EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1080

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN:	**Denmark**
REFERENCES:	**Articles 103, 135, 311 and 371**
SUBJECT:	**Crypto art and VAT**

1. INTRODUCTION

Questions regarding the VAT treatment of various digital services related to computer games and works of crypto art have been raised to the VAT Committee by Denmark. The submission of these questions comes after the VAT Committee had the occasion to discuss various issues involving non-fungible tokens (NFTs)[1].

The VAT Committee already at its last meeting discussed the VAT treatment of sales of skins in the secondary market[2] which leaves the question of works of crypto art to be dealt with.

The Danish submission is attached in annex.

2. SUBJECT MATTER

2.1. Facts

The request of Denmark concerns "crypto art" which it defines as digital images minted into an NFT. Its submission presents the case of a sale by an artist of a certificate of ownership (an NFT) of a specific digital work of art made via crypto art-platforms or directly to private customers. The artist creates between 1 and 1 000 versions of his or her digital work of art and each version is unique since the pixels vary for each work of art.

2.2. Questions

The first question that Denmark was confronted with was whether the exemption provided for in Article 135(1)(e) of the VAT Directive[3] is applicable to crypto art transactions[4]. Later, it was also asked whether crypto art was an exempt artistic service under Article 371 of the VAT Directive[5]. In the wake of these cases, Denmark enquires whether the supply of works of crypto art can benefit from either the special VAT margin scheme provided for in Article 311 of the VAT Directive or the exemption for services supplied by artists provided for under Article 371 of the VAT Directive.

2.3. Danish analysis

The Danish Tax Assessment Council first found that crypto art, which could not be used solely as a means of payment, could not be seen as a financial transaction. In the second case, it found that the supply was an artistic service exempt from VAT[6].

Denmark's submission finds that due to the nature of the art itself, works of crypto art cannot be seen from a VAT standpoint as tangible goods but rather as services. Based on this observation, Denmark considers that traditional art and crypto art can be treated in different ways from a VAT point of view. As an example, it states that crypto art cannot

1 Working paper No 1060 *Initial VAT reflections on non-fungible tokens*.
2 Working paper No 1070 *VAT treatment of sales of skins in the secondary market*.
3 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1)
4 Danish Tax Assessment Council, case SKM2022.602.SR.
5 Danish Tax Assessment Council, case not yet published.
6 Danish submission.

be covered by reduced rates, benefit from a lower VAT base or be included in the special scheme for second-hand goods.

3. COMMISSION SERVICES' OPINION

3.1. Introductory remarks

The Commission services note that, although Member States may submit to the VAT Committee questions arising from concrete cases, the VAT Committee is not the appropriate forum to settle the cases as such.

Although the matter here at stake comes from a concrete case raised by the Danish delegation, this concrete case only serves as a backdrop to, and illustration of, the issues triggered by the emergence of crypto art that need a harmonised interpretation. In that respect, the VAT Committee is the right place to discuss matters where guidance towards a harmonised interpretation of the VAT Directive is needed.

Therefore, the views of the Commission services and the opinion of the VAT Committee should be seen as aiming to provide general guidance on the application of VAT rules through a concrete case, rather than adjudicating on the case as presented.

On the matter at hand here, the purpose of the present Working paper is to analyse, and launch a discussion on, the VAT treatment of transactions linked to works of crypto art with a view to agreeing on a common approach that would help to build a coherent practice in this area across the EU. It should be noted that the term 'crypto art' here designates a subgenre of digital art that relies on the blockchain technology to create, sell, and authenticate artwork[7]. With that, the questions raised are whether trading of crypto art can be exempted as financial transactions (section 3.2), or if they can fall under the special scheme for the sale of works of art to which either the margin scheme (section 3.3.1) or a reduced VAT (section 3.3.2) applies. The applicability of the exemption for supply of services by artists is also considered (section 3.3.3).

3.2. The exemption for financial services

It is questioned whether the VAT exemption provided for in Article 135(1)(e) of the VAT Directive is applicable to crypto art transactions.

Under Article 135(1)(e) of the VAT Directive, transactions concerning currency, bank notes and coins used as legal tender are exempt. This exemption targets "all of the world's currencies" and aims at ensuring the smooth flow of payments so that "the conversion of currencies is as unencumbered as possible"[8]. An example of such a transaction was provided for in the Court of Justice of the European Union (CJEU) ruling in the *Hedqvist* case[9]. In that case the transaction consisted in the exchange of traditional currencies for units of 'bitcoin' in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which the operator sells that currency to clients. The CJEU recognised the

[7] Tangible art managed through a blockchain (through an NFT for example) would not in our definition qualify as crypto art. For further information regarding the VAT treatment applicable to such NFT, we refer to Working paper No 1060 *Initial VAT reflections on non-fungible tokens*.

[8] CJEU, opinion of 16 July 2015, *Hedqvist*, C-264/14, EU:C:2015:498, point 39.

[9] CJEU, judgment of 22 October 2015, *Hedqvist*, C-264/14, EU:C:2015:718.

'bitcoin' virtual currency as a direct means of payment between the operators that has no other purpose than to be a means of payment and hence considered it to be covered by Article 135(1)(e) of the VAT Directive. A counter example are transactions consisting in the supply of goods or services in return for a payment made with currency, bank notes and coins used as legal tender. Those do not qualify for the exemption provided for by Article 135(1)(e) of the VAT Directive or else the whole VAT system would be deprived of its basis and "all transactions, except barter transactions, would be VAT exempt"[10].

To assess the application of the exemption, it should therefore be determined whether works of crypto art qualify as a currency in the perspective of Article 135(1)(e) of the VAT Directive.

To undergo this assessment, there is a need for recourse to a definition of currency used as legal tender. From the case law, we know that the definition of currency should not be overly restricted. In particular, the CJEU has indicated that the interpretation of Article 135(1)(e) of the VAT Directive should not be limited to including only transactions involving traditional currencies as it would deprive it of part of its effect[11]. The definition of currencies used as legal tender can be found in the opinion of Advocate General Kokott in the *Hedqvist* case. She stated that:

> "currencies currently used as legal tender – unlike gold or cigarettes, for instance, which also are or have been used directly or indirectly as means of payment – have no other practical use than as a means of payment. Their function in a transaction is simply to facilitate trade in goods in an economy; as such, however, they are not consumed or used as goods.
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> That which applies for *legal* tender should also apply for other means of payment with no other function than to serve as such. Even though such *pure* means of payment are not guaranteed and supervised by law, for VAT purposes they perform the same function as legal tender and as such must, in accordance with the principle of fiscal neutrality in the form of the principle of equal treatment, be treated in the same way."[12]

To summarise, a currency used as legal tender has no other practical use than that of a means of payment and other means of payment with the same function should be treated the same. This has been confirmed by the CJEU as it indicated that the 'bitcoin' virtual currency has no other purpose than to be a means of payment and proceeded to conclude that Article 135(1)(e) of the VAT Directive covers the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa[13]. From that, it can be inferred that the determining factor to qualify as a currency is to have no other practical use than that of being a means of payment.

However, it does not seem possible to consider that works of crypto art have no other practical use than that of a means of payment. An enquiry into the world of crypto art shows that works of crypto art are bought for many reasons ranging from spectating, collecting, supporting the work of an artist to investing. Therefore, trade in which participants exchange goods or services for works of crypto art without using (crypto)

[10] *Hedqvist*, opinion, op. cit. point 27.
[11] *Hedqvist*, op. cit., paragraph 51.
[12] *Hedqvist*, opinion, op. cit. points 14 and 15.
[13] *Hedqvist*, op. cit., paragraphs 51 to 53.

currency consists in barter in which crypto art may be used as a means of payment but nonetheless does not qualify as a currency.

The Danish Tax Assessment Council reached the same conclusion considering that the work of crypto art provided by the seller could not be seen as used solely as a means of payment.

Having determined that crypto art is not a currency as per the meaning intended in Article 135(1)(e) of the VAT Directive, the purpose of that exemption is irrelevant to the question raised. Suffice to say as additional evidence that crypto art does not qualify as a currency in the case at hand, that the exemption laid down by Article 135(1)(e) of the VAT Directive is intended to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible which arise in the context of the taxation of financial transactions[14]. Indeed, trading of crypto art whereby the acquirer pays a consideration to a seller in exchange for works of crypto art does not seem to give rise to any particular difficulty such as those faced in financial transactions in term of assessment of the taxable basis.

Therefore, it must be concluded that the transactions involving works of crypto art do not fall within the scope of the exemption laid down in Article 135(1)(e) of the VAT Directive

3.3. Special scheme(s) for works of art

3.3.1. The margin scheme for works of art

The margin scheme for works of art is set out in Articles 311 to 315 of the VAT Directive. Annex IX, Part A of the VAT Directive identifies the objects to which the margin scheme for works of art under Article 311(1), point (2), might apply. The scheme allows taxable persons to subject to VAT only their margin thereby reducing the amount of VAT due on their sales and avoiding the double taxation of works of art that have already borne VAT at a previous stage of the economic cycle which cannot be recovered[15].

The margin scheme is a special arrangement that derogates from the general scheme of the VAT Directive and as such it must be construed narrowly[16].

When determining the scope of a provision of EU law such as the margin scheme, its wording, objective, and context must all be taken into account[17].

The list under Annex IX, Part A, of the VAT Directive, which covers only items that qualify as goods, is very detailed and stands as a closed list. As crypto art does not appear in the list, it does not seem possible to consider that the margin scheme for works of art can apply to crypto art.

Even if one were to bypass the narrow interpretation required in case of a special arrangement, the core difference between crypto art and the objects on the aforementioned list would not leave room, in the light of the principle of fiscal neutrality, to consider that these are similar and require the same VAT treatment. The list details what is to be

[14] *Hedqvist*, op. cit., paragraph 36.
[15] See recital 51 of the VAT Directive.
[16] *Hedqvist*, op. cit., paragraph 22.
[17] See for example CJEU, judgment of 18 January 2017, *Sjelle Autogenbrug*, C-471/15, EU:C:2017:20, paragraph 29.

considered as works of art. It includes pictures and drawings, prints and lithographs, photographs, sculptures and tapestries, etc. For some of the objects listed, it is indicated that they must be executed entirely by hand by the artist, signed by the artist, and limited to a certain number of copies. It even expressly excludes certain objects relying on a mechanical or photomechanical process. The term crypto art on the other hand, designates a subgenre of digital art dependent on the blockchain technology[18]. A work of crypto art is in no case a tangible property and thus does not qualify as a good as provided for by the VAT Directive[19] contrary to all the objects listed in Annex IX. For example, when the list mentions "photographs"[20], it does not refer to the immaterial image but to the tangible prints and even requires that these are signed by the artist. There are therefore fundamental differences between the works of art featured in that list and works of crypto art which indicates that they cannot be seen as comparable thereby fuelling the conclusion that the margin scheme for works of art cannot apply to crypto art.

Regarding the context of the scheme, it should be noted that this margin scheme dates back to the nineties when crypto art did not exist[21], hence indicating that works of crypto art are not historically targeted by the scheme.

Despite the objective assessment that the margin scheme for works of art cannot apply to crypto art, it is true that double taxation would ensue where crypto art transactions of a nature like those referred under Article 314 of the VAT Directive are subjected to VAT under the general VAT arrangements[22]. To address that, an extension of the current margin scheme for works of art would first be required.

The possibility to benefit of the special scheme for small enterprises to be exempt from VAT on supplies of works of crypto art should also be taken into consideration[23].

3.3.2. The reduced rate for works of art

Article 103 of the VAT Directive grants Member States the option of applying a reduced rate in accordance with Articles 98 and 99 to certain supplies of works of art. It should be noted that Article 103 will be repealed as of 1 January 2025[24] and that instead Member States will be able to rely, under the same conditions as now, on Annex III of the VAT Directive to apply a reduced rate to certain supplies of works of art[25]. As Article 103 relies on the definition provided for in points (2), (3) and (4) of Article 311(1) of the VAT Directive, the above analysis in section 3.3.1 applies equally to the application of the reduced rate of VAT to works of crypto art.

It can therefore be concluded that reduced rates do not apply to crypto art.

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18 See footnote 7.
19 Article 14 of the VAT Directive.
20 Annex IX, Part A, point (7) of the VAT Directive.
21 Council Directive 94/5/EC of 14 February 1994 supplementing the common system of value-added tax and amending Directive 77/388/EEC - Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques (OJ L 60 of 3.3.1994).
22 See for an example of a double taxation, CJEU, judgment of 17 May 2023, *Belgian State (TVA - Véhicules vendus pour pieces*), C-365/22, EU:C:2023:415, paragraph 23.
23 This special scheme was recently updated (Council Directive 2020/285 of 18 February 2020, OJ L 62, 2.3.2020, p. 13), and new rules will come into effect in 2025.
24 Article 1(12) of Council Directive (EU) 2022/542542 of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 as regards rates of value added tax (OJ L 107, 6.4.2022, p. 1–12).
25 Annex III, points (11) and (26) of Council Directive (EU) 2022/542.

3.3.3. The exemption for supplies of services by artists

Article 371 of the VAT Directive allows Member States to continue exempting the transactions listed in Annex X, Part B, that they were exempting before 1 January 1978, date of the implementation of the Sixth VAT Directive[26]. The provision is a so-called standstill derogation meaning that Member States cannot extend its scope after 1 January 1978. Due to the time limitation in Article 371 of the VAT Directive, the Member States that were not already members on 1 January 1978, cannot access it. However, for those that joined later, it was possible to negotiate a provision linked up to Annex X, Part B, at the time of their accession (see Articles 375 to 390c of the VAT Directive).

The supply of services by artists is one of the transactions listed in Annex X, Part B[27] that Member States can exempt provided they respect the aforementioned conditions.

Is it questioned whether this exemption for supply of services by artists could be applicable to crypto art. The first thing to be noted is that crypto art did not exist back in 1978 or at the time of accession of most of the Member States joining later[28]. It therefore appears that Member States could not continue to apply an exemption to something that did not exist, i.e. crypto art.

Moreover Article 371 of the VAT Directive expressly excludes under point 2(a) 'assignments of patents, trademarks and other similar rights'. As set out above in section 3.3.1, works of crypto art must from a VAT standpoint be categorised as services. The question as to whether works of crypto art constitute 'other similar rights' as referred to under point 2(a) of Annex X, Part B, of the VAT Directive is a question that needs to be determined on a case-by-case basis depending on the facts of each transfer.

It therefore appears very doubtful that the exemption for supply of services by artists could be applicable to crypto art.

4. DELEGATIONS' OPINION

The delegations are requested to give their opinion on the issues raised and, in particular on the application to works of crypto art of:

- the VAT exemption for financial services under Article 135(1)(e) of the VAT Directive;
- the margin scheme under Article 311(1)(2) of the VAT Directive;
- a VAT reduced rate under Article 103 of the VAT Directive; and
- the exemption for supplies of services by artists under Article 371 of the VAT Directive.

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[26] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

[27] Annex X, Part B, point (2), of the VAT Directive.

[28] Croatia joined in 2013. Although dating the apparition of crypto art is difficult it seems to have been around since 2011. To our best knowledge there was no exemption of crypto art in Croatia at the time of its accession.

ANNEX

Question from Denmark

VAT issues concerning the trading of various digital services related to computer games, "cryptoart" and non-fungible tokens

During the recent years, the market for trading various digital services has evolved rapidly, especially due to the speed of the technological development. As in many other cases, the correct VAT treatment of these types of online supplies depend upon how the transactions are seen according to the nature of the digital supplies whether or not they for instance are exempted financial services or taxable electronic services or some other kind of services. The VAT status of the supplier is also of importance, e.g., whether the VAT taxable transactions are under or over the national registration threshold and in addition the VAT status of the buyer can be important for the VAT payment according to the place of supply rules.

Recently and following the *Hedqvist*-judgment, analyses have been carried out regarding the VAT treatment of supplies related to different types of crypto-assets and payment tokens, cf. the VAT Committees Working Paper No 1037 concerning the VAT treatment of crypto-assets. The working paper is mainly focused on crypto-assets such as those linked to currencies.

Following the 120th meeting of the VAT Committee, several Member States have raised the need for a further investigation and analysis of other types of digital supplies and tokens, such as non-fungible tokens (NFTs).

According to the minutes of the 120th meeting, the Commission services noted that when it comes to other types of tokens not being covered by the Working Paper No 1037, these would have to be addressed in a separate paper although a partial analysis had previously been made (e.g. on utility tokens in the working paper on vouchers).

Background

In Denmark, we experience some uncertainties related to the VAT treatment of various digital supplies including NFTs and digital supplies related to computer games (such as the trading of "skins" as part of the computer game *Counter Strike*) and other "digital items" that can be used and resold mainly by individuals playing the same type of computer games. The fact is that some of these digital items are sold for considerable amounts by individuals who meet the criteria for taxable persons and economic activities with a following obligation for a VAT registration as a consequence.

Participants in a game are often from different countries and many of the players are relatively young. The players normally see themselves as "private persons" and not as doing business even if they buy and sell for quite large amounts yearly and above the registration threshold. This creates problems since it is the Danish point of view that sales of skins etc. is an electronic service and hence a taxable supply and the seller must be registered for VAT when the yearly turnover exceeds 50.000 DKK, which is the Danish registration threshold.

Part of the discussion in Denmark relates to the obligation for VAT registration, due to the fact, that the players suddenly find themselves being comprised by the limits for VAT

registration. Furthermore, it seems to be difficult for this segment of VAT taxable persons to comply with normal VAT requirements such as invoicing and VAT deduction. Currently there are no applicable special schemes which can reduce the VAT burden of the trading of "used" digital services or items. Thus, the special scheme for second-hand goods, cf. article 311 of the VAT directive, does not apply to "used" digital items or services. In Denmark the players wish to use the special scheme.

"Cryptoart"

Furthermore, we also see a development in other areas such as "cryptoart". "Cryptoart" is digital images which are minted into an NFT. Due to the nature of the art, the art cannot be seen as a tangible good under the current rules. Hence, "cryptoart" must be seen as a service. This also means that traditional art and "cryptoart" can be treated in different ways from a VAT point of view. E.g. the "cryptoart" cannot be covered by reduced rates or a lower VAT base, cf. Annex III, nr. 26, cf. annex IX part A of the VAT directive or be included in the special scheme for second-hand goods, cf. article 311, cf. annex IX part A of the VAT directive.

Questions

Referring to the above description of the VAT related issues, we kindly ask for the VAT Committees answer to the following questions.

1) Shall the above-mentioned scenarios with the trade of digital services related to computer games, "cryptoart", non-fungible tokens etc., be regarded as supplies of services for consideration by taxable persons acting as such, cf. article 2 (1)(a) and 9 (1) of the VAT directive?
2) If yes, is it correctly understood that the above-mentioned supplies cannot be comprised of the special VAT scheme for second-hand goods, since the supplies involve digital services and not tangible goods, cf. article 311 of the VAT directive?
3) Can "cryptoart" be seen as a VAT exempt supply of services made by artists, cf. the derogation in article 371, cf. Annex X, part B (2) of the VAT directive?

Finally, we fully support a working paper dedicated to the VAT treatment of other digital services which are not covered by Working paper No 1037 such as NFTs, "cryptoart", but also suggest that the issues in relation to skins and NFTs etc. are examined as fast as possible, and a solution is considered for instance where the supplies are included in the special scheme for second-hand goods.

Factual description of transactions

Background

The intention of this paper is to elaborate on our consultation of the VAT Committee dated 10 February 2023 concerning the VAT treatment of transactions related to online video games, crypto art/non-fungible tokens (NFTs).

We have specifically looked further into a more detailed description of the transactions related to online video games and crypto art.

The following descriptions are based upon the facts given in three specific Danish administrative case rulings, i.e., cases that have been litigated recently at the Danish Tax Assessment Council.

Online video games

In the specific case, the transaction consisted of the sale of "skins" from a non-professional private player to other private players. The seller in question, plays the online video game "Counter-Strike" which is an online game, using a profile/player-account via a platform called "Steam". Steam is a platform developed with the purpose of organizing several online video games including serving as a network platform for players.

Steam-platform

Although the online video game Counter-Strike in itself is for free, the players are able to deposit money on their individual Steam-accounts which can be used for buying up-grades, improving arsenal of weapons (weapon cases) and accessories such as so-called skins etc.

Loot boxes

As a part of the game, the players are rewarded with weapon cases – so-called "loot boxes" – which are only released if the players pay a certain amount of money for a "key" which can unlock the arsenal of weapons. The content of the weapon cases/loot boxes is unknown to the players until they have paid to unlock them.

Trade in skins

Skins can be described as virtual decorative items which can be more or less desirable or attractive for the players to achieve. The skins can consist of decoration of weapons, uniforms for the character of the player, weapons, extra lives etc. Due to the fact, that the skins are only obtainable through the players level advancing and ability to achieve awards and benefits in the game, skins become both desirable and tradable items.

The skins are typically traded through the platform Facebook using a Danish digital method of payment called "MobilePay", i.e., the entire trade set-up is digital and with no physical elements.

The player in the specific case has reached a very high level in the game which awards him with weapon arsenals, including skins. These skins are usually used by himself for a certain amount of time before some of them are sold via Facebook with a profit margin of between 10 and 20%. The player also buys skins via Facebook for his own use or for trading purposes.

The extent and marketing of the trading

The player in question, has traded skins for a period of 1 ½ years with about three trades per week with prices varying from 15 Euro to 2.500 Euro. A typical transaction value is between 400 and 500 Euro, but a single transaction may also have a value of 1.500 Euro.

On an annual basis, the player's own estimation of a trade value sums up to approx. 65.000 Euro.

The ruling

The Danish Tax Assessment Council reached the conclusion that the player should be seen as a taxable person for VAT purposes since the trading of skins is an independently carried out economic activity covered by the VAT rules.

The conclusion of the Council was based upon the fact that the intention of the player was to obtain income, that the acquired income was rather intense, that there were multiple private customers, and the transactions were both numerous and of a certain volume.

Furthermore, the Council found that neither the special scheme for second-hand goods nor any of the VAT exemptions of financial transactions were relevant regarding the activities and transactions in question.

Crypto art

The Danish Tax Assessment Council was asked in two cases to assess how to qualify the creation and trade with crypto art, which is a non-fungible token, for VAT purposes.

The trade of crypto art

The sale of the works of art is facilitated via digital crypto art-platforms where the artist sells a certificate of ownership (the NFT) of a specific work of art. In many ways, the sale of crypto art resembles the sale of physical prints of art sold via traditional sale channels, except the fact that the trade is handled through a digital crypto-blockchain.

When trading via the crypto art-platforms, the artist has an account linked to a so-called crypto-wallet. From this account, the artist is able to upload his works of art that are then transferred uniquely into the blockchain, i.e., the process called "minting". During the minting it is possible to define whether the work of art shall exist in one unique or more editions of the work of art in question.

The artist in the specific case creates between 1 and 1.000 versions of his digital works of art and each version is unique since the pixels of the works of art varies for each work of art.

When the works of art are created, they are either sold via the crypto art-platform or directly to private customers. When selling via the crypto art-platform, the work of art will be transferred to the buyer's digital wallet and the sales price (in a crypto-currency) is transferred to the digital wallet of the artist.

The trading of crypto art can only be traded in crypto-currencies such as Bitcoin, Etherum etc.

If the work of art is resold by the buyer at a later stage, the artist will automatically receive a certain amount of the sales price as a kind of royalty. Royalties are transferred to the digital wallet of the artist, as long as the work of art exists.

The rulings

The Danish Tax Assessment Council was in case SKM2022.602.SR asked whether the trading of the crypto art in question could be seen as a financial transaction, i.e., transactions regarding currencies, cf. article 135(1) of the VAT Directive, or the special

scheme for sale of works of art on a reduced VAT base was applicable, cf. article 81, cf., annex III, nr. 26, cf. annex IX, part A., of the VAT Directive.

The artist in question, creates digital works of art, which are sold as crypto art.

The Danish Tax Assessment Council found that the crypto art could not be seen as a financial transaction. The Danish Tax Assessment Council has in this connection taken into account, that the crypto art provided by the seller could not be used solely as a means of payment. Crypto art can have other purposes, such as displaying the work using digital aids. The crypto art was considered a service and hence not applicable for a reduced VAT-base, cf. article 81, cf., annex III, nr. 26m cf. annex IX, part A.

Furthermore, The Danish Tax Assessment Council was in another case (not yet published) asked whether crypto art was an artistic service and therefore exempt from VAT, cf. article 371, cf. annex X, part B, nr. 2 of the VAT Directive.

The Danish Tax Assessment Council found that the supply was an artistic service and therefor exempt from VAT.

The Council, noted, the fact that crypto art is created as a result of an intellectual achievement, that the taxable person's other works have been included in an exhibition dealing with crypto art and that, on the basis of the presented Appendix 1-2, the taxable person's crypto art must be regarded as having comparable artistic qualities as other services exempt from VAT under the provision.

As regards to the royalties, it was found that the royalties referred to and the payment thereof form part of the agreement between the artist and the buyer. When the buyer resells the crypto art to buyer 2 and when buyer 2 transfers the crypto art to buyer 3, the obligation to pay royalties to the artist continuously follows from the initial agreement between the artist and buyer 1. Hence, it is the opinion of The Danish Tax Assessment Council that the subsequent payments of royalties also constitute consideration within the meaning of the VAT Directive. This ruling is yet to be published.