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Fuel and Electric Vehicle Charging Cards: Tax Optimization vs. Abuse of Law

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The article analyzes the tax issue of VAT on fuel and charging cards, examines their economic and legal basis from the point of view of tax justice and possible abuse of law. The question is whether transactions with both types of cards are of the same nature.

Based on European and national legislation and the case law of the Court of Justice of the EU (in particular the Vega and Digital Charging Solutions cases), it turns out that in the case of fuel cards, the tax assessment depends on the specific business model. However, in the case of charging cards, the supply of electricity through an intermediary is classified as a chain supply of goods (tangible assets) thanks to the legal fiction of a commission contract.

The conclusion draws attention to the thin line between tax optimization and circumvention of the law. To achieve an effective solution, it is necessary to harmonize legislation and streamline modern control mechanisms, such as electronic records and automated information exchange according to DAC 7.

Keywords: Value Added Tax (VAT), fuel cards, charging cards, tax optimization, abuse of law, supply of goods, financial services, commission contract, CJEU case-law

JEL Classification: K34

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1. Introduction

In recent years, fuel cards, including the well-known CCS cards, have become an integral part of modern business tools used to manage and control corporate expenses related to the purchase of fuel and related services. With the advent of electromobility, cards designed to cover the costs of charging electric cars are also coming to the fore, the tax qualification of which requires a thorough analysis. Despite their apparent simplicity, they represent a complex mechanism from the point of view of tax law. The complexity is particularly evident in the assessment of transactions from the perspective of value added tax (hereinafter referred to as VAT), which requires not only detailed knowledge of the relevant legal regulations, but also an understanding of court case law and the practical application of legal provisions.

In a dynamically changing business model environment, where technological innovation and environmental policies affect fundamentally payment methods, fuel and electric car charging cards are becoming increasingly important not only as a tool for effective management of operating costs, but also as a subject of tax scrutiny. However, a controversial issue underlies this: if these transactions are not always clearly regulated, the legislation may become ambiguous on certain points or even constitute a tax haven for specific tax transactions. At the same time, it is necessary to ask whether it is the taxpayer's duty to obtain a proof of payment documenting individual transactions and what impact the failure to accept the proof of payment has on the correctness of tax payment. An important role here is played by the question of whether the consumer, who is the final recipient of public goods financed from tax revenues, can influence the correctness of the assessment and payment of taxes by taxpayers through their pressure. These considerations are further reflected in the debate on the possibilities of control – whether through complaints or other mechanisms that would allow the consumer to put pressure on legislators and state authorities to respond to and address this type of abuse of law.

The aim of this paper is to provide an analysis of the tax issues of fuel (petrol, diesel, CNG, LPG) and charging cards (electricity), while emphasizing the real economic and legal basis of transactions, with the aim of defining the possibilities of their taxation. The authors look at the issue through the prism of abuse of law and tax justice.

The main research question is whether transactions carried out with fuel cards have the same character as transactions made through charging cards for electric vehicles.

To answer this research question, the article examines several sub-hypotheses: (i) whether the two-tier test of abuse of law under the case law of the CJEU (Halifax/Emsland-Stärke) applies differently to fuel and charging cards; (ii) whether the legal fiction of commissionaire supply under Article 14(2)(c) of the VAT Directive establishes a qualitatively different legal regime for charging cards compared to fuel cards; (iii) whether there is a structural difference between tax avoidance in the area of income taxes and abuse of law in the area of VAT that is relevant for assessing card models; (iv) whether the decisive criterion for qualifying a transaction as abuse of law is the presence of real economic substance; and (v) whether the logic of automated data sharing enshrined in DAC 7 can support analogously more effective control of transactions with fuel and charging cards. Through these sub-hypotheses, the article investigates whether and to what extent the conditions under which a transaction with a fuel card can be qualified as abuse of law differ from the conditions applicable to transactions with a charging card.

The issue of VAT on fuel and charging cards is examined in professional circles and in practice from a legislative, case law, and doctrinal point of view.

At the European level, the legislative direction is set by Council Directive 2006/112/EC, which harmonizes the rules of taxation and defines the principles of neutrality and proportionality of VAT. In Czech law, the main regulation is Act No. 235/2004 Coll. on VAT, where Section 13 defines the supply of goods. Since 2019, the Tax Code (Act No. 280/2009 Coll.) has included a general anti-abuse rule (GAAR). In the field of international administrative cooperation, the DAC 7 directive, reflected in Act No. 164/2013 Coll., plays a role in order to increase transparency in the digital economy.

The interpretation of legal norms is influenced significantly by the decision-making practice of the Court of Justice of the EU. For example, the judgment in C-235/18 Vega International concluded that the provision of fuel cards may be a financial service exempt from VAT if the parent company does not decide on the purchase of fuel. The judgment in C-60/23 Digital Charging Solutions is also of great importance, as it introduces a specific solution to electric car charging cards based on the legal fiction of a commission contract, under which the supply of electricity through an intermediary is conceived as a chain supply of goods.

Furthermore, C-255/02 Halifax is used to explain the general prohibition of abuse of rights and the two-step test, C-712/17 EN.SA. Srl to address the VAT invoice obligation, and C-320/88 Shipping and Forwarding Enterprise Safe to clarify the broader concept of supply of goods regardless of possession. VAT corrections are dealt with in the judgment C-48/20 UAB "P."

Czech case law, especially that of the Supreme Administrative Court, specifies the application of law. An example is the judgment 1 Afs 334/2017-208 Kemwater Prochemie on proving the identity of the supplier, or the judgment of the Supreme Administrative Court of 31.08.2020, file reference no. 9 Afs 171/2020 emphasizing the need for careful adherence to legal criteria.

Scholarly literature includes the works of Czudek (GAAR in Czech jurisprudence, exchange of information), Knapp (definition of abuse of law), Kohajda and Lichnovský (abuse of law in Czech tax law). Foreign authors such as Prebble and Smith discuss the moral side of tax avoidance and the practical solution to VAT fraud. Majerová and Moravec et al. are engaged in quantifying the VAT gap in the EU and the Czech Republic, including the difference between legal tax avoidance and tax evasion. Important informal sources are also the conclusions of the VAT Committee (on the Vega judgment) and the methodological guidance from the General Financial Directorate on fuel cards.

2. Research methods

This article uses a comprehensive and multi-stage approach to solving the issue of applying value added tax (VAT) to fuel and charging cards. The main objective of the research is to evaluate the real economic and legal basis of these transactions and to answer the main research question of whether transactions carried out with fuel cards have the same character as transactions made through charging cards for electric vehicles. To achieve this goal and assess the issue through the prism of tax justice and abuse of law, the following research methods were applied:

- Analysis of legal regulations (dogmatic method): The basis of the research is a detailed analysis of the legislation in force at the national and European level. The research analyzes the essential provisions of Act No. 235/2004 Coll., on Value Added Tax, and harmonization regulations, in particular Directive No. 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended (hereinafter referred to as the VAT Directive). This method is used to define the basic legal framework and interpret the main concepts such as *supply of goods* or *provision of services*.
- Analysis of case law: Given that the text of legal norms itself is not always unambiguous, the article is strongly based on the analysis of the decision-making practice of the Court of Justice of the European Union (CJEU) and the Supreme Administrative Court of the Czech Republic (SAC). Precedent judgments defining the boundary between a financial service and the supply of goods (e.g. Case C-235/18 Vega), defining the prohibition of abuse of law (C-255/02 Halifax) and specifically addressing the legal fiction of a commission contract for charging electric vehicles (C-60/23 Digital Charging Solutions) are examined and interpreted in detail.
- Case analysis of business models: To understand the real functioning of the fuel-card market, it examines specific business models of card management. The differences between the purchase/sale model and the commission structure are analyzed on specific examples from practice (card issuer industry, transport services, leasing companies). In this way, the economic justification of individual links in the supply chain is verified.
- Comparative method: This method permeates the entire paper and serves to directly compare the tax mechanisms of traditional fuel cards (providing fossil fuels) with the more recently introduced cards for charging electric cars, while examining whether and how analogous principles can be applied.

- Synthesis and teleological interpretation: In the final stages of the paper, analytical findings are synthesized in order to evaluate the overall system. The paper evaluates the application of law in the light of the basic principles of VAT, such as the principles of tax neutrality and proportionality. Furthermore, a teleological interpretation is applied when placing the issue in the broader context of economic justice, the fight against the grey economy (e.g. the implementation of the DAC 7 directive) and the protection of public budgets.

Structural note on the interpretation

For the logic of further interpretation, it is essential that the article proceeds from the general definition of VAT and the concept of supply of goods, through the EU prohibition of abuse of law, to the individual models of fuel and charging cards. Such a division is not merely descriptive but methodological: the concept of supply of goods, the fiction of a commissionaire structure, and the abuse of law test form a common analytical framework, without which it is impossible to answer conclusively the question of whether transactions with fuel cards have the same tax character as transactions with charging cards (cf. Article 14 and 15 of Directive 2006/112/EC; CJEU judgment C-255/02 Halifax, paras. 74–75; Czudek, 2023, pp. 19–27).

For this reason, the general rules for qualifying performance as a supply of goods or services are first defined, then the limits of tax optimization and abuse of law are elaborated, and subsequently, these criteria are applied separately to fuel cards and to charging cards. This approach allows for maintaining functional coherence between the theoretical parts and the practical models examined in the article.

3. Historical development

The development of value added tax regulation in the Czech Republic and at the level of the European Union is inextricably linked to the need to harmonize tax procedures within the single internal market. After the accession of the Czech Republic to the European Union, the national legislation underwent significant changes that reflected harmonization with European standards. Act No. 235/2004 Coll., on Value Added Tax, is one of the pillars of the Czech tax system, in which the basic concepts and rules for accounting and applying VAT are defined. This legislation was inspired by European Union directives, in particular Council Directive 2006/112/EC, which established uniform rules for VAT within the European Union and thus ensured that the principles of VAT application were consistent in individual Member States.

Regulatory developments have been influenced by a number of factors, including the need to modernize the tax system and adapt to a rapidly changing business environment. One of the specific impulses for the new adjustments was the digitization and automation of payment systems, including the creation of fuel cards. Their rise reflects the need for companies to have tools to manage costs transparently and efficiently, but it also opens up space for a number of tax issues. In that context, the legislation must deal with the question of how to characterise correctly the transactions carried out by means of those cards – whether they are supplies of goods or the provision of financial services, each of which has different consequences for the application of VAT.

4. Legislation

The basic legal framework for the assessment of transactions related to the use of fuel cards is enshrined at the national level in Act No. 235/2004 Coll., on Value Added Tax, and at the European level in the relevant provisions of the VAT Directive.

However, the application of legislation that is straightforward at first glance is not always easy. Decisions of judicial authorities, in particular the Court of Justice, often have a major impact on the interpretation and practical application of these legal rules. For example, in its judgment in Case C-235/18 Vega International, the Court noted that the provision of fuel cards in the context of internal transactions between a parent company and a subsidiary cannot automatically be regarded as a supply of goods but must be regarded as a financial service. Such a decision has the effect that those transactions are not covered by the standard VAT regime, which in turn complicates the possibility of exercising the right to deduct. This decision-making practice is one of many examples where taxpayers have to deal with ambiguities arising from different assessments of the economic substance of transactions.

In the context of Czech law, it is also necessary to mention the decision of the Supreme Administrative Court, whose judgments, for example in the case of 31.08.2020, file reference no. 9 Afs 171/2020, confirm the need for strict adherence to legal criteria in the qualification of transactions, and thus emphasize the importance of a precise contractual definition of the relationships between fuel card issuers and their holders. Such decisions are not only of theoretical importance but also have a practical impact on the way companies approach dealing with tax risks.

The common VAT system is based on the above-mentioned VAT Directive, which lays down the basic rules of taxation for the Member States and deepens the principles of neutrality and proportionality of value added tax. In short, the principle of tax neutrality means that it should exempt completely the entrepreneur from the tax burden of value added tax, in relation to both the VAT due and the VAT already paid in connection with all their economic activities.[1]

The principle of neutrality in VAT means that each VAT payer taxes only the added value, i.e. the value that they add to the value of the goods or services used for their economic activity. From a practical point of view, this situation can be described as follows. First, it is necessary to determine the input tax, i.e. the amount of tax included in the price of taxable supplies received and used for the taxpayer's economic activity, and then to deduct this tax from the output tax, i.e. the total value added tax on taxable supplies provided by the VAT payer.

If the input tax exceeds the output tax, it is called an excessive deduction. In the event that a taxpayer incurs an excessive deduction in one of the tax periods, which has the character of a receivable from the tax administrator, the tax administrator will usually automatically return it to the taxpayer. In accordance with the principle of self-assessment, this entitlement must be stated in the VAT return, within the limitation period for tax assessment, i.e. up to three years from the occurrence of the right to deduct VAT. In order to maintain the neutrality of VAT, it is necessary that the supplier of the taxable supplies received is also in the position of a VAT payer. In accordance with the provision of Section 29(1)(a) and (b) of Act No. 235/2004 Coll., on Value Added Tax, one of the essential elements of a tax document is the designation of the person performing taxable supplies and their tax identification number. In accordance with the judgment in the Kemwater Prochemie case, the taxpayer is no longer obliged to prove the identity of the supplier of the taxable supplies received if the tax administrator has at its disposal the data necessary to verify that the unknown supplier is in the position of a VAT payer (Judgment of the Supreme Administrative Court of 23 March 2022, No. 1 Afs 334/2017-208).

Proportionality is then intended to ensure that the amount of value added tax applied by the input taxpayer is proportionate to the amount of value added tax applied by the output taxpayer (Kuneš, 2025). In this context, it is also necessary to pay attention to the way in which tax liability is conceived in the legislation. The Directive does not only work with the principles of neutrality and proportionality but also lays down rules on when tax liability arises regardless of whether the supply of goods or services has actually taken place. In the light of the above, as Article 203 of the Directive explicitly states: "*Any person who enters that*

[1] On the principle of VAT neutrality, see Novotná, Monika. Section 75 [Method of calculating the tax deduction in the proportional amount], 2021, p. 511, marg. No. 1.

tax on an invoice shall be liable to pay value added tax" (Council Directive 2006/112/EC of 28 November 2006, Art. 203).

Within the framework of national legislation, the issue of value added tax is implemented by Act No. 235/2004 Coll. on Value Added Tax, which, among other things, stipulates in the provision of Section 13 that the supply of goods refers to the transfer of the right to dispose of the goods as owner.

This creates room for different qualifications of the transactions carried out, which is of fundamental importance for and impact on the regime of their taxation. The question is also whether we are still operating under the regime of Act No. 235/2004 Coll., on Value Added Tax and this is tax optimization, or whether we can already talk about abuse of law, or tax fraud or a criminal offense.

When analyzing transactions relating to fuel cards, it is necessary to take as a starting point the concept of the subject of tax, which relates to the concepts of *supply of goods* and *provision of services*. From a legal point of view, it is essential to understand that the definitions of these terms are not only formal but have direct practical consequences.

5. Definition of *supply of goods*

From the point of view of Czech and European law, the very definition of the supply of goods will be crucial.

As already mentioned, the Czech legislation stipulates in the provision of Section 13 that the supply of goods refers to the transfer of the right to dispose of the goods as owner. However, Article 14 of the VAT Directive stipulates that the supply of goods means the transfer of the right to dispose of tangible property as owner. However, the interpretation of these two definitions is not identical. The European concept is broader, it includes any transfer of property to another person that allows for its actual disposal, even in situations where the transfer of ownership does not take place. It also follows from the CJEU's decision in Case C-320/88 Shipping and Forwarding Enterprise Safe of 8 February 1990 that the term *transfer of the right to dispose of tangible property as an owner* should be understood as a situation in which the acquirer of this right has the opportunity to make decisions that may affect the legal situation of these goods, in particular decisions on their sale. The possession of these goods or their transport is also not important.

What is more, in accordance with the Czech legislation and its provision, Section 13(3)(b) of Act No. 235/2004 Coll., on Value Added Tax, the supply of goods by concluding a commission contract or a contract of a similar type is also considered. With the amendment effective from 1 January 2025, the wording of the Act has also changed, where the supply through a representative person is also considered to be a supply of goods. However, the condition must be met that the taxable person involved in the supply of goods "*acts in their own name on behalf of another*."

That broader interpretation has the effect that transactions carried out by means of fuel cards may be classified as a supply of goods from a legal point of view if there is actual fuel consumption. Conversely, if the entity merely facilitates the purchase option without exercising control over the supply itself, the transaction can be interpreted as a payment activity of a financial nature. In such a case, the intermediary (depositor) will be exempt from tax without the right to deduct tax pursuant to Section 54(1)(e) of Act No. 235/2004 Coll., on Value Added Tax, which applies to payments and money transfers. In concrete terms, this means that the intermediary will not pay output VAT on the payment service provided, but at the same time it will lose the right to deduct input VAT on the taxable supplies received in connection with this exempt activity. The economic consequence is that the input VAT paid by the intermediary becomes its expense, which can have a significant impact on the overall economics of the transaction. For the final customer (fuel card holder), it is then true that they will not be able to claim a VAT deduction from the payment for the intermediary service, as this service is not subject to tax.

6. Theoretical framework of the legal fiction in VAT

The legal fiction in tax law does not describe actual economic reality; rather, it represents a normative construct by which the legal system, for the purpose of legal assessment, replaces a certain fact with another legally relevant fact (Knapp, 1995, pp. 184–185). Therefore, it must be distinguished from a legal presumption, which is based on a probable factual situation, and from the substance over form approach, the purpose of which is to reconstruct the true economic substance of a transaction (cf. Knapp, 1995, pp. 184–185). Fiction, on the other hand, does not deduce a conclusion from economic reality but establishes a legal consequence that applies when the conditions specified by the legal norm are met.

In the area of VAT, this construct is particularly significant in commissionaire and similar relationships, where a person acting in their own name but on behalf of another person may be deemed, for VAT purposes, to be the entity that received and subsequently supplied the goods themselves (Article 14(2)(c) of Directive 2006/112/EC; Section 13(3)(b) of Act No. 235/2004 Coll.). This qualification does not require the intermediary to hold physically the goods or actually dispose of them in the same way as an owner in the civil law sense; the decisive factor is that the legal regulation, upon fulfilment of specified conditions, associates the effects of a separate link in the supply chain with its position (cf. CJEU judgment C-320/88 Shipping and Forwarding Enterprise Safe).

For charging cards, this fiction explains why the supply of electricity through an intermediary can be qualified as a chain supply of goods, rather than merely the provision of network access or a financial service (CJEU judgment C-60/23 Digital Charging Solutions). The fiction of a commissionaire relationship in the supply of electricity, therefore, has the nature of a systemic construct of Union law, not merely a conclusion resulting from the analysis of the economic functions of the entities involved (cf. C-60/23 Digital Charging Solutions; Article 14(2)(c) of Directive 2006/112/EC). This is precisely what distinguishes the legal regime for charging cards from some models of fuel cards, where it is necessary to examine thoroughly the specific decision-making power of the card issuer, the assumption of commercial risks, and the real economic function of the intermediary (cf. CJEU judgment C-235/18 Vega International; GFŘ Information of 17.12.2024, ref. no. 81106/24/7100-30116-051722).

7. Options for applying VAT to fuel cards

In the context of business models that are applied to fuel card management, there are two basic models.[2]

The first is the buy/sell model, where the entity acts on its own behalf, negotiates prices and bears all the associated risks. In such a model, the right to dispose of the goods is transferred and, therefore, the right to deduct VAT is in accordance with the applicable legislation.[3]

The second model is the commission structure, where the entity acts only as an intermediary and does not exercise decision-making powers regarding the purchase of fuel. In this case, it is necessary for the contractual relations to establish clearly that the economic substance of the transaction remains with the end user, which is crucial for the correct qualification of the service provided.[4]

This distinction is essential, because only in business models where the entity bears risks and

[2] See the 120th meeting of the VAT Committee of 28.3.2022, presentation of the VAT Expert Group – VEG: Issues arising from recent judgements of the Court of justice of the European Union; Case C-235/18 Vega International: Fuel cards.

[3] Information from the General Financial Directorate of 17 December 2024, Ref. No. 81106/24/7100-30116-051722 and Directive 2006/112/EC.

[4] Minutes of the Coordination Committee No. 617, Financial Administration, 28 February 2024 and Information of the General Financial Directorate of 17 December 2024, Ref. No. 81106/24/7100-30116-051722.

exercises decision-making powers, one can speak of legitimate tax optimization. On the other hand, in models where there is only a formal transfer of the opportunity for payment, there is a risk that a situation of fictitious supply will arise, where the right to deduct VAT is not based on real consumption.

In accordance with the *VAT Committee's Guidelines* (2023, paragraph 3), it can be stated that:

1) In the case of the supply of goods or fuel, according to the relationship qualified under Article 14(1) of the VAT Directive, the Committee agrees in principle that the supply of fuel by the fuel card issuer to the fuel card holder does not have the nature of a supply of goods. It is the provision of a financial service.[5]
2) In the event that the model is to fall under Article 14(2)(c) of the VAT Directive (and it will thus be a commission structure), the following conditions should be met:
    a) All parties to the contract bear the risk of non-payment of their respective supplies.
    b) The risk of damage to goods is borne by the issuer of the fuel card and not directly by the fuel supplier (e.g. in the case of damage to the engine caused by poor quality fuel)
    c) A separately and independently negotiated price in each link in the chain, i.e. it is not just a "re-accounting" of the amount.
    d) Confirmation of each individual supply to the fuel card holder, within the framework of their contractual arrangements with the fuel supplier and with the fuel card holder.

It follows from the above that this is a case where the ownership right passes to the issuer of the fuel card. In addition, the right to dispose of the goods as owner may not be transferred to the issuer. The fuel card issuer does not alter the fuel supplied by the fuel supplier. Alternatively, there must be an agreement between the commission agent and the principal, where the issuer of the fuel card supplies goods on behalf of the fuel supplier or purchases goods on behalf of the fuel card holder; contractual settings reflect economic reality; The fuel card issuer is entitled to reimbursement of its services to the principal, i.e. the fuel supplier or the fuel card holder.[6]

From the point of view of practical application in the field of fuel card management, the General Financial Directorate emphasizes the need for actual fuel consumption. The General Financial Directorate is of the opinion that transactions carried out by means of fuel cards must be examined with regard to the involvement of all entities in order to avoid purely artificial involvement without economic substance. Otherwise, there is a risk that multi-link business structures created for the purpose of tax optimization will be interpreted as an attempt to circumvent the law.

To sum up, from the point of view of Czech law and in connection with the Guidelines of the VAT Committee (although they are not an official source of law), VAT will be applied when refuelling the vehicle tank by the fuel card holder as follows:

All transactions where the issuer of the fuel card acts in its own name when purchasing and selling fuel on its own behalf and influences the terms of the trade will be subject to VAT and will be considered as a supply of goods, as explained above. This applies regardless of whether it is formally a commission contract or a legal relationship established by an innominate contract with similar content.[7]

This issue is even more complicated in the case of cards for charging electric cars, where an analo-

[5] For a closer look at the characteristics of the models, see the 121st meeting of the VAT Committee of 21 October 2022, Working paper No 1046 Issues arising from recent judgements of the Court of justice of the European Union; Case C-235/18 Vega International: Fuel cards.

[6] Compare: Information of the General Financial Directorate of 17 December 2024, ref. no. 81106/24/7100-30116-051722, on the application of VAT in the area of fuel cards.

[7] Compare: Information of the General Financial Directorate of 17 December 2024, ref. no. 81106/24/7100-30116-051722, on the application of VAT in the area of fuel cards.

gous principle is applied – the supply of electricity is conditional on proof of actual consumption, and thus appropriate transparency and verifiability of the performance must be ensured for these transactions as well.

8. Business models for the application of VAT in the case of fuel cards in the Czech Republic by industry

Model 1: fuel card issuers and resellers industry

In this model, another entity enters between the fuel card issuer and the final holder (customer) – the seller.

- Seller Status: A seller is considered a supplier of goods (fuel) to the fuel card holder if he actively influences the terms of the trade and bears all commercial risks to the holder.
- Authorization: Transaction verification takes place through automated systems at both the issuer and the seller, confirming control over fulfilment.

Model 2: Transportation Services Area

Here, the transport company is the holder of the fuel card, which further provides the cards to its subcontractors (authorized users).

- Status of the fuel card holder: A transport company supplies fuel to carriers (subcontractors) if it negotiates prices with them independently of the fuel card issuer and bears the risks.
- Purpose: Carriers are entitled to use FUEL CARDS exclusively for the purpose of providing transport services to FUEL CARDS holders. There is often a mutual set-off of receivables for fuel against receivables for transport services.

Model 3: Leasing contracts

The leasing company acts as a FUEL CARDS holder and provides them to leasing lessee as part of operational leasing or fleet management.

- Status of the leasing company: It is considered to be a fuel supplier to the lessee if it invoices the fuel in its own name (often according to actual consumption) and is liable for fuel defects claimed by the lessee.
- Variability of performance: Fuel can either be part of a fixed lease instalment or invoiced separately. The decisive factor is whether the contract primarily provides for the purchase of fuel or whether it is a broader administrative mobility service.

When assessing these structures, it is necessary to pay attention to the principle of priority of content over form. Even the formal fulfilment of contractual conditions does not automatically qualify for the supply of goods regime if the involvement of a given link in the chain is purely artificial and lacks economic justification. Each stage of the chain must be examined individually in terms of its real impact on the conditions of fuel supply.[8]

It is also worth mentioning the specific context of electric car charging cards, which are legally analogous to fuel cards.

9. Application of VAT to cards for charging electric vehicles

In the context of the preliminary ruling procedure, the Court sought answers to the following legal problems:

I. Does the supply of electricity for the purpose of recharging an electric vehicle constitute a “supply of goods” within the meaning of Article 14(1) and Article 15(1) of the VAT Directive?

[8] Compare: Annex to the Information of the General Financial Directorate of 17 December 2024, ref. no. 81106/24/7100-30116-051722, on the application of VAT in the field of fuel cards.

II. Is such supply present at all stages of the transaction chain if there is an intermediary company and the user determines the quantity, time, and place of charging?

In its decision, the Court answered the following questions. Firstly, it assessed:

1) What is the legal nature of electricity? And is it therefore a supply of goods?

The Court concluded that, under the VAT Directive, electricity is regarded as tangible property. Thus, the supply consisting in ensuring the supply of electricity to the vehicle's battery constitutes a supply of goods, since it entitles the user to dispose of the supplied electricity as owner and to use it to propel their vehicle.

If the recharging is carried out in a network of public charging points to which the user has access through a subscription to another (intermediary) company, the entire transaction is considered as two consecutive supplies for VAT purposes:

- The electricity is first supplied by the operator of the network of charging points to the intermediary company.
- Subsequently, the electricity is supplied by this intermediary company to the user.

This legal fiction of two supplies also applies in situations where the amount, time, and place of charging (including the method of using electricity) is determined exclusively by the user. However, the condition is that the intermediary company acts in its own name, but on behalf of the user on the basis of a so-called commission contract.

Here the second question arises, namely:

2) What role do intermediary companies play in the electricity supply chain?

Intermediary companies, in this case Digital Charging, play a central role in the electricity supply chain for charging electric cars, a role that, from a VAT perspective, takes the nature of a commission relationship from the VAT point of view. Their main practical role is to provide users with access to a wide network of charging points that are not operated by these companies themselves, but which belong to various independent operators. To this end, they provide users with authentication means (e.g. cards or apps) and related services such as information on prices, availability, station search, and route planning.[9]

From a legal and tax point of view, the intermediary then fulfils the role of an entity that acts in its own name, but on behalf of another person (typically the user or operator of the charging point) within the framework of a commission contract. The contractual arrangement works in such a way that the operators of the charging points bill the electricity consumed to the intermediary company. The latter then invoices it (together with a separate fixed fee for access to the network and other services) to the users themselves.

The concept of a commission contract is decisive in this case, because in the VAT system it allows the legal fiction of two identical and consecutive supplies of goods to be applied. This regulation is a special rule that applies in a situation where an intermediary acts in their own name when supplying goods, but on behalf of another person, i.e. the principal. If that condition is met, the intermediary person, namely Digital Charging Solutions, shall be deemed to have received and supplied the goods in question – the electricity – itself.

[9] According to the judgment, ancillary (or related) services in the context of charging electric vehicles consist in particular of: providing access to the network of recharging points (otherwise they would need to have a separate card/app/registration with each network operator), continuous information on electricity prices and availability of recharging points, recharging point search and location functions, as well as route planning, access to recharging equipment, technical support, recharging point reservation, consultation of recharging history or collection of credits in a digital wallet. A regular fee is charged for these services, regardless of actual consumption, e.g. even if they do not consume any electricity in a given month.

This concept is especially important because it satisfactorily addresses two main specifics of the case:

- It specifies the exact role of the intermediary: It allows the intermediary company to be classified as a link in the chain of electricity suppliers, and not just as someone who provides the user with access to the network or acts only as a credit provider for the purchase of electricity.
- It explains the free choice of the user: It resolves the apparent contradiction where the intermediary supplies electricity, although the amount, time, place of charging and method of using electricity are determined exclusively by the end user. The Court found that it is entirely consistent with the nature of a commission contract for the purchase of electricity for those parameters to be chosen by the user and not by the commission agent.

The Court's judgment also explicitly emphasizes what an intermediary company is not: it does not only act as a provider of credit or financing for users (as could be the case with classic fuel or leasing cards). This is evidenced in particular by the way it is remunerated – the intermediary does not take a commission on the volume of charged electricity but charges a fixed fee that is completely independent of the amount of electricity consumed. Therefore, the role of the intermediary is taken as a full-fledged link in the chain of supply of goods, despite the fact that the intermediary does not physically store the electricity (as in the case of fuel card issuers) and the decision on where, when, and how much electricity is determined solely by the end user. In addition, there is no credit mechanism and pre-financing. This was the case, for example, in previous cases where the court found that the intermediary acted as a credit provider, for example, in the case of leasing contracts, where monthly payments were only an advance payment and actual fuel consumption was not billed until the end of the year.[10]

In summary, the court held as follows: The supply of electricity at charging stations must be regarded for VAT purposes as a supply of goods within the meaning of Articles 14(1) and 15(1) of the VAT Directive, not as a supply of services. Electricity is considered a tangible asset by the directive and the charging process entitles the user to use the consumed electricity as the owner to drive their vehicle.

In the context of the second question referred, concerning the presence of an intermediary company in a chain of transactions, the answer was also in the affirmative. The court concluded that the electricity consumed is considered to be supplied successively in two stages. It is first supplied by the operator of the recharging point network to the intermediary company (which offers the user access to the network on a subscription basis) and is then supplied to the user by that intermediary company.

The main point is to confirm that if an intermediary company offers access to a network of different operators, electricity is supplied in a chain through commission contracts. Although the end user determines the time and amount of consumption themselves, electricity flows legally from the operator to the intermediary and then to the driver. The judgment also states that network access charges may be assessed as separate services if they are charged independently of actual energy consumption. This interpretation ensures the uniform application of the European VAT Directive in the context of modern charging infrastructure.

Here, too, it is necessary to document the real consumption of electricity, which allows for accurate monitoring of transactions using modern digital technologies. Such systems include various types and methods of electronic registration of transactions applied in EU countries. In this respect, the perspective of the European Union's environmental policies, which are aimed at the development of electromobility and the introduction of specific tax measures supporting sustainable

[10] Compare with the judgments of the European Court of Justice of 6 February 2003, Auto Lease Holland (Case C-185/01), and of 15 May 2019, Vega International Car Transport and Logistic (Case C-235/18).

energy sources, is also important. However, as can be inferred from the spirit of the directive, any tax measures must respect the principles of neutrality and proportionality in order to avoid double taxation or the grant of unfair tax advantages.

10. Economic justice and tax optimization

From a systemic point of view, the issue of the correct taxation of fuel cards and cards for charging electric cars appears to be an issue that requires harmonization of EU and national legislation.

However, this harmonization often takes place in real time only at the level of working groups and the interpretation takes place within the framework of soft law. The question is whether this is sufficient from the point of view of the taxpayer's rights. On the other hand, it is necessary to consider whether there is a real faster and more effective way of interpreting European and national legislation. In any case, the conclusions within the framework of the various guidelines and interpretative opinions of European or national authorities or working groups should sooner or later be formalized at least within the framework of subordinate legislation.

A uniform interpretation of definitions such as the supply of goods and the provision of financial services is essential to ensure transparent tax administration that protects the financial interests of the state while promoting innovation in payment systems. To achieve this objective, it is also necessary to improve control mechanisms through regular checks and the introduction of mandatory electronic records, thereby reducing the risk of bogus transactions leading to an unjustified tax deduction.

As already mentioned, tax optimization is a strategy that uses the provisions of the law to its full extent and, if carried out within the limits of the law, is not illegal in itself. However, the problem arises when companies create artificial structures that lack a real economic basis and their only goal is to avoid paying VAT properly. Such practices are a classic example of circumvention of the law, taking advantage of the discrepancy between the formal VAT statement and actual consumption, which leads to tax evasion and a decrease in public budget revenues (Judgment of the Regional Court in Prague of 30.03.2022, No. 54 Af 19/2019–37).

From the point of view of economic justice, it is crucial that the tax regime reflects real economic activity. It can be assumed that the VAT legislation with loopholes regarding the documentation of real fuel consumption may represent a kind of "tax haven" for some taxpayers. This view is supported by the fact that some companies abuse unclear provisions to create artificially the right to deduct VAT without being able to bear the burden of proof and prove that fuel purchases were made (Judgment of the Regional Court in Prague of 30.03.2022, No. 54 Af 19/2019–37). Empirical research confirms that the VAT gap in some EU Member States reaches considerable proportions – on average 20% of the theoretical tax liability – while the level of transparency and anti-corruption environment is the decisive factor in reducing it, not the VAT rate itself (Majerová, 2016, pp. 348–353). Specifically, in the Czech Republic, the VAT gap was quantified in the range of approximately CZK 34 to 123 billion CZK. (depending on the estimation method used), while its share in the theoretical VAT collection was around 26–31% (Moravec, Hinke, Kaňka, 2018, pp. 466–467). These data show that VAT tax evasion is a systemic problem of a considerable fiscal scale in the Czech environment.

The current data on the VAT gap in the Czech Republic according to the European Commission's *VAT Gap in Europe – Report 2025* confirm that although the situation has improved as compared to previous years, the problem remains relevant. The VAT compliance gap in the Czech Republic totalled CZK 50.1 billion in 2023. This corresponds to 8.0% of the theoretical tax liability (VTTL), compared to 8.2% in 2022 and a significantly lower value compared to 2019, when it was 14.6%. In absolute terms, the gap decreased from CZK 74.6 billion in 2019 to the aforementioned CZK 50.1 billion in 2023, i.e. by 6.6 percentage points over the period under review. Nevertheless, the value of the Czech VAT gap in 2023 remained below the EU average of 9.5% VTTL. VAT revenues in the Czech Republic grew by 6.7% in 2023, but at a slower pace than during the post-pandemic peak in 2022, when growth was 15.8% (VAT Gap in Europe Report, 2025).

The report also states that in 2023, no major changes to VAT rates or exemptions were implemented in the Czech Republic, as these did not come into force until 2024 as part of the consolidation package, which unified the existing reduced rates into one. Economic growth in the Czech Republic stagnated in 2023 and real household consumption fell by 2.8%, which put pressure on increasing the VAT gap in Europe (VAT Gap in Europe Report, 2025). External economic conditions, in particular the slow recovery of Germany and other EU economies, as well as high inflation driven by energy prices and persistent supply chain disruptions were also the main factors influencing the evolution of the VAT gap.

From the point of view of the effective rate of taxation, situations may arise where companies use the VAT regime to obtain disproportionate tax reliefs, which raises questions regarding the fairness of tax regulation and equality before the law.

This is contrary to the principle that tax breaks and deductions should only be granted when they are backed by real economic activity that contributes to the public budget. Consumers who are beneficiaries of taxes through the public services utilized have an interest in the tax burden being determined fairly and in taxpayers paying tax corresponding to the actual consumption of goods or services.

It follows from the foregoing that the very boundary between legitimate tax optimization and the abuse of law is not clearly defined in either legislation or practical application. Therefore, it is essential to analyze in more detail the Union doctrine of abuse of law, which provides a legal framework for classifying those contractual structures that lack real economic substance and whose primary purpose is to obtain an undue tax advantage.

11. Relation to abuse of law

Judgment of 8 May 2019 (C-712/17), in case EN.SA. Srl, is decisive in the present case, since the Court emphasised here that the obligation to pay VAT arises from the mere fact that the tax was indicated on the invoice, even in cases where the supply did not actually take place. This principle, based on the need to "protect" the tax system, prevents the right to deduct in cases where a fictitious supply could occur. At the same time, such an approach contributes to the protection of public budgets against tax evasion.

Another important decision is the judgment of 15 May 2019 (C-235/18), in the Vega case, in which the Court of Justice of the EU challenges the classification of transactions where a parent company provides fuel cards to its subsidiaries. According to that decision, the decisive factor is whether the parent company exercises decision-making powers over the purchase of fuel. If it is proven that this power is transferred to the subsidiary, which makes its own decisions, then the transaction formally qualifies as a credit service that is exempt from VAT. This interpretation reflects the idea that the supply of goods cannot be automatically assumed on the basis of formal invoicing alone. This shows the thin line between legal tax optimization and circumvention of the law, where an entity can achieve tax savings through contractual arrangements without the actual economic significance of the transaction.

In connection with the issue of corrections of incorrectly charged VAT, the judgment of 18 March 2021 (C-48/20), in the UAB 'P.' case, where the Court points to the need to be able to correct the incorrectly charged tax even after the initiation of a tax audit, but with an emphasis on the regulation of this instrument in national legislation, is relevant. This approach is justified by the principle of neutrality and proportionality of the tax system, as limiting corrections could lead to unjustified taxation, which would run counter to the objective of ensuring a fair tax process. The protection of taxpayers against disproportionate penalties thus plays a main role, reaffirming that the mere formal inclusion of VAT on an invoice is not proof of the supply of goods.

It should be emphasized that tax optimization itself is not contrary to the law if it is carried out in accordance with applicable legal standards. The problem arises in cases where artificial structures and complex contractual arrangements are created, the sole purpose of which is to achieve the right to a tax deduction without the real economic substance of the transaction. Such practices can be qualified as circumvention of the law and pose a serious threat to the financial interests of the state (Freedman, 2014; Prebble J., Prebble Z., 2010, pp. 693–745;). As Majerová (2016, pp. 341–342) shows, it is necessary to distinguish between legal tax avoidance, which consists in exploiting loopholes and deficiencies in the tax system in a way that was not foreseen by the legislator, and unlawful tax evasion, where the taxpayer obtains a tax advantage in violation of the law.

Abuse of law can be defined as "*a situation where someone exercises their subjective right to unjustified harm to another person or society. Such behaviour, which achieves an illicit result, is only apparently permissible. Behaviour that is only apparently permissible is concerned because objective law does not recognise behaviour that is both permissible and illicit at the same time; Since it follows from the principle of lex specialis derogat legi generali that the prohibition of abuse of rights is stronger than the permission given by law, such conduct is not an exercise of a right, but an unlawful act*" (Knapp, 1995, pp. 184-185).

In tax law, the principle of prohibition of abuse of law has long been deduced mainly from case law. In addition to the subsequent national case law, as the issue of VAT is a European phenomenon, the judgment of the European Court of Justice of 21.2.2006 in Case C-255/02 Halifax was an important milestone. It follows from the judgment, inter alia, that for an abuse to exist, it is necessary, firstly, that the transactions concerned, despite the formal application of the conditions laid down in the relevant provisions, result in the acquisition of a tax advantage, the grant of which would be contrary to the objective pursued by those provisions. In addition, it must be apparent from all objective circumstances that the principal purpose of the transactions in question is to obtain a tax advantage (for more details on the general anti-abuse rule (GAAR) and its application in Czech case law, see Czudek, 2023, pp. 19–27). In accordance with the case law of the CJEU, tax authorities apply a two-step test when assessing abuse of rights, introduced by the decision in the Emsland-Stärke case (Decision of the Court of Justice of the EU of 14 December 2000, C-110/99 Emsland-Stärke) and further developed in the Halifax case. In the first phase, it is assessed whether the meaning and purpose of the applied tax provision (objective element) has been fulfilled. In the second phase, it is assessed whether there was an intention to obtain a tax advantage by creating artificial conditions (subjective element). To conclude on an abuse of law, both elements must be met (Czudek, 2023, pp. 22–24).

The amendment to Act No. 280/2009 Coll., the Tax Code, effective from 1 April 2019, enshrined a general clause against abuse of law, namely in the provision of Section 8 (4) of the Tax Code (on the development and application of this provision, see Czudek, 2023, pp. 21–22).

At the same time, however, it is necessary to acknowledge the nuance regarding abuse of law – see, for example, Lichnovský (2024, pp. 47–79): "*The problem of abuse of law in the field of tax law is a situation where a taxpayer proceeds exactly according to the positive legal regulation, i.e. the text of the law, but its procedure is subsequently questioned by the tax administrator, arguing that, while the law has been complied with, it has been abused*." On the other hand, it is the duty of tax administrators to respect "*tax optimization carried out using all legal provisions that affect the taxpayer's factual circumstances. On the other hand, however, it is understandable and desirable for tax administrators to sanction such conduct of taxpayers where they abuse the provisions of tax laws contrary to their obvious meaning*" (Kohajda, 2010, p. 302).

Distinction between tax avoidance and abuse of law in VAT

For accuracy of argumentation, it is appropriate to distinguish between tax avoidance in the area of income taxes and abuse of law in the area of VAT (cf. Majerová, 2016, pp. 341–342; Prebble J., Prebble Z., 2010, pp. 693–745). In the case of income taxes, the assessment often focuses on whether the taxpayer exploits loopholes, inconsistencies, or deficiencies in legal regulations to achieve a lower tax liability, or whether they exceed the boundaries of legitimate tax planning (Kohajda, 2010, p. 302). In the area of VAT, however, it is crucial that it is a transactional tax based on neutrality, deduction, and the link between a formal tax document and a genuinely performed taxable supply (cf. Novotná, 2021, p. 511; Kuneš, 2025).

Abuse of law in VAT, therefore, generally does not consist merely of an attempt to reduce the overall tax burden, but primarily in the artificial creation of a right to deduct or a discrepancy between the formal invoicing flow and the real economic performance (cf. CJEU judgment C-712/17 EN.SA. Srl; CJEU judgment C-255/02 Halifax, paras. 74–75). Precisely for fuel and charging cards, this distinction is significant, because the structures under consideration can, on the one hand, represent legitimate commercial and tax optimization, but on the other hand, they can merely create a formal link in the chain without sufficient economic substance (cf. Czudek, 2023, pp. 22–24; Lichnovský et al., 2024, pp. 47–79).

Therefore, when applying the Union standard of abuse of law in the context of fuel and charging cards, both the objective and subjective elements of the test must be examined separately (CJEU judgment C-255/02 Halifax, paras. 74–75; CJEU judgment C-110/99 Emsland-Stärke; Czudek, 2023, pp. 22–24). The objective element requires an assessment of whether the formal fulfillment of conditions for a certain tax qualification leads to a tax advantage contrary to the purpose of VAT rules. The subjective element requires determining whether the main purpose or one of the main purposes of the given structure was to obtain this advantage through artificially created conditions (cf. Section 8(4) of the Tax Procedure Code, Act No. 280/2009 Coll.). For fuel cards, therefore, the decisive factors will particularly be the issuer's actual economic role, its ability to influence supply conditions, the assumption of commercial risks, and the existence of a separately agreed price (cf. VAT Committee Guidelines, 2023, point 3; GFŘ Information of 17.12.2024, ref. no. 81106/24/7100-30116-051722). For charging cards, this test must be applied taking into account the special legal fiction of a commissionaire structure, which in certain situations itself establishes a chain supply of electricity as goods (CJEU judgment C-60/23 Digital Charging Solutions).

Based on the criteria for abuse of law in the area of VAT defined above, we can proceed to further questions related to the practical functioning of the system — particularly the question of the consumer's role and their potential ability to influence the correctness of VAT collection through the requirement for a tax document.

12. The role of the consumer and the possibility of influencing tax justice

Another fundamental question is whether it is the duty of the VAT payer to obtain a proof of payment documenting the performance and what is the role of this receipt in the proper payment of VAT. From a practical point of view, if the taxpayer does not collect or request a receipt that becomes a tax document in the broad sense of the word after being entered into the tax records, there is a risk that they will not be able to prove input VAT. Within the VAT system, the receipt of a document with all the requisites[11] according to Act No. 235/2004 Coll. on Value Added Tax is therefore a necessity.

The situation is different in the relationship between the VAT payer and the consumer. Here, at

[11] Section 29 of Act No. 235/2004 Coll., on Value Added Tax.

least in the Czech Republic,[12] the consumer is not obliged to accept the document confirming the transaction. An entrepreneur, whether a VAT payer or a non-VAT payer, is obliged to issue it.[13] In this regard, for example, various receipt lotteries were organized in the past so that the state would motivate consumers to demand them and thus control the taxation of transactions (Wan, 2010, pp. 611–624). It primarily concerned the obligation to record sales, i.e. income tax, and this is how it was often presented politically and in the media. In fact, however, if the entrepreneur was an obligatory or optional VAT payer, this method of control was more important from the point of view of public revenue administration, as the volumes of VAT and related evasion can be significant compared to income tax evasion (also with regard to the issue of excessive VAT deductions).

However, the problem is when an entrepreneur – a VAT payer proposes to the consumer that they reduce the price of the goods or services by the value of VAT or part of it (i.e. they perform the transaction without a document). In addition to VAT, the entrepreneur does not declare income and there is a double tax understatement, or even excessive VAT deductions. The problem, however, is that the consumer themselves are also motivated to do so.

13. Control mechanisms and possibilities for legislative intervention

Effective supervision of the correct payment of tax is conditional not only on the proper setting of legislation, but also on the support of modern control mechanisms. The Financial Administration should implement mandatory electronic records of fuel and electricity consumption, which will enable accurate monitoring of real performance and prevent fictitious billing. In addition, audits and updates of the methodological guidelines should be carried out regularly based on the latest case law (Keen, Smith, 2006, pp. 861–887; Majerová, 2016, pp. 353–354). An important prerequisite for an effective fight against tax evasion is also greater transparency on the part of the state administration when publishing the methodology for estimating the VAT gap, as emphasized by Moravec, Hinke, and Kaňka (2018, p. 470), who point out that the Czech Republic does not have an officially statistically based typology of VAT evasion yet and the estimates of the competent authorities are not commonly available to the public.

Furthermore, these opinions should be adopted and enshrined in at least subordinate legislation, with a view of making the process of adoption or amendment faster and easier. This guarantees the possibility of a faster response. On the other hand, it is also necessary to pay attention to the principle *of nullum tributum sine lege*. This means that in tax matters, the specification of taxpayers' obligations is in accordance with the law and that secondary legislation is issued only on the basis of a statutory authorization.[14]

From the point of view of the management of public funds or public revenues at the European and national level, a sufficiently fast (i.e. also automated), flexible, and effective exchange of information on transactions of taxpayers is crucial. In this area, the 7th Council Directive has already been adopted under the designation DAC 7 (Council Directive (EU) 2021/514 of 22 March 2021).

[12] The situation may be different, for example, in Austria.

[13] Section 28 of Act No. 235/2004 Coll., on Value Added Tax.

[14] Cf. the judgment of the Supreme Administrative Court 5 Afs 45/2011-94 of 19 April 2012, cited by O. Moravec. Is there no tax without law? ASPI: *"Taxes can only be determined on the basis of the law … It is therefore completely inadmissible for the subject of taxation … to be determined in any other way, moreover, not within the legislative power, but within the executive power (i.e. on the basis of an implementing decree or 'Accounting Procedures', which are issued by an administrative body, in this case the Ministry of Finance). In such a case, the constitutional principle of the separation of powers is violated."* Identically, M. Karfíková. in Taxes as a tool for the functioning of the state. AUC Iuridica, 2018, states*: "The legislator is therefore obliged to adopt such a regulation directly in the tax law that will be so specific and specific that it is possible to reconstruct the entire content of the tax liability from it."*

This Directive represents the sixth major amendment to Directive 2011/16/EU on administrative cooperation in the field of taxation (Czudek, 2024, pp. 19–26). Its primary objective is to increase tax transparency in the digital economy environment and to eliminate tax evasion arising from insufficient cooperation between digital platform operators and tax administrators.

In the Czech legal system, this directive was implemented through an amendment to Act No. 164/2013 Coll., on International Cooperation in Tax Administration.

Argumentative relationship between DAC 7 and the control of card models

For the purposes of this article, it should be explicitly stated that DAC 7 does not represent a direct legal regime governing fuel or charging cards. Its significance lies rather in demonstrating a broader trend of digitizing tax administration, automated data collection, and cross-border exchange of information on economic activities (cf. Council Directive (EU) 2021/514; Czudek, 2024, pp. 19–26). Therefore, DAC 7 serves as a supporting argument for considerations regarding the modernization of control mechanisms in the area of VAT, not as an immediate legal basis for controlling the settlement of fuel or charging cards (cf. Keen, Smith, 2006, pp. 861–887).

The analogous relevance of DAC 7 lies in the shift from *ex post* control of isolated documents to the systematic collection, structuring, and sharing of transactional data (cf. Czudek, 2024, pp. 19–26). For fuel and charging cards, similar logic can support the introduction of electronic record-keeping of actual fuel and electricity consumption, because the verifiability of real performance is crucial for distinguishing actual supply from a fictitious or artificially created invoicing chain (cf. Majerová, 2016, pp. 353–354; Moravec, Hinke, Kaňka, 2018, p. 470). This consideration simultaneously respects the principle of *nullum tributum sine lege*: new obligations for taxpayers must be established by law, while DAC 7 here functions only as a model example of a more effective data infrastructure (cf. judgment of the Supreme Administrative Court 5 Afs 45/2011-94; Radvan, 2018, p. 340; Radvan, Czudek et al., 2018, p. 190).

The Directive obliges digital platform operators (established inside and outside the EU if they provide services to EU sellers) to collect and report annually information on sellers who carry out defined activities through these platforms. The so-called relevant activities include:

- Provision of immovable property (including the lease of recreational facilities, apartments or parking spaces).
- Provision of a personal service (work performed by a natural person, e.g. craftsmanship, programming, supply services).
- Sale of goods (e-commerce).
- Rental of any means of transport.

The information obtained is automatically forwarded by the tax administrator (in the Czech Republic the Specialized Tax Office) to the competent authorities of the EU Member States in which the seller is a resident or where the rented property is located. The scope of the transferred data includes the seller's identification data (including VAT number or social security number), the total consideration and the identification of the financial accounts to which the funds were paid.

The current problem, especially in the case of taxi operators and related fraud, is the fact that this data is provided automatically only once a year, which creates a huge space for the emergence of the grey economy in the operation of the so-called taxi fleets.[15] The deadline for filing the notification ends on 31 January of the calendar year following the year for which the declaration is submitted. For failure to comply with obligations (e.g. failure to verify sellers, failure to file a notification), platform operators in the Czech Republic face a fine of up to CZK 1,500,000 or even a ban on activity.

[15] Compare, for example: Information about *Action Charon: A trap has been closed*. For years, foreigners operating taxi fleets have been depriving the state of millions in VAT (news coverage of GFD press outputs).

14. Conclusion

This article deals with the complex issue of applying VAT to fuel cards and cards intended for charging electric cars. The main objective was to analyze the real economic and legal substance of these transactions through the prism of tax justice and abuse of law, and above all, to answer the key research question of whether transactions carried out with fuel cards have the same character as transactions made through charging cards.

The analysis shows that although both instruments serve a similar purpose – providing energy for the propulsion of vehicles – their tax classification and the nature of transactions may differ significantly. For traditional fuel cards, the assessment depends on the business model chosen. If the card issuer acts in its own name, negotiates prices and bears risks, it is a supply of goods. However, if it merely intermediates payment and does not exercise control over the purchase of fuel, case law (e.g. the Vega case) classifies such a supply as a supply of a financial service (credit) that is not subject to the standard VAT regime.

On the other hand, in the case of EV charging cards, the CJEU (in Case C-60/23) took a different approach. Electricity is considered to be tangible property and its supply through an intermediary (providing access to a network of charging stations) is perceived as a chain supply of goods based on the legal fiction of a commission contract. Unlike some fuel card models, the intermediary does not act only as a credit provider (the credit mechanism and pre-financing are not applied), but as a full-fledged link in the supply chain, even though it does not store electricity physically and the charging parameters are determined exclusively by the end user. The research question can, therefore, be answered by saying that transactions do not always have the same character and a more specific approach is applied to charging cards, establishing the intermediary as a supplier of goods.

The article's sub-hypotheses can be evaluated as follows. The hypothesis concerning the differentiated application of the two-tier test of abuse of law to both types of cards was confirmed: for fuel cards, both elements of the test (objective and subjective) must be examined with regard to the specific business model and the degree of economic autonomy of the card issuer, whereas for charging cards, the fiction of a commissionaire relationship inherently establishes a chain supply of goods, thereby fundamentally modifying the initial position for assessing the abuse of law (cf. CJEU judgment C-255/02 Halifax; CJEU judgment C-60/23 Digital Charging Solutions; Czudek, 2023, pp. 22–24). The hypothesis regarding the structural distinction between legal fiction, presumption, and the substance over form approach was also confirmed: the fiction under Article 14(2)(c) of Directive 2006/112/EC acts as a systemic construct of Union law independent of the economic reconstruction of the transaction (cf. CJEU judgment C-60/23 Digital Charging Solutions; Knapp, 1995, pp. 184–185). The hypothesis concerning the distinction between tax avoidance in income taxes and abuse of law in VAT was confirmed in the sense that abuse of law in VAT primarily lies in the artificial creation of a right to deduct, rather than merely a reduction in the overall tax burden (cf. Kohajda, 2010, p. 302; Majerová, 2016, pp. 341–342). The hypothesis regarding the decisive role of real economic performance was confirmed by an analysis of case law and GFŘ opinions: the absence of actual consumption, risk assumption, and independently negotiated prices indicates an artificial structure meeting the conditions of the abuse of law test (cf. GFŘ Information of 17.12.2024, ref. no. 81106/24/7100-30116-051722; VAT Committee Guidelines, 2023, point 3). Finally, the hypothesis concerning the analogous relevance of DAC 7 for fuel and charging cards remains partially open: although the logic of automated data collection is transferable, its implementation in the specific segment of fuel and charging cards has not been formalized yet in binding legislation and requires further research, particularly in the area of the proportionality of the regulatory burden to the principle of *nullum tributum sine lege* (cf. Czudek, 2024, pp. 19–26; Radvan, 2018, p. 340).

The analysis also confirmed that there is a very thin line between legal tax optimization and abuse of law in this area. The creation of complex and artificial contractual structures that lack real economic substance and serve only to obtain the right to a tax deduction constitutes a circumvention of the law and a threat to public budgets. From the point of view of tax justice, it is essential that the tax regime and any deductions reflect only actual and proven economic activity.

In order to address this issue effectively in the future, it is necessary to harmonize EU and national legislation more consistently, which should go beyond mere methodological guidelines ("soft law") and be reflected in binding legislation. It is also necessary to introduce and improve modern control mechanisms, such as electronic consumption records and a more flexible automated exchange of information within the framework of the DAC 7 directive, the current annual frequency of reporting of which still leaves considerable room for the informal economy. As Radvan summarizes it (2018, p. 340), "*the electronic revenue register might be an effective tool for fair tax payments, but only in case of harmonized rules for all businessmen. The higher the number of exemptions is, the less effective tool the revenue register is*." The same applies by analogy to the area of fuel and charging cards – the more exceptions and ambiguities the legislation contains, the easier it is to abuse the system. Electronic records of sales are undoubtedly "*a good tool to meet its goals, such as combating tax evasion, eliminating unfair competition, reducing the shadow economy and collecting taxes more efficiently*" (Radvan, Czudek et al., 2018, p. 190). However, for it to be fully effective in the field of fuel cards, it is necessary to have a more consistent harmonization of EU and national regulations going beyond mere soft law.

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