



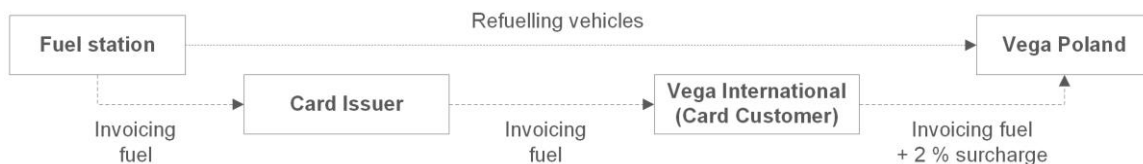
VAT NEWSLETTER

## ECJ again qualifies use of fuel cards as granting of credit rather than supply of goods in a chain

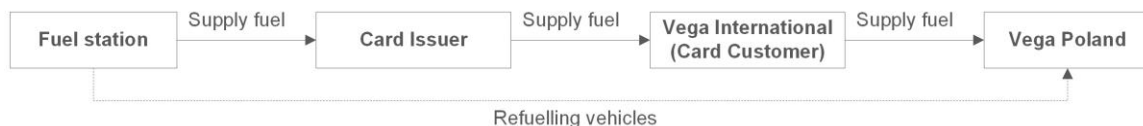
25 | 2019

### 1 Facts / Background

*Vega Int.*, based in Austria, has centralised the purchase of fuel for its subsidiaries using fuel cards issued by card issuers ('CI'). The terms "fuel supplier" (paragraph 14) and "oil company" (paragraph 30) were used in the judgment. However, even oil companies have bundled the fuel card business into separate companies, which then operate as CI, not to mention independent providers of fuel cards. The cards were issued to the drivers of *Vega PL* who "used" them for refuelling. CI then invoiced the fuel deliveries to *Vega Int.* At the end of each month, *Vega Int.* charged the fuel to *Vega PL* with a 2% surcharge. The invoices had to be paid within one to three months, unless it was possible to set them off against other claims.



The parties had initially assumed that the power to dispose of the fuel was obtained at each settlement stage and that supplies were therefore rendered in a chain.

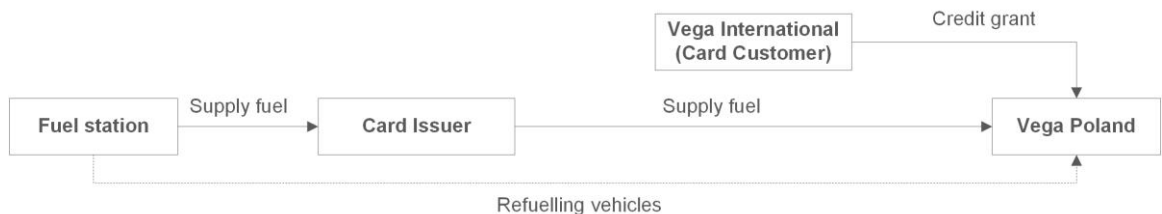


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## 2 Granting of credit rather than supply of goods

In its ruling of 15.05.2019 (C-235/18), the ECJ came to the conclusion that the card customer *Vega Int.* did not have the power to dispose of the fuel. This means that there could be no supply to *Vega Int.* and no further supply to *Vega PL*. In fact, “it is common ground” that *Vega Int.* provided services to *Vega PL*. These services constituted credit grants within the meaning of Article 135 (1) (b) of the VAT Directive. Accordingly, neither *Vega Int.* nor *Vega PL* was entitled to deduct input VAT from fuel invoices. The CIs were also affected. They had reported unjustified VAT to *Vega Int.* and would have to pay additional VAT for the direct supply to *Vega PL*, at least if the result was found to be as follows:



The question is whether the ECJ's findings must also be extended to the CIs' sales, at least if one assumes that the respective CI is not the first supplier in the chain. The CI could also only grant credit to the card customer, *Vega International*, because it also does not have the power to dispose of the fuel. In any case, this is obvious if one observes the principles mentioned by the ECJ in paragraph 36 of the judgement, according to which only *Vega Poland* decides on the modalities of the fuel purchase. This would give rise to the following situation:



## 3 Individual case or general decision?

The question now arises as to whether this current judgment was based only on a specific individual case and whether the resulting ECJ findings can only be applied to comparable cases. This argument is certainly supported by the fact that the ECJ always wishes to see its rulings, in references for a preliminary ruling only, as an interpretation of EU law in a specific individual case. This is also supported by the fact that the ECJ primarily repeats the findings made in the case *Auto Lease Holland* (C-185/01). That judgement was understood by experts to be a special individual case judgement. Furthermore, in its letter of 15.06.2004, the German Federal Ministry of Finance also severely restricted the applicability of the principles from the *Auto Lease Holland* judgment and this letter remains applicable, at least, for the time being. It will also depend on what the contractual arrangements look like in the individual case. On the other hand, however, the ECJ also makes quite general findings. It points out that the concept of "supply of goods" is objective in nature and that it applies without regard to the purpose or results of the transactions concerned. It also emphasises that what is decisive is who makes the ultimate decision on the modalities of the purchase of fuel. In addition, many models in which a monthly retrospective settlement of fuel card transactions is made have, at least as a side effect, a certain financing character. Against this background, the ruling could have a much broader effect. Not only CIs, but also all of their customers, such as logistics and leasing companies, would have to take action in terms of VAT. In addition, electric vehicles are now also charged using e-charging cards and similar tools, which could also affect charging station operators and their customers.