

# FRAUDULENT REDUCTION OF VAT TAXABLE TURNOVER IN THE VIDEO GAME SECTOR

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# I - PRESENTATION OF THE CASE

## 1 - The company

X sells digital products through its website, mainly video game keys, gaming gift cards, gift cards, software and subscriptions to buyers, mainly individuals, around the world.

## 2 - Type of products sold by X

Videos games keys, software, gifts cards, Game gifts cards.

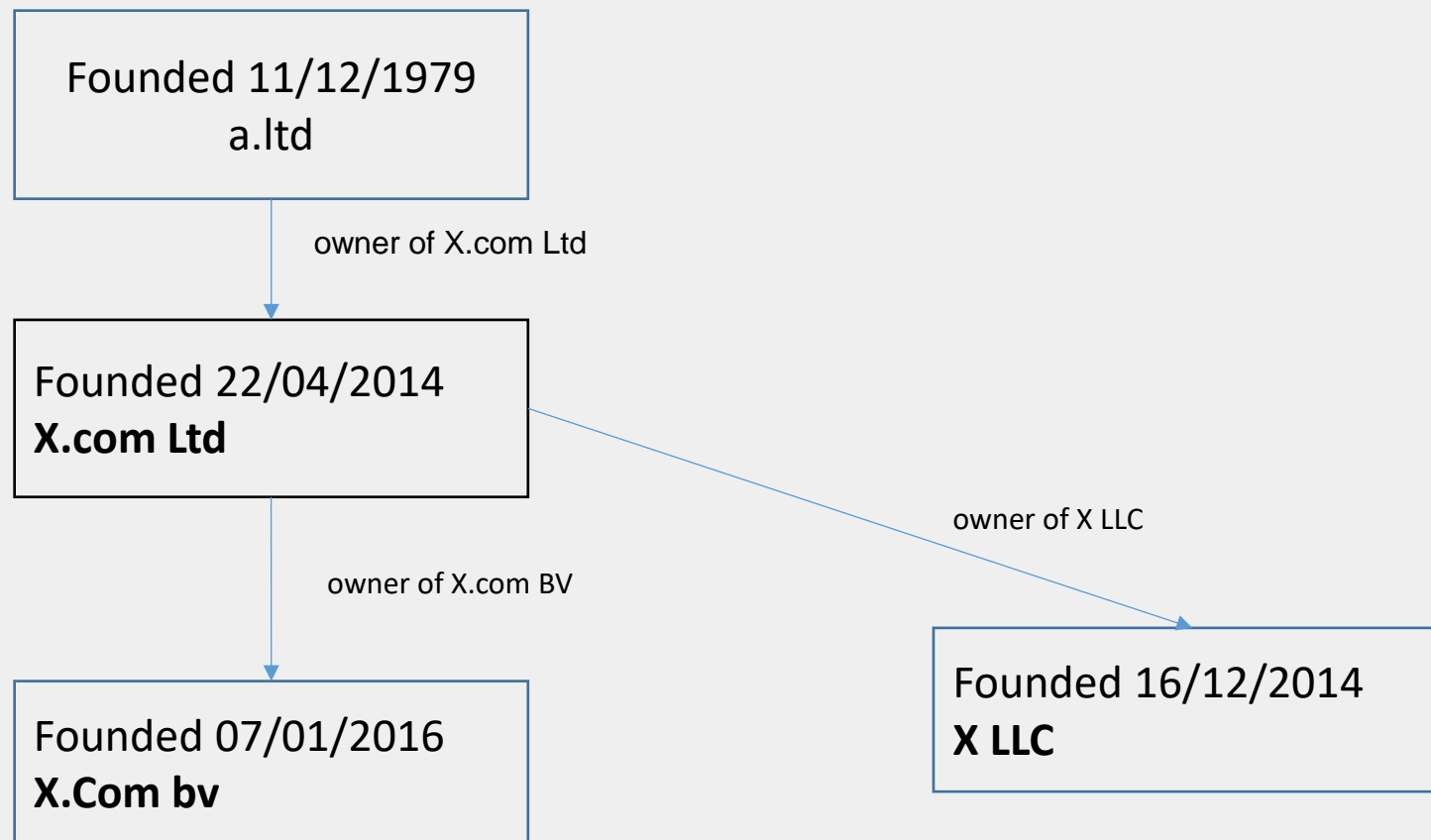
## 3 - Conduct of the tax audit

Information was obtained as part of the multilateral audit (CML), in accordance with the provisions of Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and the provisions of Regulation (EC) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

## II - ISSUES RAISED DURING THE TAX AUDIT

- 1 - The liable entity
- 2 - The classification of products sold by the company
- 3 - Application of article 9 bis of Implementing Regulation No. 282/2011

## 1 - The liable entity



## **III - ANALYSIS**

### **1 - Position on the American entity**

Transfer of liability is artificial.  
No employee.

### **2 - Position on the Hong Kong entity**

No substantial commercial assets or employees in HK.  
Tax not paid in HK, probably because it is considered to be an offshore company exempted for tax in HK.

### **3 - The law**

Taxpayers are free to choose the structure of their company.

## **IV - TAX ANALYSIS**

### **1 - Place of taxation**

The US entity cannot be considered as a real taxpayer.

### **2 - Classification of sold products**

### **3 - Tax situation**

# V- VAT ADJUSTMENTS AMOUNTS

1 - Period of assessments

2 - Period from 01/01/2017 to 25/06/2017

3 - Period from 01/01/2020 to 30/09/2023



## 1 - PERIOD OF ASSESSMENTS

On 25/06/2017 the Hong  
Kong company registers in  
MOSS

**From 01/01/2017 to  
25/06/2017:**

Period with tax adjustments  
(occult activity)

**From 26/06/2017 to 31/12/2019:**

Limitation period (Fiscal  
prescription in France is 3 years)

**From 01/01/2020 to  
30/09/2023:**

Period with tax  
adjustments

## 2 - PERIOD FROM 01/01/2017 TO 25/06/2017

Total taxable amount of sales including taxes (from PSPs) : €9 008 187



Coefficient applied according to products taxable as Electronic Supplied Services (ESS) 83.56% = €7 527 241



Total taxable amount of sales excluding tax :  $€7\,527\,241,2 / 1,2 = €6\,272\,701$



**VAT adjustment of :  $6\,272\,701 \times 20\% = €1\,254\,540$**

A 80% penalty for occult activity was added to the tax adjustment.

### 3 - PERIOD FROM 01/01/2020 TO 30/09/2023

	2020	2021	2022	2023
Total taxable amount of sales including taxes (from PSPs)	3 920 300 €	2 717 625 €	2 757 590 €	914 404 €
Total taxable amount of sales excluding tax	3 266 916 €	2 264 687 €	2 297 991 €	762 004 €
Coefficient applied according to products taxable as ESS 83.56%	2 729 835 €	1 892 373 €	1 920 201 €	636 730 €
<b>VAT adjustment of</b>	<b>545 967 €</b>	<b>378 474 €</b>	<b>384 040 €</b>	<b>127 346 €</b>

A 40% penalty for deliberate mistake (bad faith) was added to the tax adjustment.