**Description of the facts**

The Applicant (hereafter also referred to as the "Foundation") carries out public charity 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: '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 existed since 2010. The Foundation has the status of a public benefit organisation. The Foundation is registered as an active taxpayer of value added tax (hereinafter: 'VAT'); the date of registration as a VAT payer is 11 June 2016.

As part of its statutory activities, the Foundation has launched the BuyMyCancer fundraising campaign to raise money for the BuyMyCancer 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.

'Buy My Cancer' is an innovative model for funding costly malignant cancer treatment. It involves auctioning donations using the NFT auction mechanism.

Confirmation of winning the auction, and thus making the highest donation bid, will be an NFT token linked to one of the images of different types of cancer cells, transformed by the artist into artworks in NFT form.

An NFT (Non-Fungible Token, 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 donation auction will be a digital diploma of winning the auction and an acknowledgement of helping cancer patients. The amount raised in the auction will be used to cover the costs of treatments not reimbursed in Poland for patients suffering from, among other things, the depicted cancer types.

BuyMyCancer - is a subversive slogan aimed at encouraging people to help cancer patients. The use of the idea of NFTs, which represent diseased cells is symbolic and allows a campaign to 'buy back' cancer cells without selling the artwork itself.

In marketing materials related to the campaign, phrases such as: "sale of NFTs", "auction", "sale of an image", "sale of a photo" as terms that everyone understands. In accordance with the terms and conditions of the action (there will be a link to the terms and conditions in the metadata of each NFT):

- by participating in the NFT auction, the participant commits to making a donation to the Foundation in the amount of the funds included in its bid,

- the highest bidder in the auction makes a donation to the Foundation and at the same time receives the NFT to which the auction related,

- each NFT auctioned has its own unique number (TokenID), which cannot be changed, and includes a link to additional information, stored on an external server outside the blockchain, containing information about the share and a link to a digital copy of the image associated with the NFT,

- The NFT is a digital diploma for winning the auction and acknowledging the support given to cancer patients,

- the receipt of the NFT by the shareholder only implies a transfer of the right to dispose of the data stored in the blockchain (i.e. the right to decide to remain the sole disposer of the NFT or to transfer this right to another person),

- The receipt of an NFT does not imply a transfer of the Foundation's economic copyright in the photograph (understood as a work created by an artistic processing of a photograph of a cancer cell) to the participant or the granting of a licence to use such a photograph, except that the participant who has received an NFT has the right to use the photograph to the extent necessary for the use and disposal of the NFT (e.g. display on NFT platforms, cryptocurrency wallets, social networks, etc.).

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

1. using images of cancer cells provided by the Gliwice Institute to create a work by the Polish artist Pawel Swansky and then transforming them into 3 NFT series and auctioning them on VAST or OpenSea (both US-based platforms).

2. a website buymycancer.org will be created for the campaign - where basic information about the campaign, the project's content patrons, the artist and the platform on which the auction will take place will be posted.

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

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

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

The applicant also plans to make it possible to make a donation of a predetermined amount ('NFT purchase'). Such a donation 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 the Applicant plans to carry out further editions of this campaign in the future, this description constitutes both a description of the facts and a future event. Subsequent editions of the action will be carried out according to exactly the same principles as described above.

**Questions**

(1) Does the transfer of NFT rights by the Applicant to the auctioneer who won the auctions (or made a donation of a predetermined amount) constitute a supply of services for consideration within the meaning of the VAT Act?

(2) Does the Applicant's activity of holding an auction (or "selling" NFTs for a predetermined amount) and subsequently disbursing the monies obtained from the auction constitute an economic activity within the meaning of Article 15(2) of the VAT Act?

(3) Is the Applicant required to issue a VAT invoice to the auctioneer (or purchaser) who has won the auctions for the transfer of NFT rights?

**Applicant's position**

Re 1 and 2

In the Applicant's view, the transfer of NFT rights by the Applicant to the participant who won the auction does not constitute the provision of services for consideration.

In the Applicant's view, the activity of holding an auction and the subsequent disbursement of funds obtained from the auction does not constitute economic activity within the meaning of Article 15(2) of the VAT Act.

Pursuant to Article 5 of the Act on Value Added Tax of 11 March 2004 (consolidated text: Journal of Laws of 2022, item 931, hereinafter: 'the VAT Act'), VAT is payable on, inter alia, the supply of goods and the supply of services against payment within the territory of the country. A chargeable supply of goods and a chargeable supply of services is subject to VAT only if it is carried out by a VAT taxpayer acting as such. In other words, a transaction will only be taxable if: (i) it constitutes a supply of goods or services for consideration, and (ii) the entity carrying it out - in doing so - will be acting as a taxable person. A supply of goods or services is subject to taxation if it is a supply for consideration. A supply of services is understood to be any supply which does not constitute a supply of goods, including the transfer of rights to intangible assets.

In the Applicant's view, the transfer of ownership of the NFT will not constitute a supply of goods, but may constitute a supply of a service within the meaning of the VAT legislation. The VAT Act does not define the concept of consideration. It is accepted in case law, both domestic and European, that consideration occurs when there is a direct relationship 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 on the basis of which the service is provided. Furthermore, for an activity to be subject to VAT, there must be a direct causal link between the goods supplied and the consideration received.

When examining whether a given supply is of a consideration or gratuitous nature, the question of the frequency of the campaign will be irrelevant. A gratuitous provision of services is not subject to VAT. Pursuant to Article 15(1) of the VAT Act, taxpayers are legal persons, organisational units without legal personality and natural persons who independently carry out business activity, regardless of the purpose or result of such activity.

However, by economic activity, the VAT Act understands any activity of producers, traders or service providers, including natural resource extraction entities and farmers, as well as the activity of freelancers. Economic activity includes, in particular, activities involving the use of goods or intangible and legal assets on a continuous basis for gainful purposes. The definition of economic activity under the VAT Act is autonomous and should be considered independently of other provisions of the law (even independently of the definitions of economic activity contained in other tax acts). In principle, economic activity is only that activity which is performed professionally, in a professional manner. As indicated by the doctrine, carrying out certain activities incidentally, outside the sphere of conducted business activity, does not allow to recognise a given entity as a taxpayer with regard to these activities (A. Bartosiewicz [in:] VAT. Commentary, XVth edition, Warsaw 2021, art. 15.). It is also a condition of conducting business activity that the economic risk of such activity is borne. In accordance with the rulings of the Court of Justice, the mere fact that an activity is carried out by an entity registered as a VAT taxpayer does not mean that it is subject to VAT, as it is possible that in a given transaction the seller does not play this role (Judgment of the Court of Justice of the European Union of 4.10.1995, C-291/92, Finanzamt Uelzen v Dieter Armbrecht, EU:C:1995:304).

The performance of certain activities - being the supply of goods or services - not taking place in the framework of a business activity, is not an act in the capacity of a taxpayer and, consequently, is not subject to taxation. The mere entry in the VAT taxpayer register as an active VAT taxpayer does not, therefore, prejudge the existence in a specific transaction as such a taxpayer. Pursuant to the Act of 24 April 2003 on public benefit activity and voluntary work (consolidated text Dz. U. of 2020, item 1057, as amended, hereinafter: 'Act on Public Benefit Activity'), paid public benefit activity is deemed to be economic activity within the meaning of the Act of 6 March 2018. - Entrepreneurs' Law (consolidated text Dz. U. of 2021, item 162, as amended, hereinafter the "Entrepreneurs' Law"), if one of the prerequisites concerning the remuneration received for a given service or the remuneration of persons employed in the performance of the statutory activity is met.

However, given the autonomous nature of the definition of economic activity resulting from the VAT Act, it should be concluded that the definition of economic activity should be considered independently of the provisions of other acts, regardless of whether it is the definition of economic activity resulting from tax regulations (e.g. the Tax Ordinance), business activity regulations or regulations governing the activity of foundations and public benefit organisations. Therefore, whether a given activity may be deemed an economic activity within the meaning of the Entrepreneurs' Law is irrelevant for the purposes of answering the questions which are the subject of this application. What matters for such an assessment is only the definition of conducting business activity within the meaning of the VAT Act.

As indicated in the description of the future event, the Cancer Applicant. BuyMyCancer is a fundraising campaign and therefore there is no economic risk involved. It differs from other fundraisers only in the idea - "buy someone's sick cell". The person who pays the most will receive an acknowledgement in the form of an NFT. Such a procedure is intended to help donors imagine that with their own strength and resources they can remove and "take away" someone's diseased cells, and the competitive element in the form of an auction is intended to further enhance this. In the Applicant's opinion, there can also be no charge for the service here. According to the rules of the auction, the NFTs are offered as a form of digital diploma confirming the winning of the auction and the donation. The whole concept of conducting the auction and 'selling' is due to the marketing concept, as described above. Retribution could occur if the payment made by the auction winner is a direct consequence of the transfer of the NFTs.

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 of the service and the recipient whereby reciprocal benefits are fulfilled. The payment made by the winning bidder, is not a consequence of the acquisition of the 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 portfolio. From the perspective of the purchaser of the NFT, the payment of money is merely a form of assistance consisting of the transfer of the declared amount to the statutory objectives of the Foundation. This conclusion is not altered by the possibility of a further transfer of rights to the NFT by its purchaser.

With this in mind, in the Applicant's view, this equivalence does not exist in the present case.

In addition, it should be noted that all income generated by the auctions held will be donated to the foundation's statutory activities. The above-described understanding of the regulations was confirmed by the Director of National Fiscal 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 this case, images of cancer patients were auctioned, which represented the creative work of a human being rather than records of a few bits of information.

In view of the above, in the Applicant's opinion, the transfer of the rights to the NFT will not constitute a supply of goods or provision of services for consideration within the meaning of the VAT Act and, consequently, will not be subject to VAT. Thus, the Applicant's activity consisting in holding an auction and subsequent disbursement of funds obtained from the auction does not constitute economic activity within the meaning of Article 15(2) of the VAT Act

Re.3

In the Applicant's opinion, by virtue of the transfer of rights to NFT, the Applicant should not issue VAT invoices to purchasers of NFT. This is because the described activity does not constitute a supply of goods for consideration and, as an activity not subject to VAT, should not be documented with a VAT invoice. plans to conduct an auction of NFT tokens correlated to photographs of cancer cells taken by the artist. Each token will relate to a different photograph or part of a photograph. Importantly, the token received as part of the auction does not incorporate any rights to the artwork indicated in it, it is merely an 'accounting' record on the blockchain 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 artwork, which cannot be altered. The entire auction is for charity, with the aim 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 whole BuyMyCancer action is a modern fundraising action and its sole purpose is to raise funds for charity. The purchaser of the NFT associated with a particular image does not acquire any rights to it, therefore, according to the Applicant, the purpose of participating in the auction is not to own the NFT, but to help cancer patients. The acquired NFT will be a kind of diploma confirming the donation and participation in the charity. 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 that they are helping in a very tangible way.

An economic activity within the meaning of the VAT Act is only an activity carried out professionally in a professional manner. The Foundation is not an auction house and does not intend to trade in works of art professionally. The BuyMyCancer campaign is dictated by a marketing concept aimed at raising money for a charitable cause. The Foundation does not sell works of art in the auction, nor does it license the use of such works, nor does it intend to do so in the future. One of the prerequisites for running a business is to bear the economic risk of this activity. The Foundation does not organise campaigns for profit-making purposes; all income will be used to help patients