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"Rental" of virtual land during online game subject to VAT?

Transactions made in exchange for redeemable play money as part of an online game in virtual space are subject to VAT. This was decided by the Cologne Fiscal Court in August 2019. The final decision of the Supreme Tax Court is expected soon due to the fact that the case has now been pending since January 2020.

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Background

The case in dispute addresses the question whether transactions from the "rental" of virtual land during the online game "*Second Life*" are subject to VAT. In particular, it needs to be clarified if the virtual "rental" of land – by merely pretending and simulating real-life processes - may be regarded as a consumable service provided in the general course of a business. In the end, the case needs an answer to the following question: By renting out games in the virtual world, did the plaintiff provide taxable services as part of an exchange of services or did the exchange of services take place between the operator of the online platform (located in a third country) and the users?

The plaintiff acquired virtual land from the US game provider (operator), divided the land up into single lots and let it to other users within the online game in return for payment of a virtual currency. He then exchanged the accumulated play money for U.S. dollars via the game's own exchange platform. Later he had the U.S. dollars paid out in the equivalent of Euros. For this purpose, the plaintiff had registered a trade and prepared a VAT return.

The tax office took this "rental income" to be subject to VAT. It assumed that 70% of the revenue was generated in Germany. The plaintiff claimed that there was no exchange of services. Furthermore, he argued that he had not provided the services to other users of the online game, except to the U.S. operator with his domicile abroad. The place of performance was therefore to be in the U.S., which is why the sales could not be taxable in Germany.

Decision by the regional tax court

The Lower Tax Court did not agree and dismissed the claim. The plaintiff had used the online game platform primarily not as a "gaming platform" but rather to generate revenue by "renting out" virtual land. Such revenues would thus be the result of an exchange of services in return for payment. As regards the German-language internet presence of the plaintiff, the assumption of the tax office was plausible for the court insofar as the majority of the "tenants" were domiciled in Germany and the place of performance was therefore predominantly in Germany.

The plaintiff has filed an appeal to the Supreme Tax Court (case reference V R 38/19). In view of the proceedings now pending since January 2020, a decision by the Supreme Tax Court should be expected soon.

Source:

Regional Tax Court of Cologne, decision of 13 August 2019 (case ref. 8 K 1565/18)

Schlagwörter

VAT on virtual rental, online game, virtual game, virtual land