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VAT NEWSLETTER

ECJ affirms deemed reseller rule for in-app purchases via app stores

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1 Background

If an app store is involved in the provision of a service and is acting in its own name but on behalf of an app developer, the deemed supplier rule applies (sec. 3 para. 11 German VAT Act / Art. 28 EU VAT Directive). The app store is then treated, for VAT purposes, as if it were purchasing and reselling the service itself. With effect from 1 January 2015, this regulation was in accordance with Art. 9a EU VAT Implementing Regulation (CIR) for electronically supplied services to the effect that the deemed supplier rule applies in certain constellations, without it being necessary for the app store to act in its own name and on behalf of another person (cf. KMLZ VAT Newsletter 33 I 2025). However, the German preliminary ruling procedure in case C-101/24 – *Xyrality* still concerns the legal situation prior to 1 January 2015. The Federal Fiscal Court (BFH) referred the questions to the ECJ as to whether the deemed reseller rule applies in accordance with Art. 28 EU VAT Directive in the case of so-called in-app purchases and where the app store's service is then to be taxed.

2 Facts

The dispute concerned the VAT treatment of so-called in-app purchases. End customers were able to download a games app, free of charge, from an app store to their end device. The app store displayed the app, uploaded by the app developer, on behalf of the app developer.

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In the course of using the games app, the end customer had the opportunity to make in-app purchases against payment. This was facilitated by a pop-up window opening in the games app. This window included the app store logo, without mentioning the app developer. The purchase was processed via the app store and the payment method stored there. The app store was authorized to collect the respective fee for the in-app purchases from the end customer. After the purchase was completed, the app store issued order confirmations to end customers, naming the app developer as the service provider and showing VAT.

3 Decision of the ECJ

The ECJ affirms the application of the deemed reseller rule in accordance with Art. 28 EU VAT Directive. The app store acts in its own name with regard to in-app purchases. The order confirmations, which show the name of the app developer, do not indicate that the app store is acting on behalf of a third party. This is because these order confirmations are inevitably only issued after the purchase process has been completed. With regard to Art. 9a CIR, the ECJ merely makes supplementary comments that have no effect on the ECJ's decision. The ECJ confirms that Art. 9a CIR, which came into force on 1 January 2015, does not apply to the present case, in terms of time. Nevertheless, the fundamental principles underlying Art. 9a CIR should also be taken into account when interpreting Art. 28 EU VAT Directive.

Not surprisingly, the ECJ further states that the place of supply for the deemed service, provided by the app developer to the app store, is governed by the basic rule for B2B services in sec. 3a para. 2 German VAT Act / Art. 44 EU VAT Directive. Far more interesting, however, is that the order confirmations to end customers, on which the app developer is identified as the service provider, do not trigger a VAT liability for unduly charged VAT under sec. 14c German VAT Act / Art. 203 EU VAT Directive. The ECJ comes to this conclusion because the end customers, in the present case, were demonstrably non-taxable persons. The question of whether the order confirmations constitute VAT invoices at all could therefore be left open.

4 Practical Considerations

The platform industry can breathe a sigh of relief. Contrary to what the Advocate General's opinion might have suggested, the ECJ does not blur the boundaries between Art. EU 28 VAT Directive and the application of Art. 9a CIR. The ECJ makes it very clear that an app store is always included in the service chain if it is not expressly acting on behalf of a third party at the time the service is performed. Of great practical interest would be the question of what specific requirements the ECJ imposes on a digital platform acting on behalf of a third party. However, the ECJ was able to leave this question open, as in the present case, any possible action on behalf of a third party only took place after the services had been performed, as confirmed by the order confirmation.

It was to be expected that the ECJ would not apply the irrefutable presumption in Art. 9a CIR to periods prior to 1 January 2015, and this provides legal certainty for digital platforms. In contrast to the legal situation in the years in dispute, the current legal situation is much clearer. This is because the provision already assumes a deemed reseller model for all electronic services via digital platforms (such as app stores) if the digital platform is involved in the provision of the service and, as in the present case, authorizes payment to the end customer. In this case, the supply of service is attributable to the digital platform without any further requirements, such as contractual agreements or explicit action on behalf of a third party, being necessary. It is also very encouraging that the ECJ has confirmed its ruling in the cases *P-GmbH I* and *P-GmbH II*, according to which invoices to non-taxable persons do not trigger a VAT liability for unduly charged VAT under sec. 14c German VAT Act / Art. 203 EU VAT Directive (see KMLZ VAT Newsletter 31 | 2025). This also has great practical relevance beyond the boundaries of the platform economy.