell the fuel to the fuel card customer, which includes the authority to set prices as well as the responsibility for material defects.

More precisely, the contractual arrangements between a mineral oil company and a FCI provide for the transfer of ownership of the fuel to the FCI so that the FCI is in a position to economically profit from the fuel by reselling it to its customer, the fuel card user, based on a sales agreement.

On the basis of such sales agreement, fuel is provided to the final customer only if the acceptance process instituted by the FCI is successfully completed. That process checks requirements like the country of supply, the petrol station in question, the type of fuel, the time of the supply and agreed upon limits of supply. Once the acceptance process is completed successfully, the fuel card user at the authorised service station of the mineral oil company triggers an individual supply of fuel from the mineral oil company to the FCI and, immediately thereafter, an individual supply of fuel from the FCI to the fuel card user.

**Taking this into consideration, it is evident, that an FCI has acquired a right to dispose of these goods as an owner.**

**The buy/sell business model (shown above) underpins many business sectors - not just that of FCIs - where there is central purchasing.**

Central purchasing in groups of companies is often structured in a way that on the basis of contractual agreements in place, a central procurement unit (B) procures goods from a supplier (A) which it then on-sells to group companies (C), whereby C may place orders directly at A. Successive supply arrangements are usually used for this purpose. In these arrangements, the procurement unit B has agreed the product range that can be ordered with A, as well as other details such as the parties that can place orders, shipping and payment terms, responsibility etc., however, the type

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<sup>1</sup> CJEU, [order of 15 July 2015, Itales, C-123/14, not published, EU:C:2015:511](#), paragraph 36; [judgment of 20 June 2018, UAB 'Enteco Baltic' C-108/17, EU:C:2018:473](#), paragraph 87

<sup>2</sup> CJEU, [judgment of 23 April 2020, Herst s.r.o., C-401/18, EU:C:2020:295](#), paragraph 40



and the quantity of products to be purchased and sold in detail are at the discretion of the last recipient C, as well as the point in time to place orders.

As regards shipping, C may collect the goods directly from A or A might transport them to C, in both cases without the physical involvement of B. Subsequently, an invoice for the supplies carried out will be issued from A to B and from B to C.

With regard to this business model, the existence of the power of disposal over the acquired goods at the level of the procurement unit B is, thus, based on its ability to make decisions that affect the legal situation of the relevant goods, such as the decision to resell the goods to the group companies C. By inserting article 36a into the VAT Directive effective as of 1 January 2020, its authors have for the first time explicitly mentioned chain transactions in the Directive and thus strengthened the position of the middle party. Consequently, as far as can be seen, this business model has not been questioned in the past.

In case the buy/sell structure in the area of purchasing fuel with the use of fuel cards was to be challenged, the question needs to be asked whether such interpretation of the notion of “supply” in the meaning of Article 14 No. 1 of the VAT Directive **would be contagious and impact upon the treatment of other business fields, such as central purchasing described above.**

### The Vega International case as an exception rather than a reference

The facts submitted to the Court of Justice of the European Union (CJEU) for a preliminary ruling in case C-235/18, do not regulate the "classic" fuel card business for the reasons detailed in more depth below.

In the Vega case, a fuel card was issued to Vega International by the FCI to enable Vega International to acquire fuel from mineral oil companies<sup>3</sup>. Vega International, however, most likely contrary to its agreement with the FCI<sup>4</sup>, passed on the fuel card to its subsidiary Vega Poland, a third party, to ensure the fuel supply of Vega Poland. This transfer, which was not contractually agreed, created a situation that was outside the scope of the classic fuel card business. In the absence of authorisation of the "actual fuel card user" (Vega Poland) by the FCI, logically no delivery could take place from the FCI to the fuel card user (Vega International). Rather, Vega Poland acted outside of the powers granted by the FCI to its contractual partner (Vega International) and thus at its own discretion and not in the name of the FCI.

What's more, Vega International did not invoice Vega Poland for a supply of fuel, which would have required it to register for Polish VAT and submit VAT returns in Poland. Instead, Vega International

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<sup>3</sup> The contracts between the fuel card issuer and the mineral oil company on the one hand, and the contracts between the fuel card issuer and the fuel card user on the other hand, define the conditions under which the fuel card issuer is willing to purchase the delivery items from the mineral oil company and sell them to the fuel card user.

<sup>4</sup> The general terms and conditions of FCIs typically prohibit the transfer of fuel cards to non-contracting parties.



invoiced by way of simple cost allocation and claimed input VAT through a refund procedure (Council Directive 2008/9 EC) and not a VAT assessment.

**The CJEU, thus, did not assess the VAT treatment of a (classic) fuel card business (i.e., chain transaction). Rather, the court exclusively assessed a situation that fundamentally differs from the fuel card business, namely the direct purchase of fuel by a third party (Vega Poland), which when using the fuel card was not authorised by the FCI to act in the FCI's name and on its behalf. As a result, the decision of the CJEU in the case of Vega-International cannot be used as a reference ruling on the VAT assessment of transactions in the fuel card business.**

### The parallels between fuels and electricity

In December 2021, the European Commission issued [VAT guidelines on the recharging of electric vehicles](#). These guidelines confirm that this represents a supply of goods in a chain transaction, thus confirming the Commission's proposal as presented in [Working Paper 1012](#) (*"The Commission services are therefore of the view that that the CPO supplies electricity and ancillary supplies to the eMP who then in turn supplies this electricity with ancillary supplies to the driver of the electric vehicle."*).

**In the light of this precedent, it would be inconsistent to treat classic fuels differently to electricity in the context of e-mobility as the models through which a vehicle is refuelled or recharged are essentially the same.** The uniform treatment of fuels and electricity in this context is essential as FCIs increasingly allow for the purchase of both electricity and fuels on the same hybrid card. As customers increasingly have more hybrid vehicles and fleets, so too they expect solutions to meet their changing needs.

From a customer perspective, what sense does it make to have a hybrid card if the customer cannot conveniently use it for its intended purpose, both refuelling and recharging of their hybrid fleet? **FCIs are enabling the transition towards greener road transport in the future, however, to facilitate that transition and support the internal market, electricity and fuels need to be treated in a uniform way, ensuring there is a practical and "future-proof" regulatory framework in place.** This need to ensure there is an aligned fiscal approach was underscored in the report presented by the EU VAT Experts on 28 March 2022.



## 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.

FCE represents the independent fuel card sector in Europe, which facilitates the purchase of fuel and other related on-the-road goods and services for millions of commercial users across Europe. FCE members represent a major share of the B2B fuel cards market in Europe and our membership base includes key independent players in this market which are headquartered and operate across the continent. The majority of European logistics, transportation and other fleet businesses rely on the services (issuing, billing, fuel discounts, etc.) provided by FCE members, helping them to move goods and people efficiently and seamlessly across Europe on a daily basis.

Further information about FCE can be found on our website [www.fleetcardseurope.org](http://www.fleetcardseurope.org) or by contacting the FCE Secretariat: [fleetcardseurope@humbrophy.com](mailto:fleetcardseurope@humbrophy.com)

Our members include:

