

February 2021

General ruling on proper classification of transactions with the use of fuel cards for VAT purposes

On 16 February 2021, the Ministry of Finance announced via its website that on 15 February 2021 a general ruling (case file: PT9.8101.3.2020) regarding proper classification of transactions with the use of fuel cards for VAT purposes was issued.

In the Ministry's opinion, the ruling takes into account the reasoning behind the Judgment delivered by the Court of Justice of the European Union (CJEU) in the case C-235/18 - Vega International Car Transport and Logistic, relating to classification of transactions with the use of fuel cards.

Acting in accordance with the general ruling, secures the taxpayers before questioning their tax settlements by the tax authorities.

The key conclusions of the ruling can be found below.

Scope of the ruling

The ruling pertains to a transaction model involving three parties, i.e.:

- the supplier;
- the intermediary operator; and
- the recipient.

The intermediary operator makes available (hands over) fuel cards (of which the intermediary operator is not the issuer) to the recipient (e.g. a lessee or a subsidiary). The recipient uses the fuel card to purchase specific goods from the supplier running a gas station.

In such a model, it is of key importance to establish, whether the sale of goods takes place between the supplier and the intermediary operator and then the recipient, or it is rather carried out solely between the supplier and the recipient (where the intermediary operator acts only as a service provider in relation to the recipient).

Pursuant to the ruling, in order to classify a transaction carried out by the intermediary operator as a supply of goods or provision of services, it is necessary to determine to which entity the supplier has actually transferred the right to dispose of the goods as owner.

The fact of transferring the right to dispose of the goods as owner by the supplier directly to the recipient should be ascertained only if the following conditions are jointly met:

- 1) the goods are purchased by the recipient (the fuel card holder) directly from the suppliers;
- 2) the recipient, at their sole discretion, decides on the method of purchase of goods (the place of purchase), the amount and quality of goods purchased, as well as the moment of purchase and the way the goods will be further used;
- 3) the costs of the purchase of goods are wholly borne by the recipient (excluding the intermediary operator);

- 4) the role of the intermediary operator is limited to making the financial instrument enabling the purchase of goods available to the recipient.

In the Ministry's opinion, only if these conditions are jointly met, it may be stated that the activity of the intermediary operator, limited to making the fuel cards available to the recipient, should be classified as provision of services to the latter.

The end of rulings' protection

The Ministry of Finance further announced that due to the revocation of Article 7(8) of the Polish VAT Act, effective as of 1 January 2021, individual rulings issued under it, do no longer protect taxpayers who received those. This means that taxpayers to whom individual rulings were issued under Article 7(8) of the VAT Act, may still be covered by their protective power, yet, only in relation to settlement periods before 1 January 2021.

If you would like to learn more about the issues discussed, please do not hesitate to contact us at: mampytanie@kpmg.pl

KPMG offices

Warsaw

ul. Inflancka 4a
00-189 Warsaw
Tel. : +48 22 528 11 00
Fax: +48 22 528 10 09
kpmg@kpmg.pl

Gdańsk

al. Zwycięstwa 13a
80-219 Gdańsk
Tel. : +48 58 772 95 00
Fax: +48 58 772 95 01
gdansk@kpmg.pl

Kraków

ul. Opolska 114
31-323 Kraków
Tel. : +48 12 424 94 00
Fax: +48 12 424 94 01
krakow@kpmg.pl

Katowice

ul. Francuska 36
40-028 Katowice
Tel. : +48 32 778 88 00
Fax: +48 32 778 88 10
katowice@kpmg.pl

Poznań

ul. Roosevelta 22
60-829 Poznań
Tel. : +48 61 845 46 00
Fax: +48 61 845 46 01
poznan@kpmg.pl

Łódź

ul. Składowa 35
90-127 Łódź
Tel. : +48 42 232 77 00
Fax: +48 42 232 77 01
lodz@kpmg.pl

Wrocław

ul. Szczytnicka 11
50-382 Wrocław
Tel. : +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl



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