

# ECJ Preliminary Ruling Request (VAT): GIS (Case C-249/22) – Verwaltungsgerichtshof Submits Referral on VAT Treatment of Public Service Broadcaster's Programme Fees

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On 11 April 2022, the Verwaltungsgerichtshof (the Supreme Administrative Court of Austria) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *BM v. Gebühren Info Service GmbH* (GIS) (Case C-249/22) on whether a programme fee of a public service broadcaster set by itself should be regarded as consideration for VAT purposes.

The Verwaltungsgerichtshof requested the ECJ to answer the following questions:

"(1) Taking into account the primary law provision of article 151(1) in conjunction with annex XV, part IX, no. 2, letter h, first subparagraph, second indent, of the Act concerning the conditions of accession and the adjustments to the Treaties on which the European Union is founded, must consideration such as the programme fee of the Österreichischer Rundfunk (Austrian Broadcasting Corporation, 'ORF'), which the public service broadcaster sets itself in order to finance its operation, be regarded as consideration within the meaning of article 2 in conjunction with article 378(1) of [VAT Directive \(2006/112\)](#)?

(2) If Question 1 is answered in the affirmative, must the ORF programme fee referred to therein also be regarded as consideration within the meaning of [VAT Directive \(2006/112\)](#) in so far as persons are obliged to pay it who, although they operate a broadcast receiver in a building which is supplied by the ORF with its terrestrial programmes, cannot receive those ORF programmes because they do not have the necessary receiver module?"