

New practice opens the possibility of challenging refusals of fuel VAT refunds

Transport companies may challenge refusals of VAT refunds for fuel purchases made through fuel cards and intermediary arrangements. This is particularly relevant where the Danish Tax Agency has applied guidelines from October 2024 with retroactive effect.



Several transport companies have, in recent years, been denied VAT refunds on fuel purchases made via fuel cards and intermediary schemes. New EU case law and a binding ruling from the Danish Tax Council in 2025 provide, in a number of cases, grounds for reconsidering these decisions.

BACKGROUND FOR THE CHANGED ASSESSMENT

In 2019, the Court of Justice of the European Union ruled in Vega International that certain intra-group fuel schemes could constitute VAT-exempt financial services, which therefore do not entitle the parties to a VAT refund. The judgment created uncertainty regarding the VAT treatment of fuel card schemes.

On 6 September 2023, the EU VAT Committee adopted new guidelines on fuel card schemes. The guidelines clarify that there are two supplies of goods where the issuer acts in its own name. The Danish Tax Agency followed up in April 2024 with an administrative notice, which is now incorporated into the Danish Legal Guidance.

On 17 October 2024, the Court of Justice of the European Union confirmed in Digital Charging Solutions that card- and app-based energy supplies, as a rule, constitute chain transactions under the commission model and not VAT-exempt financial services.

As a supplement, the Danish Tax Council published a binding ruling in March 2025. In this ruling, the Tax Council confirms that classic fuel card schemes fall under the commission model where the issuer acts in its own name. Ancillary services such as CO2 compensation or digital monitoring do not change this qualification, provided the scheme is correctly structured. In this context, fuel and electricity are regarded as goods.

WHAT DOES THE APPLICABLE PRACTICE REQUIRE?

From October 2024, the authorities impose stricter requirements on invoicing and contractual basis. Businesses must ensure that the invoice issuer is the same entity that is regarded, for VAT purposes, as the seller, or that correct third-party invoicing is applied.

At the same time, businesses must ensure correct transfer of title to the fuel and uniform supplies throughout the chain. A clear contractual basis between intermediary and principal is necessary to qualify the scheme as supplies of goods under the commission model.

Where the issuer is the VAT seller and acts as the seller of record, the customer receives a correct invoice. This forms the basis for VAT deduction in Denmark and for VAT refunds under the 8th Directive for cross-border refuelling. If, on the other hand, the scheme is qualified as a financing or disbursement model, there is typically no supply of goods and therefore no basis for deduction or refund.

THREE KEY CONDITIONS FOR FUEL CARD SCHEMES

Fuel card schemes presuppose that the following conditions are met:

- The issuer has the formal legal title and bears the contractual and economic risk.
- The supply of goods is uniform, and the issuer does not alter the goods.
- The parties have established a clear contractual basis between intermediary and principal.

Agreements and invoice flows must reflect the economic reality, including allocation of risk and complaints handling between subcontractor, issuer, and customer.

PRACTICAL CONSEQUENCES FOR TRANSPORT COMPANIES

Companies with fuel and payment card schemes should review agreements and invoicing practices. The documentation must demonstrate that there are two supplies of goods, and that the issuer acts in its own name.

This includes, in particular:

- Pricing and terms and conditions
- Allocation of risk and complaints handling
- Invoice flows, including identity of parties or correct third-party invoicing
- Registration and VAT treatment in the countries of supply

For cross-border supplies, the issuer must ensure correct registration and VAT treatment in the relevant countries of supply.

Lack of alignment may lead to denial of VAT deductions or VAT refunds, with significant financial consequences, especially in the case of international activities.

The same principles apply to electric truck fleets. Electricity constitutes a good, and charging schemes via card or app qualify as chain transactions under the commission model where the issuer acts in its own name. The schemes involve two VAT-taxable supplies of goods and impose corresponding requirements for correct invoicing and registration in the country of supply in the case of cross-border charging.

NJORD'S ASSESSMENT

The new guidelines significantly change the VAT treatment of fuel card schemes. Transport companies should therefore act proactively and ensure that existing schemes comply with applicable EU case law and Danish requirements.

Companies that have been denied VAT refunds should consider challenging the decision, including by reopening the case or lodging an appeal, particularly where the decision concerns periods after 20 October 2023 for fuel cards. The forward-looking change for international credit cards applies from approximately the end of October 2024.

The right to a VAT refund always depends on the specific circumstances of the individual case.

For further advice on VAT refunds and fuel card schemes, you can contact NJORD Law Firm.



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