0114-KDIP4-2.4012.315.2022.1.KS - Letter issued by: Director of National Fiscal Information

Letter

dated 23 September 2022.

Director of National Fiscal Information

0114-KDIP4-2.4012.315.2022.1.KS

**INDIVIDUAL INTERPRETATION** - correct position

Dear Sirs,

**I affirm that your position on the assessment of the tax consequences of the described facts and future event is correct.**

Scope of the request for an individual interpretation

Your request for an individual interpretation dated 24 June 2022, received on 24 June 2022,concerns a determination of whether transferring the rights to NFTs to a bidder who won an auction (or made a donation of a predetermined amount) constitutes a provision of services for consideration within the meaning of the VAT Act, whether the activity of holding an auction (or "selling" NFTs for a predetermined amount) and the subsequent disbursement of funds obtained from the auction constitutes business activity within the meaning of Art. 15(2) of the VAT Act, and whether there is an obligation to issue an invoice to the bidder (or buyer) who won an auction for a transfer of NFT rights.

The content of the request is as follows:

**Description of the facts and future event**

The Applicant (hereinafter also referred to as the "Foundation") conducts public benefit activities in the form of a foundation. The purpose of the Foundation is to fight cancer and ensure equal access to the best oncology care for all. The Applicant is registered in the National Court Register (hereinafter the "**KRS**") in the register of associations, other social and professional organisations, foundations and independent public health care institutions. The Foundation is not listed in the KRS in the Register of Entrepreneurs. The Foundation has been in existence since 2010. The Foundation has the status of a public benefit organisation. The Foundation is registered as an active taxpayer of tax on goods and services (hereinafter "VAT"), and became registered as a VAT taxpayer on June 11, 2016.

As part of its statutory activities, the Foundation launched a fundraising campaign (...) to raise money for the (...) fund. The fund's mission is to provide funding for activities and initiatives that can directly or indirectly help save the health or lives of cancer patients or improve their quality of life. " (...)" is an innovative model for financing costly malignant cancer treatment. It involves auctioning off donations using the NFT auction mechanism. Confirmation of having won an auction by making the highest donation bid will be an NFT token linked to one of the images of different types of cancer cells, transformed by an artist into artworks in the form of NFT. An NFT (Non-Fungible Token, a non-fungible token) is a cryptographic token based on blockchain architecture that is designed to uniquely identify the associated artwork. The NFTs given to the winners of the donations’ auction will constitute digital diplomas for winning the auction and an acknowledgement of helping cancer patients. The amount raised in the auction will be used to cover the costs of unreimbursed treatments in Poland for patients suffering from the types of cancer portrayed in the images, among others. (...)- is a witty slogan aimed at encouraging people to help cancer patients. The idea of using NFTs that represent diseased cells is symbolic; through the campaign cancer cells are “redeemed” without the artwork itself being sold. In marketing materials related to the campaign, phrases such as: "sale of NFT", "auction", "sale of a painting", "sale of a photo" may appear as terms that everyone understands. Under the campaign regulations (in the metadata of every NFT there will be a link to the regulations):

- by participating in an NFT auction, the participant agrees to donate the amount of the bid to the Foundation,

- the participant who placed the highest bid in an auction makes a donation to the Foundation, and at the same time receives the NFT to which the auction related,

- every NFT auctioned off has its own unique number (TokenID), which cannot be changed, and which includes a link to additional information on the campaign, stored on an external server outside the blockchain along with a link to a digital copy of the image associated with the NFT in question,

- the NFT is a digital diploma for winning the auction that acknowledges the help given to cancer patients by the bidder,

- the receipt of an NFT by an auction participant only constitutes a transfer of the right to dispose of the data stored in the blockchain (i.e., the right to decide to remain the sole holder of the NFT or to transfer that right to another person),

- the receipt of an NFT does not constitute a transfer by the Foundation to the participant of the economic copyright to the image (understood as a work created through the artistic processing of a photograph of a cancer cell) or the granting of a license to use the image, except that the participant who received the NFT has the right to use the image to the extent necessary to use and dispose of the NFT (e.g., to display it on NFT platforms, in cryptocurrency wallets, on social networks, etc.).

The campaign may consist of several editions, in different countries, run with the participation of local cancer centres, artists and patients. The first edition of the campaign (implemented in Poland) assumes that:

**1.** images of cancer cells provided by the Institute in (...) will be used by the Polish artist (...) to create works of art that will then be transformed into 3 NFT series, and that then an auction will be held on the (...) platform (both US-based platforms),

**2.** for the campaign, a website will be created (...) where basic information will be posted about the campaign, substantive patrons of the project, the artist, and the platform on which the auction will be conducted,

**3.** the edition of the campaign will be supported by a PR campaign on the Polish market, as well as in the US (the main auction market),

**4.** the edition of the campaign will also be promoted on the organizers' and campaign partners' own channels.

The Polish edition of the campaign will include 3 actual paintings (but they will not be auctioned/sold). Based on them, 3 NFT series will be created - the first one will be numerous and easily affordable, the second one less numerous, and the third one will be very exclusive, consisting of only several NFTs. The sale of NFTs will take place on major international NFT platforms: (...).

The Applicant also plans to make it possible to make a donation of a predetermined amount ("NFT purchase"). This will differ from the auction described above only in the form of a "sale". Given that the above-described campaign has already been launched, and that the Applicant plans to conduct further editions of the campaign in the future, this description constitutes both a description of the facts and of a future event. Subsequent editions of the campaign will be carried out in accordance with the exact same principles as those described above.

**Questions**

1) Does the Applicant's transfer of NFT rights to the bidder who won the auction (or who made a donation of a predetermined amount) constitute a supply of services for consideration under the VAT Act?

2) Does the Applicant's activity of holding the auction (or "sale" of NFTs for a predetermined amount) and the subsequent disbursement of funds obtained from the auction constitute business activity within the meaning of Art. 15(2) of the VAT Act?

3) Is the Applicant required to issue an invoice to the bidder (or buyer) who won the auction for a transfer of NFT rights?

**Your position on**

Re 1 and 2

In your opinion, the transfer of NFT rights to the participant who won the auction does not constitute the provision of services for a consideration.

In your opinion, the activity of holding the auction and the subsequent disbursement of funds obtained from the auction does not constitute business activity within the meaning of Art. 15(2) of the VAT Act.

Pursuant to Art. 5 of the Value Added Tax Act of 11 March 2004 (unified text: Journal of Laws of 2022, item 931, hereinafter the “VAT Act”), VAT is applied to, among other things, the delivery of goods and the provision of services against payment on the territory of the country. VAT is imposed on the supply of goods for consideration and the provision of services for consideration only if these are made by a VAT taxpayer acting as such. In other words, a given transaction will be taxed only if:

i. it constitutes a supply of goods or services for consideration, and

ii. the entity making it - by making it - acts as a taxpayer.

The supply of goods or services is taxable if it is for a consideration.

Supply of services means any supply that does not constitute a supply of goods, including a transfer of rights to intangible assets. In your opinion, the transfer of ownership of NFTs does not constitute a supply of goods, but might constitute a supply of services within the meaning of the VAT regulations. The VAT Act does not define the concept of consideration. In both domestic and European case law, it is accepted that consideration occurs when there is a direct connection between the supply of goods or services and the consideration received. This means that there must be a clear, direct benefit to the seller from the particular legal relationship under which the service is provided. In addition, for an activity to be subject to VAT, there must be a direct relationship of a causal nature between the goods supplied and the consideration. In examining whether a given service is a consideration or a gratuitous service, the frequency of the campaign is irrelevant. A gratuitous supply of services is not subject to VAT.

According to Art. 15(1) of the VAT Act, taxpayers are legal persons, organizational units without legal personality and natural persons who independently perform business activity, regardless of the purpose or result of such activity. However, by business activity, the VAT Act understands all activities of producers, traders or service providers, including natural resource extraction entities and farmers, as well as activities of freelancers. Business activity includes, in particular, activities involving the use of goods or intangible assets on a continuous basis for profit-making purposes.

The definition of business activity under the VAT Act is autonomous, and should be considered independently of other laws (even independently of the definitions of business activity contained in other tax laws). In principle, business activity is only activity that is performed professionally, in a professional manner. As the doctrine points out, the performance of certain activities incidentally, outside the sphere of business activity, does not allow a given entity to be considered a taxpayer with respect to those activities (A. Bartosiewicz (in:) VAT. Commentary, XV edition, Warsaw 2021, art. 15.). It is also a condition of doing business that the economic risk of such activity be borne. According to rulings of the Court of Justice, the mere fact that an activity is performed by an entity registered as a VAT taxpayer does not mean that it is subject to VAT, because it is possible that, in a given transaction, the seller does not play that role (Judgment of the Court of Justice of the European Union of 4 October 4 1995, C-291/92, *Finanzamt Uelzen v. Dieter Armbrecht*, EU:C:1995:304). The performance of certain activities - supplying goods or services - where this does not take place in the course of business activity, is not acting as a taxpayer - and therefore is not taxable. The mere entry of an entity as an active VAT taxpayer in the VAT taxpayer register does not determine that the entity acts as a taxpayer in a specific transaction.

Pursuant to the Law of 24 April 2003 on Public Benefit Activity and Volunteerism (unified text: Journal of Laws of 2020, item 1057, as amended, hereinafter the "Law on Public Benefit Activity"), paid public benefit activity is considered business activity within the meaning of the Law of 6 March 2018. – the Entrepreneurs' Law (consolidated text: Journal of Laws of 2021, item 162, as amended, hereinafter the "Entrepreneurs' Law") if one of the prerequisites regarding the remuneration received for a given service or the remuneration of persons employed in the performance of the statutory activity is met.

However, bearing in mind the autonomous nature of the definition of business activity under the VAT Act, it should be stated that that definition of business activity should be considered independently of the provisions of other laws, whether it be the definition of business activity in tax laws (e.g., the Tax Ordinance), business regulations, or the laws that regulate the activities of foundations and public benefit organizations. Thus, whether an activity can be considered a business activity under the Entrepreneurs' Law is irrelevant to answering the questions that are the subject of this application. This is because all that matters for such an assessment is the definition of conducting business activity within the meaning of the VAT Act. As indicated in the description of the future event, the Applicant plans to conduct auctions of NFT tokens tied to photographs of cancer cells made by an artist. Each token will relate to a different photograph or part of a photograph. Significantly, a token received in the auction does not incorporate any rights to the work it indicates; it is only an "accounting" record on the network (...), containing the token's identification number, the address of the smart contract used to create the NFT, and additional data, including a link to a digital copy of the work, which cannot be altered. The entire auction is for charity, with the goal of raising funds to help cancer patients. The use of the token as part of the auction is secondary (it does not involve the acquisition of any rights to the image), and only serves a very important marketing function. The entire action (...) is a modern fundraising campaign, and its sole purpose is to raise funds for charity. The purchaser of an NFT associated with a particular photograph acquires no rights to the photograph, so in your opinion the purpose of participating in the auction is not to own an NFT, but to help cancer patients. The acquired NFT will be a kind of diploma confirming the donation and participation in the campaign. The use of the NFT token concept is symbolic. Through the uniqueness of the NFT token and its association with a particular patient's cancer cell, donors feel they are helping in a very tangible way. Under the VAT Act, business activity is only an activity carried out professionally, and in a professional manner. The Foundation is not an auction house and does not intend to deal in artwork professionally. The campaign (...) is part of a marketing concept aimed at raising money for a charitable purpose. The Foundation does not sell works of art in the auctions, nor does it license the use of such works, nor does it intend to do so in the future. One of the conditions for conducting business is to bear the economic risk of the activity concerned. The Foundation does not organize auctions for profit, and all the income will be used to help cancer patients. (...) is a fundraising campaign, so there can be no economic risk involved. It differs from other cash collections only in the idea - "buy someone's sick cell". The highest bidder will receive an acknowledgment of their contribution in the form of an NFT. This procedure is intended to help donors imagine that, through their own effort and means, they can "take" someone's sick cells away, and the competitive element in the form of an auction is designed to further enhance this.

In your opinion, one cannot speak here about any consideration for the service. Under the rules of the auction, NFTs are offered as a form of digital diploma confirming that the auction was won and a donation made. The whole concept of holding an auction and "selling" stems from the marketing concept, as described above. Consideration would occur only if the payment made by the auction winner were a direct consequence of the transfer of the NFT. In other words, there would have to be equivalence between the price and the service being purchased, and there would have to be a legal relationship between the provider and the recipient of the service, where reciprocal benefits were fulfilled. The payment made by the winning bidder is not a consequence of the acquisition of economic rights to the artist's images (no such acquisition occurs at all), nor is it a consequence of the transfer of the NFT to the winning bidder’s wallet. From the perspective of the ‘purchaser’ of the NFT, the payment of money is merely a donation involving the transfer of the pledged amount for the statutory purposes of the Foundation. This conclusion is not altered by the possibility of a further transfer of rights to the NFT by the bidder. With this in mind, in your opinion, no such equivalence exists in the present case.

In addition, it should be noted that all the proceeds from the auctions held will be donated towards the foundation's statutory activities.

The above understanding of the regulations was confirmed by the Director of National Tax Information in a similar case, in an individual interpretation dated 2 May 2018, ref. 0112-KDIL2-3.4012.100.2018.1.WB. Moreover, in the facts of that case, works of cancer patients were auctioned, that were a person’s creative work, not records of a few bits of information.

In view of the above, in your opinion, the transfer of rights to the NFT will not constitute a supply of goods or services for consideration within the meaning of the VAT Act, and consequently will not be subject to value added tax. Thus, your activity of holding an auction and the subsequent disbursement of funds obtained from the auction do not constitute business activity within the meaning of Art. 15(2) of the VAT Act.

Re. 3

In your opinion, for the transfer of rights to an NFT you should not issue invoices to buyers of the NFT. This is because the described activity does not constitute a supply of goods for consideration and, as an activity not subject to value added tax, should not be documented with an invoice.

Evaluation of the position

The position you have presented in your application is correct.

**REASONS for** individual interpretation

Pursuant to Art. 5(1)(1) of the Value Added Tax Act of 11 March 2004 (Journal of Laws of 2022, item 931, as amended), hereinafter referred to as the “Act”:

tax on goods and services (...) are imposed on the supply of goods and services for consideration in the territory of the country.

Pursuant to Art. 2(6) of the aforementioned law:

gods means things and their parts, as well as all forms of energy.

According to Art. 2(22) of the VAT Act:

sale means the delivery of goods and the provision of services against payment in the territory of the country, the export of goods, and the intra-community supply of goods.

Pursuant to Art. 7 (1) of the aforementioned law:

The supply of goods referred to in Art. 5(1)(1) means the transfer of the right to dispose of goods as the owner (...).

According to the provision of Art. 8 (1) of the VAT Act:

The provision of services as referred to in Art. 5 (1) (1) shall be understood as any provision for the benefit of a natural person, legal person or organisational unit without legal personality that does not constitute a supply of goods within the meaning of Art. 7 (...).

The concept of providing services has a very broad scope. Provision should be understood as any behavior that may consist of either action (doing, performing something for the benefit of another person) or omission, refraining from action (not doing or tolerating). When assessing the nature of a performance as a service, it should be borne in mind that the VAT Act classifies as a service any performance that is not a supply under Art. 7 of the VAT Act. It should be noted, however, that a service is only a service when there is a direct consumer, the recipient of the service, who benefits from it in a material way.

Accordingly, an activity is taxable only if it is performed under a contract of obligation, one of the parties to the transaction can be considered the direct beneficiary of the activity, and the connection between the payment received and the benefit to the payer must be direct and clear enough to say that the payment is made in exchange for that benefit.

Pursuant to Art. 15 (1) of the Act:

taxpayers are legal persons, organisational units without legal personality and natural persons that independently perform business activity as referred to in paragraph 2, regardless of the purpose or result of such activity.

According to Art. 15(2) of the Act:

business activity includes any activity of producers, traders or service providers, including natural resource extractors and farmers, as well as the activities of freelancers. Business activity includes, in particular, activities involving the use of goods or intangible assets on a continuous basis for profit-making purposes.

The concept of business activity is also defined in the second paragraph of Art. 9 (1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (Official Journal of the EU.L of 11 December 2006, No. 347, p. 1, as amended), hereinafter referred to as Directive 2006/112/EC:

"business activity" includes any activity of producers, traders or service providers, including mining, agricultural activities and the exercise of liberal professions or those recognized as such. In particular, the use, on a continuous basis, of tangible or intangible property for the purpose of earning income therefrom shall be considered business activity.

The first paragraph of Art. 9 (1) of Directive 2006/112/EC indicates that:

"taxpayer" is any person who independently conducts any business activity anywhere, regardless of the purpose or results of such activity.

It is clear from the above regulations that the scope of VAT taxation is determined by two factors:

- relating to the object - only the supply of goods and services is taxable, and

- relating to the subject - the supply and provision of services must be made by a taxpayer acting as such.

The important thing is that both prerequisites must be met together.

It should be noted that, under both national and Community legislation, in order for an activity to be subject to VAT, it must be carried out by a VAT taxpayer acting in that capacity (i.e., in the course of business activity). Thus, not every action by a taxpayer constitutes VAT-taxable activity. This problem is particularly relevant to the activities of foundations.

It should be noted that the activities of foundations are regulated by the provisions of the Law on Foundations of 6 April 1984 (Journal of Laws of 2020, item 2167).

According to Art. 1 of the Law on Foundations:

a foundation may be established for socially or economically useful purposes consistent with the fundamental interests of the Republic of Poland, in particular such as health care, the development of the economy and science, education and upbringing, culture and art, welfare and social assistance, environmental protection, and care for historical monuments.

According to Art. 4 of the Law on Foundations:

a foundation operates under the provisions of this law and the statute.

Pursuant to Art. 5 (1) of the Law on Foundations:

a founder shall establish the foundation's statute, specifying its name, seat and assets, objectives, principles, the forms and scope of the foundation's activities, the composition and organisation of the board of directors, and the method of appointing and the duties and powers of that body and its members. The statute may also contain other provisions, in particular concerning the conduct of business activity by the foundation, the permissibility and conditions of its merger with another foundation, changes in the purpose or the statute, and may also provide for the creation of other foundation bodies in addition to the board of directors.

In addition, under Art. 5(5) of the same law:

a foundation may carry out business activities to the extent of achieving its objectives. If the foundation is to carry out business activities, the value of the foundation's assets allocated to business activities may not be less than one thousand zlotys.

In light of Art. 7 (1) and (2) of the same law,

a foundation must be registered in the National Court Register. A foundation acquires legal personality upon entry into the National Court Register.

In principle, based on the aforementioned regulations, the activities of a foundation can therefore be divided into statutory activities (related to the achievement of the purposes for which the foundation was established) and other business activities (which, in principle, are intended to support its statutory activities).

Referring the provision of Art. 15(1) of the VAT Act to the provisions of the Law on Foundations, it should be stated that a foundation that conducts business activity becomes a VAT taxpayer under the same rules as any other entrepreneur.

In turn, according to Art. 1(1)(1) and (2) of the Act of 24 April 22003 on public benefit activities and volunteerism (Journal of Laws 2022, item 1327, as amended):

The law regulates:

**1)** theacquisition of goods and services, the conduct of public benefit activities by non-governmental organisations in the sphere of public tasks, cooperation between public administration bodies and non-governmental organisations, and the cooperation referred to in Art. 4d;

**2)** the acquisition of public benefit organisation status by non-governmental organisations, and the operation of public benefit organisations.

According to Art. 3 (1) of the Law on Public Benefit Activity and Volunteerism:

public benefit activity is socially useful activity carried out by non-governmental organizations in the sphere of public tasks specified in the law.

In light of Art. 3(2)(2) of the aforementioned law:

non-governmental organizations are non-profit legal persons or organizational units without legal personality, to which a separate act grants legal capacity, including foundations and associations, subject to paragraph 4.

Pursuant to Art. 6 of the Law on Public Benefit Activity and Volunteerism:

public benefit activities are not, subject to Art. 9(1), business activities, as defined by the provisions of the Act of 6 March 2018. - Entrepreneur Law (Journal of Laws of 2021, item 162 and 2105, and of 2022, item 24 and 974), and may be conducted as unpaid activity or as paid activity.

Pursuant to Art. 7 of the Law on Public Benefit Activity and Volunteerism:

unpaid public benefit activity is activity carried out by non-governmental organizations and entities listed in Art. 3(3), in the sphere of public tasks referred to in Art. 4, for which they do not receive remuneration.

On the other hand, paid public benefit activity is, according to Art. 8 (1) of the Law on Public Benefit Activity and Volunteerism:

**1)** activity carried out by non-governmental organizations and entities listed in Art. 3(3) in the sphere of public tasks referred to in Art. 4, for which they receive remuneration;

**2)** thesale of manufactured goods or provision of services in the areas of:

**(a)** thesocial and vocational rehabilitation of disabled persons under the terms of the Act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons (Journal of Laws of 2021, items 573 and 1981, and of 2022, item 558), or

**b)** theintegration and professional and social reintegration of persons at risk of social exclusion, as referred to in the Act of 13 June 2003, on social employment (Journal of Laws of 2020, item 176 and of 2022, item 218) and the Act of 27 April 2006 on social cooperatives (Journal of Laws of 2020, item 2085);

**3)** thesale of donation items.

In accordance with Art. 22(1) of the Law on Public Benefit Activity and Volunteerism:

non-governmental organization and entities listed in Art. 3(3) points 1 and 4 may obtain the status of public benefit organization, provided that the activities referred to in Art. 20(1)(1) point 1 and (2) are carried out continuously for at least 2 years.

In light of Art. 3 of the Law of 6 March 2018. – Entrepreneurs’ Law (Journal of Laws of 2021, item 162, as amended):

business activity is an organized profit-making activity carried out on one’s own behalf and on a continuous basis.

Doubts include whether the transfer by you of the rights to the NFT to the bidder constitutes the provision of services for consideration, and whether the activity of holding an auction (or selling the NFT for a predetermined amount) and the subsequent disbursement of the money obtained from the auction constitutes a business activity within the meaning of Art. 15(2) of the VAT Act.

Here, it should be pointed out that the aforementioned provisions of Arts. 5, 7 and 8 of the Act contain the basic principles that govern the taxation on goods and services. It follows from these provisions, first of all, that the supply of goods and provision of services carried out in the territory of the country are subject to taxation. In addition, the supply of goods or services is subject to taxation if it is of a “for consideration” nature.

The VAT Act does not define the concept of consideration. In common language, consideration means payment, remuneration in exchange for a thing (goods) or behavior (service). It should be emphasized that the term “paid delivery”, “paid provision of services” should be understood as an economic benefit to the seller.

The case law of the European Court of Justice assumes that consideration occurs when there is a direct connection between the delivery of goods or provision of services and the consideration received. This means that there must be a clear, direct benefit to the seller from the legal relationship under which the services are provided. In addition, in order for an activity to be subject to VAT, there must be a direct relationship of a causal nature, between the service and the consideration. The payment received should be a consequence of the service provided.

The provision of services is a VAT-taxable activity if it is performed for remuneration and if there is an explicit or implicit legal relationship (contract) between the provider of the service and its beneficiary (recipient) under which reciprocal services are performed. VAT taxation of an activity involving the provision of services is therefore determined by its consideration.

In the case under review, reference should be made to the CJEU ruling in R. J. Tolsma a Inspecteur der Omzetbelasting Leeuwarden (judgment of 3 March 1994, Case C-16/93). Tolsma was a street player who presented his work. The player set up a can in front of him, into which passersby could throw donations. The CJEU, pointing to the lack of a direct link between playing music and payment and the voluntariness of the donations, held that donations are not subject to VAT because “an activity is taxable only if there is a legal relationship between the provider and the recipient of the service, whereby a reciprocal service is provided, with the consideration received by the provider being the value actually transferred in exchange for the services rendered to the recipient of the service.”

Applying the above general assumptions to the description of the case, the condition of provision of services for consideration is not/will not be met. The amount paid by the participant in the auction - the bidder who won/wins the auction (or made/donated a donation in the predetermined amount does not constitute a provision of services for consideration. The donation paid whether in the amount auctioned or in a predetermined amount is intended to fund the treatment of malignant tumors. An NFT token linked to one of the images of various types of cancer cells transformed by the artist into artwork in the form of NFT is only a confirmation of winning the auction and thus making the highest donation bid. The NFTs given to the winners of the donation auction will be a digital diploma of winning the auction and confirmation of helping cancer patients. On the other hand, the participant’s receipt of the NFT only signifies the transfer of the right to dispose of the blockchain records in question and does not imply the Foundation’s transfer to the participant of the economic copyright in the photo (understood as a work created through artistic processing of a cancer cell photo) or the granting of a license to use such photo. The acquired NFT rights do not reflect the value of the NFT.

In light of the above, it should be considered that the funds raised are not/will not be linked to the economic value of the NFT rights you transfer to the bidder who won/wins the auction (or made/makes a donation). One may consider that the acquired NFT rights act as a reward to the bidder and an expression of thanks by the Foundation for the donation, rather than a sale transaction in itself. Therefore, your transfer of the rights to the NFT to the bidder, does not meet the condition of consideration, as it is not a consequence of the provision of services within the meaning of Art. 8(1) of the Act. From the bidder’s perspective, the receipt of the NFT involved in the auction is related only to a specific form of assistance, consisting of a commitment to donate to the Foundation. In effect, the amount raised in the auction will be used to cover the costs of patients’ treatment methods. The rights to NFTs acquired in thanksgiving are of secondary importance - as they have no real economic value for the purchaser, but only emotional or symbolic value. In the case at hand, it cannot be considered that the auction participant is/will be making a donation in order to acquire services. The donation is not/will not be made “in exchange” for the services provided to the auction participant. The purchaser of NFT rights should therefore be viewed as the donor, and the Foundation and its wards, as the recipient of the donation.

Accordingly, the transfer of NFT rights to the bidder who won the auction (or made a donation of a predetermined amount) does not/will not constitute a supply of services for consideration within the meaning of Art. 8(1) of the VAT Act.

At the same time referring to the definition of business activity (business activity includes any activity of producers, traders or service providers, including natural resource extractors and farmers, as well as the activities of freelancers. Business activity includes, in particular, activities involving the use of goods or intangible assets on a continuous basis for profit-making purposes). It should be pointed out that your activity of holding an auction (or “sale” of NFTs for a predetermined amount) and the subsequent disbursement of funds obtained from the auction does not constitute business activity within the meaning of Art. 15(2) of the VAT Act. The Foundation is a public benefit organization and is not registered in the register of entrepreneurs of the National Court Register. The purpose of the venture is not to obtain turnover from the provision of services for consideration, but to raise funds from donors to finance the costly treatment of malignant tumors. These activities are part of your purpose as a public benefit organization.

Accordingly, the activity of holding an auction (or “selling” NFTs for a predetermined amount) and the subsequent disbursement of funds obtained from the auction does not constitute a business activity within the meaning of Art. 15(2) of the VAT Act.

In view of the above, your position on the questions marked 1 and 2 in the application is correct.

In addition, your concerns relate to the issue of the obligation to issue invoices to the bidder (or buyer).

The rules for documenting taxable activities are governed by Art. 106a-106q of the Act.

According to Art. 106b (3) of the Act:

At the request of the purchaser of goods or services, the taxpayer is obliged to issue an invoice documenting:

**1)** activities referred to in paragraph 1 item 1, if the obligation to issue an invoice does not result from paragraph 1, except:

**(a)** theactivities referred to in Art. 19a(5)(4),

**(b)** activities referred to in Art. 106a(3**)** and (4),

1a) receipt of all or part of the payment before the performance of the activities referred to in paragraph 1 item 1, if the obligation to issue an invoice does not result from paragraph 1, except:

**(a)** where the payment relates to the activities referred to in Art. 19a (1b**)** and (5) (4) and Art. 106a (3) and (4),

**(b)** intra-Community supply of goods,

2) exempted sales referred to in paragraph 2, subject to Art. 117 item 1 and Art. 118, - if the demand for its issuance was made within 3 months, counting from the end of the month in which the goods or services were delivered or all or part of the payment was received.

Therefore, since your activity of auctioning donations using the NFT mechanism does not and will not constitute an activity defined in Art. 8(1) of the VAT Act, nor will it be performed as part of a business activity within the meaning of Art. 15(2) of the VAT Act - you do not and will not in the future be required to issue a VAT invoice to a bidder who has won an auction or made a donation for a predetermined amount.

Thus, your position in the above regard is also correct.

Information on the scope of the settlement

The interpretation applies to the actual state of affairs that you have presented and the legal status that was in effect on the date of the event, and to the future event that you have presented and the legal status that is in effect on the date of the interpretation.

**CONCLUSION** on the protective function of interpretation

- The protective function of individual interpretations is defined by the provisions of Art. 14k-14nb of the 29 August 1997 Act. - Tax Ordinance (Journal of Laws 2021, item 1540, as amended). The interpretation will be able to perform a protective function if your situation is consistent (identical) with the description of the facts and future event and you comply with the interpretation. It follows from the application that the NFTs given to the auction winners will be a digital diploma of winning the auction and an acknowledgement of helping cancer patients. Therefore, the interpretation remains valid in the event that the NFT tokens issued do not have a value for the buyer corresponding to the amount paid, nor do they have any real economic value, but only sentimental or symbolic value. The interpretation will no longer be valid if the purpose of the auction and donation is not to donate funds for the treatment of cancer patients free of charge but to acquire an NFT token that has value and that can be converted (sold) into funds or, for example, other cryptocurrencies or virtual values.

- According to Art. 14na § 1 of the Tax Ordinance:

The provisions of Art.s 14k-14n of the Tax Ordinance do not apply if the factual state or future event that is the subject of an individual interpretation is an element of the activities that are the subject of the decision issued:

**1)** using Art. 119a;

**2)** in connection with the occurrence of abuse of the right, as referred to in Art. 5 (5) of the Value Added Tax Act of 11 March 2004;

**3)** with measures to limit contractual benefits.

According to Art. 14na § 2 of the Tax Ordinance:

The provisions of Art. 14k-14n shall not apply if the tax benefit, as established in the decisions listed in § 1, is the result of adherence to established interpretative practice, general interpretation or tax explanations.

**NOTICE** of the right to file a complaint against the interpretation

You have the right to appeal this individual interpretation to the Provincial Administrative Court (...). The rules for appealing individual interpretations are regulated by the Law of 30 August 2002. - Law on Proceedings before Administrative Courts - Journal of Laws of 2022, item 329, as amended; hereinafter “p.p.s.a.”.

A complaint to the Court shall be filed through the Director of the NIS (Art. 54 § 1 p.p.s.a.). The complaint must be filed within thirty days from the date of delivery of the individual interpretation (Art. 53 § 1 p.p.s.a.):

- in paper form, in two copies (original and copy) to the address: Krajowa Informacja Skarbowa, 17 Teodora Sixta St., 43-300 Bielsko-Biała (art. 47 § 1 p.p.s.a.), or

- in the form of an electronic document, in one copy (without a copy), to the address of the Electronic Submission Box of the National Fiscal Information on the ePUAP platform: /KIS/SkrytkaESP (Art. 47 § 3 and Art. 54 § 1a p.p.s.a.).

A complaint against an individual interpretation may be based only on an allegation of a violation of the rules of procedure, an error of interpretation or an incorrect assessment as to the application of a provision of substantive law. The court is bound by the allegations of the complaint and the legal basis invoked (Art. 57a p.p.s.a.).

Legal basis for issuing the interpretation

The legal basis for issuing this interpretation is Art. 13 § 2a and Art. 14b § 1 of the Act of 29 August 1997. - Tax Ordinance (Journal of Laws 2021, item 1540, as amended).