

Fuel cards and VAT - Swiss tax administration comments on VAT treatment of fossil fuels and electricity

Christoph Drexl christoph.drexl@primetax.ch

Linda Graff-Brakemeier linda.graff@primetax.ch

In many areas, the Swiss VAT regulations are very similar to the European VAT law - but not without arriving at completely different results in individual cases. Accordingly, many of the discussions taking place at European level and in the Member States are also taking place at Swiss level. This also applies, for example, to the supply relationships involving the use of fuel cards. A year ago, the Swiss Federal Tax Administration (FTA) published its first draft on how it would like these supply relationships to be qualified for VAT purposes, and on 20 January 2023 it published its definitive practice on the subject.

BACKGROUND: FUEL CARDS

For the purposes of its administrative practice, the FTA defines a fuel card as a card that allows the fuel card holder (customer) to purchase certain supplies at petrol stations upon presentation of the card. The fuel card issuer shall specify in the general terms and conditions (hereinafter referred to as GTC) and/or contracts the service stations for which the fuel card is valid and the supplies that can be purchased with the card. The fuel card holder may, for example, purchase fuel, vehicle consumables (lubricants, antifreeze, etc.), goods or other services at a petrol station.

TAX TREATMENT

BASE CASE

According to its now published practice, the FTA seems to assume that the supply provided by the fuel card issuer to the fuel card holder is a financial service exempt from VAT without the right to recover input tax. While this presumption was explicitly formulated in the first draft, there is now no clear wording ("it must be examined whether the card can be treated like a credit card for tax purposes"). Administrative sources have indicated that the softer wording in the final publication has not changed the FTA's basic view that, in principle, a financial service is to be presumed to have been provided by the issuer to the holder.

EXCEPTION

As an exception to this rule, fuel card issuers have the option of treating the supplies processed via the fuel card as chain transactions (i.e., the service station does not supply the fuel card holder but the issuer, who in turn supplies the fuel card holder). This different treatment is only possible if the following conditions defined by the FTA are cumulatively met:

1. The fuel card holder presents the fuel card but does not pay for the services received at the petrol station. The petrol station simply issues a delivery note without any reference to VAT;
2. each provider (petrol station, fuel card issuer) makes the supplies to the recipient and invoices them in its own name and for its own account, including a VAT reference;
3. each provider itself assumes the full del credere risk of its own customers as well as the warranty for defects of the supplies provided in its own name and on its own account; and each provider must ensure that its contractual partners (except the ultimate fuel card holder) refer to these terms and conditions in all contracts as well as in the GTCs.

ELECTRICITY SUPPLY

The above principles apply to both fossil fuels and electricity. It should be noted that the supply of electricity is subject to special rules regarding the place of supply for VAT purposes:

- The place of supply is deemed to be the place where the recipient of the supply has the registered office of the economic activity or a permanent establishment for which the supply is made (B2B);
- in the absence of such a registered office or place of business (B2C), the place of supply is the place where the electricity is consumed, which is deemed to be the place where the electricity is supplied and therefore the place where the charging station is located.

CONCLUSION

The FTA's practice publication creates legal clarity and allows fuel card issuers to structure their business models accordingly.

In view of the clearly formulated catalogue of conditions required to be treated as a chain transaction, we strongly recommend reviewing existing agreements and adapting new contracts accordingly.