



VAT NEWSLETTER

Austria: Fuel card and toll services as credit services instead of chain transactions?

43 | 2019

1 Austria plans to implement ECJ case law

With a new section entitled "fuel cards and tolls" in Rz 345 of the Austrian VAT Guidelines (UStR AT), the Austrian tax authorities are planning to reclassify the fuel card business for VAT purposes on the basis of the ECJ ruling in the case Vega (see KMLZ Newsletter 25/2019). In just a few lines, this new section will hit the core of the fuel card business. It will have far-reaching consequences, not only for fuel card issuers, but also for their customers and suppliers. The principles are also to be extended to toll transactions. A loose translation of the current draft of the maintenance decree on the UStR AT is as follows:

"Rz 345 incorporates the findings of the ECJ of 15 May 2019, Rs C-235/18, Vega International Car Transport and Logistic, on the subject of fuel card companies. As these are also transferable to the charging of toll services, reference is also made to these. Rz 345 reads: [...] Fuel cards and tolls: When fuel is charged by a petrol station operator to a fuel card company and then passed on from the fuel card company (in its own name and for the account of a third party) to a freight forwarder, the petrol station operator supplies the fuel to the freight forwarder. The service provided by the fuel card operator is a supply of services, which may be tax exempt under the conditions of § 6 para. 1 no. 8 lit. a UStG 1994 (see ECJ 15.5.2019, C-235/18, Vega International Car Transport and Logistic and ECJ judgement Auto Lease Holland). The same applies to the settlement of mileage-related tolls by ASFINAG as the road operator via a fuel card company."

The Austrian tax authorities are thus reversing their previous position. As in Germany, the tax authorities in Austria issued



Fresa C. Amthor
Lawyer, Certified Tax
Consultant

+49 (0) 89 217 50 12-45
fresa.amthor@kmlz.de

instructions according to which the principles of the ECJ ruling in the case *Auto Lease Holland* were not applicable to fuel card transactions. In contrast to credit card transactions, fuel card transactions were qualified as chain transactions. However, if Rz 345 is implemented with the current wording, there is a risk that the Austrian tax authorities will no longer be authorised to accept chain transactions for fuel card and toll transactions in Austria from the date of publication, at the latest (possibly at the end of November / beginning of December 2019). Rz 345 will have VAT consequences for all parties in the supply chain from the petrol station/toll operator via the card issuer to the card customer.

2 Previous VAT treatment

To date, transactions using fuel cards in Austria have mostly been set up and carried out in the form of chain transactions. The petrol station/toll operator invoices fuel deliveries or toll services with Austrian VAT to the card issuers and these, in turn, invoice taxable supplies to the companies that use the fuel cards in their fleet when purchasing fuel/toll services. VAT is paid and the recipients are reimbursed the input VAT.

3 Legal consequences for the entrepreneurs involved

The Austrian tax authorities would have to qualify all transactions involving the use of fuel cards as direct supplies from the petrol station/toll operator to the fuel card customer, at the latest from the date on which the new VAT Guideline applies. Card issuers, on the other hand, would then supply services to the fuel card customers which could even qualify as VAT-exempt credit services. If the parties do not adapt their previous set-up as chain transactions, this would have the following consequences:

- Petrol stations/toll operators will face a double VAT liability: they will be liable for the VAT wrongly invoiced to the card issuer and the VAT on fuel supplies/toll services to the fuel card customers.
- The fuel card issuers will owe the VAT wrongly invoiced to the card customers and will not be entitled to deduct input VAT from the invoices from the petrol stations/tolling operators.
- The fuel card customers will not be permitted to claim any input tax deduction from the card issuers' incorrect invoices.
- Where the card issuers' sales to card customers qualify as VAT-exempt crediting, they will be detrimental to the input VAT deduction position - i.e. they will also affect the general title to input VAT deduction of the card issuers from their other purchases.

4 Position and Prospects

The draft maintenance decree 2019 for the Austrian VAT Guidelines has been published on the website of the Austrian Federal Ministry of Finance with the notice that evaluation will take place by 13 November 2019. Currently, Austrian commercial associations are being invited to comment. An implementation without changes would have extensive consequences, not least of which being a potential signal effect for other countries. It would force the entire sector to completely change its business models and adapt its processes, each with several participants involved. And for the time being this would only be required for Austrian transactions. Such a significant change would require adequate transition periods. It is recommended that all affected companies, i.e. petrol stations and toll operators, card issuers, fuel card customers and above all the logistics sector, monitor developments very closely. They should also brace themselves for the change in question in order to be in the position to act quickly, if necessary. Their focus should also remain on corresponding developments in other EU member states.