

Analysis of the EU VAT Committee Working Paper on treatment of NFTs

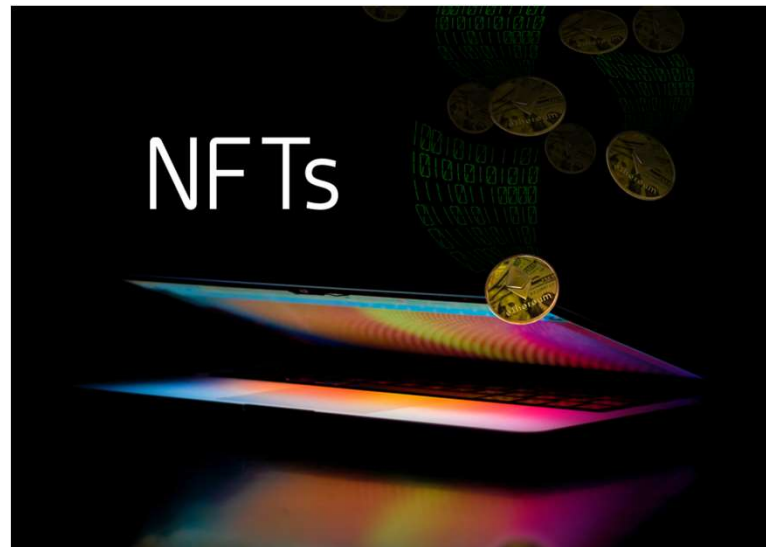
Initial VAT reflections on non-fungible tokens (NFTs)



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Non-fungible tokens (NFTs)

- ▶ Unique crypto-asset that represents rights to an underlying asset.
- ▶ Unique means it is not fungible, such as other crypto-assets (e.g. Bitcoin), where each token is interchangeable and indistinguishable.
- ▶ Crypto-asset means “digital representation of value or rights which may be transferred and stored electronically, using Distributed Ledger Technology (DLT)”



1. INTRODUCTION

- ▶ The European Commission (EC) recently published Working Paper 1060 of the EU Value Added Tax (VAT) Committee in relation to EC question on the VAT treatment of Non-Fungible Tokens (NFTs)
- ▶ The purpose of the working paper is to discuss and analyse the VAT treatment of transactions linked to NFTs in order to define a common approach and practice in this area across the EU.

2. Main supplies linked to NFTs

“Minting” of NFTs: making and uploading NFTs onto a digital ledger

“Trading” of NFTs: Buying and selling NFTs

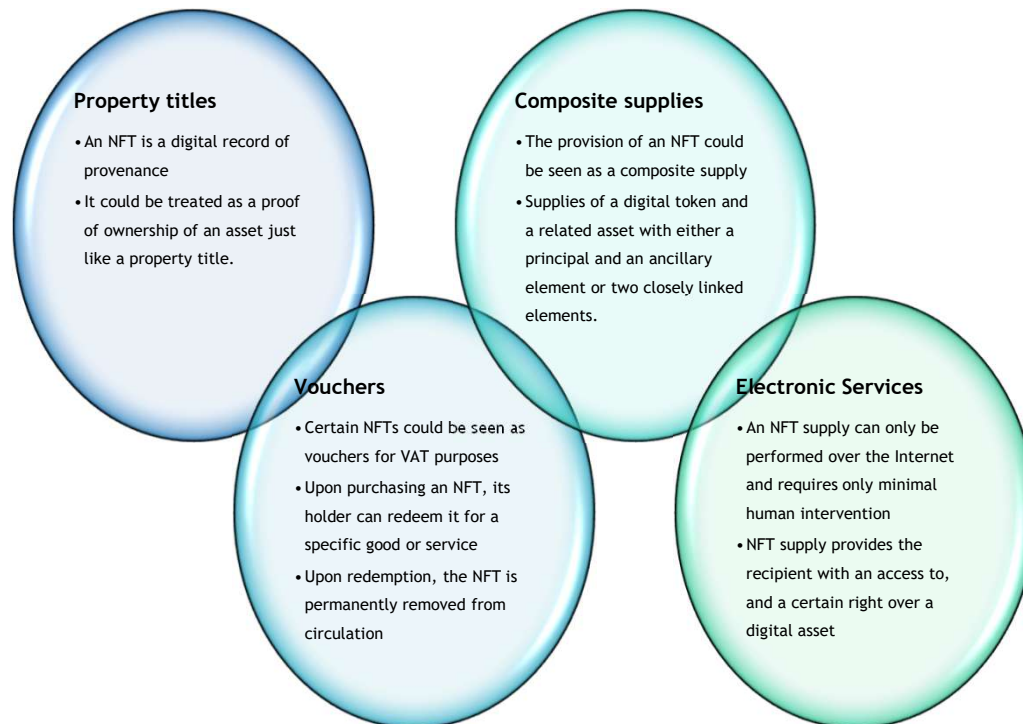
“Earning” NFTs: Receiving NFTs as a reward

3. VAT treatment - General

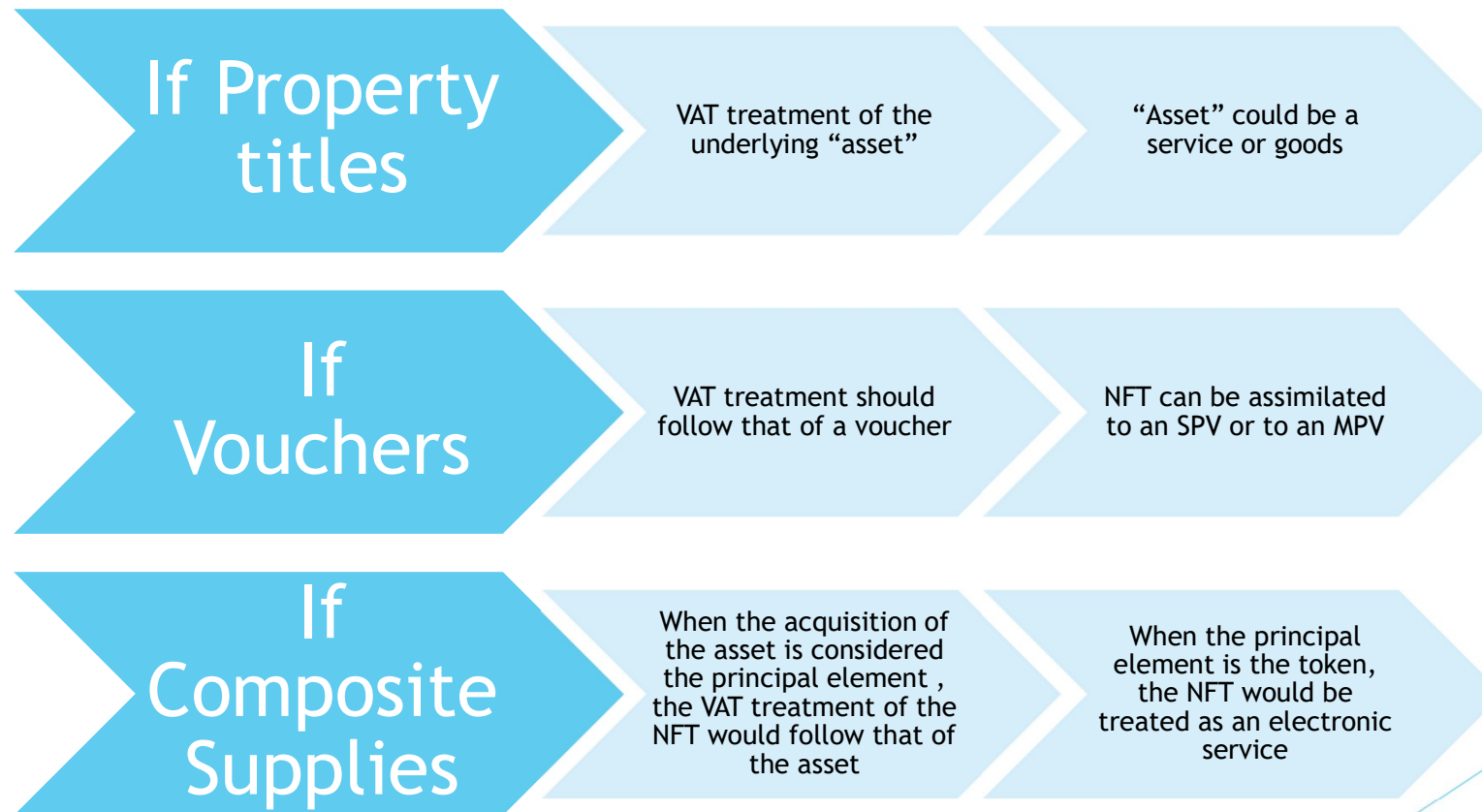


- ▶ Supply falls within the scope of the VAT?
 - ▶ it is a supply of goods or services?
 - ▶ the supply is made for consideration?
 - ▶ the supply is made by a taxable person acting as such?
- ▶ The supply is taxable or exempt?
- ▶ The working paper highlights that although the current majority view is that NFTs are electronic services, given the complexity of the area, it is advisable to examine these transactions on a case-by-case basis.

3.1 What are NFTs? Are supplies of NFTs transactions in goods or services?



3.2 What are NFTs? NFTs VAT treatment?



4. NFTs supplies and their VAT implications

- ▶ “Minting” of NFTs
- ▶ “Trading” of NFTs
- ▶ “Earning” NFTs

4.1 Minting of NFTs

“Minting” of NFTs: making and uploading NFTs onto a digital ledger

- Minting services are remunerated with gas fees, but it is very difficult to clearly establish that there is a direct link between the gas fee paid and the publication on the digital ledger by the network validators
- Consequently, it is not clear whether the gas fees could qualify as “consideration” for VAT purposes, due to the anonymity of the transactions, and the difficulty to recognise the legal relationship between the parties

4.2 Trading of NFTs

“Trading” of NFTs: Buying and selling NFTs

- Trading of NFTs would be subject to VAT when a marketplace or an individual is selling multiple NFTs over time
- However, when an individual is selling an NFT on an occasional basis the sale may not trigger the qualification of the seller as a “taxable person acting as such”
- Hence, transactions in NFTs should be analysed on a case-by-case basis to determine if an economic activity is performed

4.3 Earning NFTs

“Earning” NFTs: Receiving NFTs as a reward

- NFTs can be gained through video games using digital ledger technologies to reward gamers
- It seems that usually there is no direct link between the earned NFTs and the amount paid by the players to play the game