

YPOG Briefing:

Latest Developments in the VAT Treatment of NFT Transactions

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The VAT treatment of crypto transactions is currently marked by significant uncertainty, as the tax authorities have so far only issued guidance on the taxation of Bitcoin and comparable virtual currencies (cf. Circular issued by the German Federal Ministry of Finance dated 27 February 2018 – III C 3 - S 7160-b/13/10001).

Against this backdrop, the recent decision by the Lower Saxony Tax Court (FG Niedersachsen) is of particular importance. It is the first tax court ruling in Germany to address the VAT treatment of trading in non-fungible tokens (NFTs), thereby providing an important impetus for the tax classification of crypto assets in general.

The decision has been admitted for appeal due to its fundamental significance.

1. The Case

The plaintiff, who is based in Germany, acted as a reseller of NFTs linked to digital image files (so-called "NFT Collectibles"), which were traded on international digital marketplaces. In these transactions, the digital object itself was not transferred; rather, a database entry stored on a decentralized blockchain, serving as proof of ownership, was conveyed.

The transactions were carried out almost exclusively via the "OpenSea" platform and utilized the Ethereum blockchain as well as other decentralized blockchains. To sell the NFTs, the plaintiff was required to connect their crypto wallet (a type of digital wallet) to the platform of the digital marketplace and its smart contract programs. The wallet is used to manage access credentials for interacting with content on the blockchain.

The plaintiff argued that due to the pseudonymization of wallet addresses and the partial anonymity of buyers, it was not possible to identify the purchaser or determine their place of residence or establishment. For practical reasons, obtaining information about the recipient of the service and their address was nearly impossible. As a result, in the absence of identifiable recipients, no exchange of services within the meaning of VAT law could be deemed to have occurred.

2. Important Aspects of the Decision

The following aspects of the judgment are particularly relevant from a VAT perspective:

- **NFT transactions do not constitute supplies of goods, but rather services (Sec. 3 para. 9 of the German VAT Act – UStG):** The transfer of these NFTs constitutes an electronically supplied service. The purchaser does not receive a tangible item, but rather a database entry on a blockchain that designates them as the "owner" of a digital asset. Accordingly, the place of supply – both for private individuals and for businesses – is determined by the location of the purchaser.
- **No application of the fictional commissionaire structure for services:** The tax court (FG) rejects the application of the fictional commissionaire structure for services pursuant to Sec. 3 para. 11a sentence 1 of the German VAT Act (UStG). This provision establishes a legal fiction under which digital platform operators are treated as if they themselves provided the service (i.e., as undisclosed

intermediaries). However, in this case, the court ruled that the services are not deemed to be supplied through the platform operator, but directly from the seller to the purchaser. According to the court, the legal fiction does not apply in particular because the services are not provided via the OpenSea platform itself, but via a decentralized blockchain infrastructure. The transaction is executed on the blockchain through an automatically triggered smart contract. Therefore, the centralized commission structure—such as one typically found in an app store—is absent.

- **Extended cooperation and disclosure obligations of the service provider:** The court rejected the plaintiff's argument that no taxable supply had taken place due to the lack of an identifiable recipient. According to the court, the identifiability of the recipient via a wallet address alone is sufficient to establish a VAT-relevant service exchange — even if the purchaser's name and address are unknown. The court compared this to cash transactions, where the buyer can also remain anonymous.

In addition, the service provider is obliged to cooperate, within reasonable limits, in determining the place of supply (which serves as the basis for VAT liability). The court held that it is both possible and reasonable for the provider to choose a trading platform that can supply the necessary information regarding the recipient's location. This implies that the responsibility lies with the seller to choose a platform that ensures the provision of such data.

Since the plaintiff in this case was unable to provide conclusive evidence regarding the place of supply, the court proceeded to estimate the share of transactions subject to VAT in Germany. Considering the overall circumstances, it concluded that 50% of the revenues were taxable and subject to VAT in Germany — a significantly higher proportion than the approximately 3% assumed by the plaintiff.

This highlights the crucial role of cooperation obligations in ensuring legal certainty for the VAT treatment of pseudonymous blockchain transactions.

3. Practical Implications of the Judgment?

The pseudonymization and anonymization of service recipients in the trading of crypto-assets present an immeasurable practical challenge for the contracting parties outside of digital platforms when it comes to identifying the parties involved. The recent judgment clearly shows that action is needed by tax authorities, sellers, and platforms alike to align the taxpayer's obligations with practical realities.

It is therefore advisable to review the current contractual arrangements to assess the extent to which NFT marketplaces are integrated into the supply chain. In the context of NFT trading via platforms, the application of the legal fiction of a commissionaire structure for services pursuant to § 3 para. 11a sentence 1 of the German VAT Act (UStG) should not be assumed without thorough examination. It is even questionable whether this provision is applicable to NFT marketplaces at all, given that the services are typically provided in a decentralized manner via blockchain infrastructure. Against this background, further contractual arrangements may be necessary to establish a legally effective commissionaire relationship, thereby designating the platform itself as a clearly identifiable recipient of services.

If the platform's involvement is excluded, the place of supply is determined by the location of the recipient (the purchaser of the NFTs). In such cases, the service provider bears special cooperation and disclosure obligations, particularly with regard to determining the place of supply. A persistent problem in this context is that the identity of the purchasers can usually not be clearly established due to pseudonymization via wallet addresses without additional information. From a German perspective, this situation poses a risk that the German tax authorities—similar to the case at hand—may comprehensively estimate the taxable base of domestic customers. Moreover, there remain VAT risks arising from potential end-customer taxation abroad.

