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VAT'S UP

VAT NEWSLETTER

German Federal Fiscal Court: In-game transactions are not within the scope of VAT

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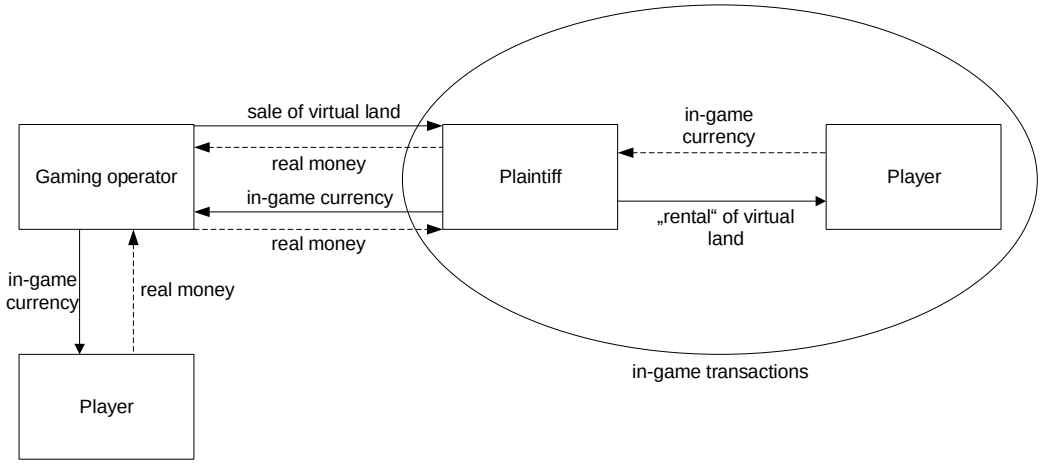
1 Facts

A dispute existed as to whether the "rental" of virtual land, within an online game, was within the scope of German VAT. In the underlying facts, the plaintiff initially acquired virtual land in an online game from the gaming operator. The plaintiff parceled out this land and "rented" it to other players in the online game, who paid with in-game currency. Subsequently, the plaintiff exchanged the in-game currency earned by "renting" out the virtual land for US dollars on the exchange platform managed by the gaming operator. Afterwards, the gaming operator sold the in-game currency to another player.



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In the opinion of the court of first instance, the Fiscal Court of Cologne, the plaintiff rendered a unique supply of services by granting other players rights of use by “renting” the virtual land, for which he received in-game currency as remuneration.

2 Decision of the Federal Fiscal Court

Contrary to the statements of the Fiscal Court of first instance, the in-game "renting" of virtual land to other players does not constitute a supply within the scope of VAT. In-game transactions are not to be regarded as participation in (real) market activities. This is because these transactions have no significance beyond the interaction with other players. The “renting” of the virtual land was not based on a legally binding obligation to make it available for consideration. Rather, the “rental” merely served to achieve the purpose of the game, namely interaction with other players. The Federal Fiscal Court thus denied that the “rental” had any significance beyond the gaming experience.

In contrast, a supply of service within the scope of VAT was found to exist when the plaintiff exchanged the in-game currency into US dollars on the exchange platform managed by the gaming operator. In doing so, the plaintiff carried out a supply of services in the form of a transfer of rights. This is because the transfer of the in-game currency as a contractual right (vis-à-vis the gaming operator) took place by way of assignment in favour of another player. The plaintiff provided the other player with a consumable benefit, as the latter was able to use the in-game currency for a future online-game. Applying the rules for commissionaire schemes, the gaming operator is to be regarded as being the recipient of the service. This is because, as a commission agent, it undertook the sale of the in-game currency to other players in its own name and for the account of the plaintiff.

3 Consequences for the practice

The Federal Fiscal Court's decision is convincing. For the assumption of in-game transactions within the scope of VAT, the necessary direct link between the supply and the consideration is lacking. In the present case, there is, at most, an indirect link between virtual “renting” and consideration. This is because the “landlord” must first exchange the in-game currency generated by the “rental” on the exchange platform for consideration. Moreover, there is no will to render supplies within the scope of VAT, because the players expressly do not intend to participate in economic life.

The player can render the exchange of the in-game currency vis-à-vis the gaming operator, as in the case of the decision, within the scope of his business, or as in the case of an exchange designed for repetition, become a taxable person in the game in this way. This results in the player, acting as a taxable person, rendering output supplies subject to VAT to the gaming operator. This, in turn, basically entitles him to deduct input VAT from his input supplies. The resulting VAT consequences for the gaming operator are equally significant. For, if players can be taxable persons in the context of their participation in the game, it therefore follows that B2B supplies by the gaming operator are also possible. In order to correctly determine the place of supply, the gaming operator should therefore implement a VAT-ID query, in the course of the player’s onboarding process, in order to determine the player’s status (see Art. 18 of the Council Implementing Regulation). In practice, the question then arises as to whether the gaming operator can rely on the accuracy of the player's information. The background to this is that the presumption rule in accordance with Art. 18 of the Council Implementing Regulation only applies in the case that the gaming operator “has no information to the contrary”. Contrary information could, in particular, become available to the gaming operator in the context of the player’s activities within the online game offered by the gaming operator.

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