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VAT'S UP

VAT NEWSLETTER

Digital marketplace not considered a seller of NFTs for VAT purposes

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1 Background

VAT law includes a deemed supplier rule for certain situations where a digital marketplace is involved in the provision of a service (sec. 3 para. 11 and 11a German VAT Act / Art. 28 VAT Directive). The digital marketplace is then treated, for VAT purposes, as if it were purchasing and reselling the service itself. This assumption is particularly problematic if the digital marketplace does not act under its own name, from a civil law perspective. In this case, the VAT treatment is purely fictitious. This is why the special treatment under VAT law is, in practice, often overlooked.

The deemed supplier rule applies, in particular, if the digital marketplace controls the provision of the services. This is the case if it authorizes billing to the recipient of the service, approves the provision of the service, or determines the general terms and conditions for the provision of the service (cf. sec. 3 para. 11a sentence 4 German VAT Act). The decisive factor is therefore the actual powers enjoyed by the digital marketplace, vis-à-vis the service provider.

For the question of whether the deemed supplier rule applies, it is also relevant whether the services in question qualify as electronic services within the meaning of sec. 3a para. 5 German VAT Act. This is the case if the service is essentially automated and involves only minimal human intervention (Art. 7 EU VAT Implementing Regulation). This is because EU law treats these services as a chain of supplies (Art. 9a EU VAT Implementing Regulation). In contrast, the German implementation of this provision in sec. 3 para 11a sentence 1 German VAT Act extends the scope of application (at least according to the wording) and applies the deemed supplier rule to all services provided via a telecommunications network, an interface, or a portal.

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2 Facts

In the case in question, the plaintiff traded as a domestic taxable person with NFTs for digital image files as collectibles (so-called NFT collectibles). He sold the NFTs via the globally used digital marketplace “OpenSea”. In doing so, the plaintiff did not trade the respective digital image or collectible itself, but only a database entry on a decentralized blockchain. This allowed a purchaser to claim to be the “owner” of the digital item. In order to sell the NFT, the plaintiff had to connect his third-party crypto wallet to the digital marketplace and its smart contract program. The respective blockchain stored the transaction processes, including the associated pseudonymized crypto wallet addresses of the plaintiff and the buyers. The Fiscal Court of Lower Saxony had to decide whether the NFT sales constituted electronic services and whether the digital marketplace was involved in the provision of services within the meaning of sec. 3 para. 11a of the German VAT Act, i.e., whether it became the recipient of the service.

3 Decision of the Fiscal Court of Lower Saxony of 10 July 2025 – 5 K 26/24 (legally binding)

The Lower Saxony Fiscal Court classifies the NFT sale as an electronic service. It bases its decision on the technical processing via the blockchain and assumes minimal human involvement. This is noteworthy insofar as the transfer process requires active participation on the part of the seller, in terms of the specific NFT to be transferred. Nevertheless, no in-depth examination of human involvement was carried out by the Fiscal Court.

At the same time, the Fiscal Court denies that the application of the deemed supplier rule. The digital marketplace is not to be regarded as the recipient of the service. In this regard, the Fiscal Court relied, in particular, on the fact that the actual service—the transfer of the NFT—took place outside of the digital marketplace. This is because a decentralized blockchain database was used for the technical processing. In the Fiscal Court’s view, the fact that the transaction was secured by the use of a so-called smart contract from the digital marketplace is apparently irrelevant. In contrast, it should be noted that the plaintiff controlled the sales process, as he himself decided on the price and duration of the offer and could reserve NFTs specifically for certain buyers. In this respect, the Fiscal Court considers that the sale of NFTs differs significantly from the transactions on the *OnlyFans* platform, which form the basis of the ECJ judgment in the case *Fenix* (judgment of 28 February 2023 – Case C-695/20; see KMLZ VAT Newsletter 13 | 2023).

4 Practical Considerations

The judgment of the Fiscal Court of Lower Saxony has far-reaching consequences for NFT sellers (see KMLZ VAT Newsletter 12 | 2023). This is because, in general, electronic services that do not fall within the scope of the deemed supplier rule are, in B2C cases, taxable in the country of the recipient of the service. This is significantly disadvantageous, from a financial and administrative perspective, compared to (fictitious) B2B services supplied to the digital marketplace within the framework of the deemed supplier rule.

In contrast, the ruling of the Fiscal Court of Lower Saxon is a blessing for digital marketplaces with comparable offerings. They can rely on the Fiscal Court’s reasoning and argue against being included in the chain of services. This is because, despite the digital marketplace's involvement in the sales process, the Fiscal Court rejects any application of the deemed supplier rule. This is remarkable in that the Fiscal Court's judgment includes a detailed description of the involvement of the digital marketplace and it nevertheless still arrives at a restrictive application of the deemed supplier rule. Digital marketplaces with comparable offers that are either not involved in the performance of the service or allow sellers extensive control over their offers should therefore examine whether they can make use of the judgment.

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