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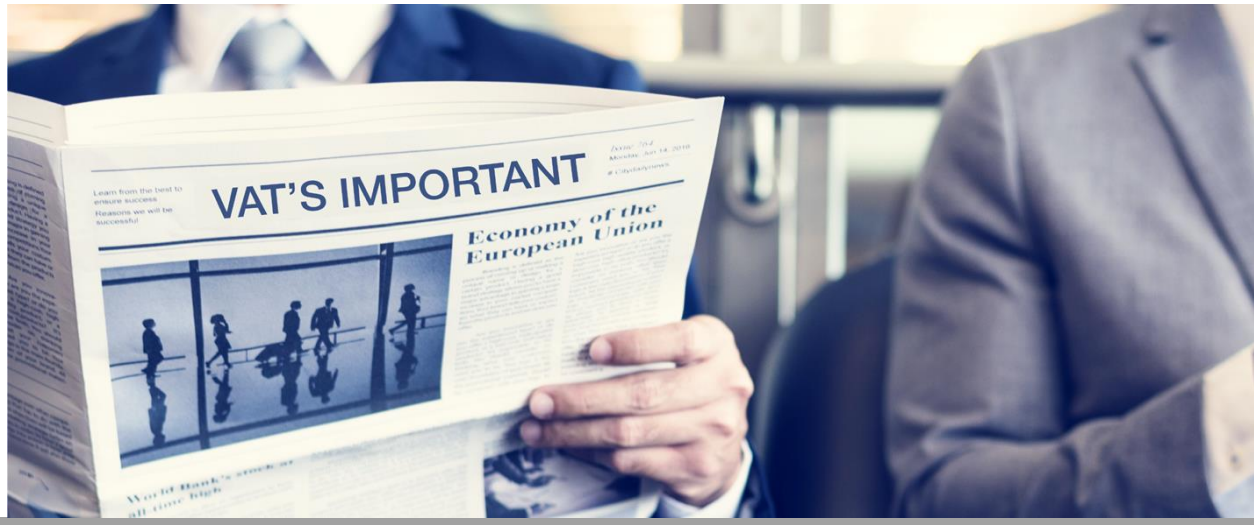


VAT'S UP

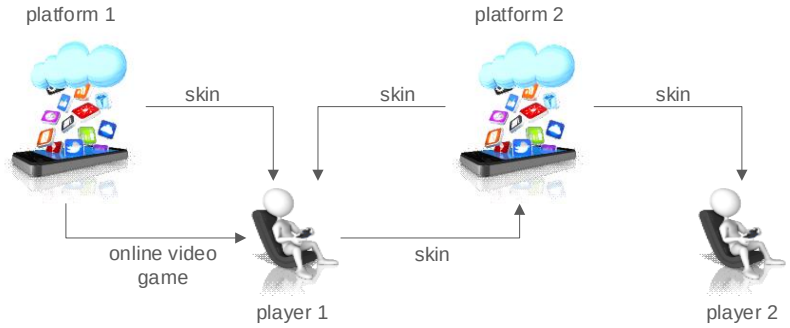
VAT NEWSLETTER

VAT Committee: sale of virtual assets via digital platforms

48 I 2023

1 Background

Denmark has asked the EU Commission's VAT Committee for an opinion on the VAT treatment of trade in virtual assets via digital platforms. The virtual assets in question are so-called "skins" from online video games (eg a player character's uniform, additional lives, weapons, etc). The digital platform makes the skins available to players through so-called "loot boxes" in the online video game. Players can trade skins with each other through digital platform. These transactions do not necessarily take place on the digital platform that issued the skins.



In the example, player 1 plays an online video game on platform 1 and purchases skins there. He then purchases more skins on platform 2. He first uses the purchased skins in the online video game on platform 1 and then sells them to player 2 on platform 2 with a profit margin.

Dr. Matthias Oldiges
Lawyer

+49 (0) 211 54 095-366
matthias.oldiges@kmlz.de

2 Questions to the VAT Committee

The VAT Committee shall clarify whether the sale of skins by natural persons on the secondary market falls within the scope of VAT. In this context, the questions arise as to whether (i) a taxable transaction for consideration (ii) by a taxable person, within the meaning of VAT law, exists. The EU Commission Service has commented on this as follows:

- A supply of services for consideration can exist if a natural person sells so-called skins to other players via a digital platform in return for consideration.
- If a natural person regularly sells skins for consideration over a longer period of time, he acts as a taxable person within the meaning of the VAT law and the sales fall within the scope of VAT.

3 German perspective

The Federal Fiscal Court (BFH) has already ruled in a similar case. In the case in question, a player generated in-game currency in an online video game and transferred this currency to other players for real money via an exchange managed by the gaming operator (BFH, judgement of 18 November 2021 – V R 38/19). In the BFH's opinion, the player used the in-game currency to provide other players with a virtual game object for later use in the game and thus a consumable benefit. As a result, the BFH confirmed a deemed reseller model between the player, the digital platform and the other players. This case decided by the BFH is comparable to the sale of virtual assets (eg skins from online video games) on digital platforms. If a player's status as a taxable person is confirmed, then, according to the German point of view, the sale of virtual assets (eg skins from online video games) via digital platforms, should regularly constitute a deemed reseller model in accordance with sec. 3 para. 11a of the German VAT Act.

4 Consequences for the practice

The principles of VAT law also apply to the sale of virtual goods. A player can sell virtual assets via digital platforms as part of his business. As a rule, a deemed reseller model in accordance with sec. 3 para. 11a of the German VAT Act is given. That is to say, player 1 renders a taxable supply of service to platform 2 and the latter provides a taxable supply of service to player 2. Player 1 is generally entitled to deduct input VAT from the supplies purchased (eg hardware and software).

The resulting VAT consequences for the digital platforms are equally significant. To date, digital platforms that enable the trading of virtual assets have regularly assumed B2C supplies to be the case. This means that the place of supply, in the case of an electronically supplied services is, in accordance with sec. 3a para. 5 of the German VAT Act, the player's place of residence / permanent address. However, if a B2B supply is given, the place of supply, in accordance with sec. 3a para. 2 of the German VAT Act, is where the player's business is established. This does not lead to a different place of supply in the case of a domestic supply of service. However, B2B cross-border supplies of services are subject to the reverse charge mechanism. For this reason, the digital platform must not show VAT in these cases. For tax calculation purposes, the digital platform should therefore implement a VAT-ID query in the particular 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 digital platform can rely on the information provided by the player. The background to this is that the presumption rule in Art. 18 of the Council Implementing Regulation only applies in the event that the digital platform "has no information to the contrary". This must be answered on a case-by-case basis.