

ECJ Advocate General Opines on VAT Treatment of Public Service Broadcasters' Programme Fees: *G/S* (Case C-249/22) (VAT)

25 May 2023

Report from Stefania Lotito Fedele, VAT Associate, IBFD

On 25 May 2023, Advocate General Maciej Szpunar of the Court of Justice of the European Union (ECJ) gave his opinion in the case of *BM v. Gebühren Info Service GmbH (GIS)* (Case C-249/22) on the VAT treatment of programme fees paid by public service broadcasters.

In this case, the Advocate General opined that article 378(1) of the [VAT Directive \(2006/112\)](#) must be interpreted as permitting Austria to treat the activity of a public service broadcaster as a taxable activity, with the result that the broadcaster is entitled to deduct the VAT paid, while the resulting loss of tax revenue is offset by an additional tax imposed by the national authorities on the programme fee, the revenue from which is allocated to the State budget.

This additional tax must be regarded as a direct public charge, which is completely outside the common system of VAT. It cannot therefore be regarded as a tax contrary to the [VAT Directive \(2006/112\)](#) or to the law of the European Union, since it does not constitute an additional burden on the persons liable to pay it, but simply the amount collected under it serves a different purpose.

Therefore, the Advocate General proposed that the ECJ answer the questions referred to as follows:

"Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [[VAT Directive \(2006/112\)](#)], read in conjunction with Article 378(1) of that directive and Article 151(1) of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded of 26 July 1994 and point 2(h) of Part IX of Annex XV thereto

must be interpreted as meaning that the Republic of Austria is not precluded from levying a charge additional to the programme fee within the meaning of Paragraph 31 of the Bundesgesetz über den Österreichischen Rundfunk (Federal Law on Austrian Broadcasting) in order to compensate for the loss of budgetary revenue from value added tax resulting from the right of a public service broadcaster to deduct tax paid on goods and services acquired by it for the purposes of its activities, which are financed by the proceeds of that programme fee."

A more substantial report containing details of the Advocate General's reasoning will be published in due course.

European Union; Austria - ECJ Advocate General Opines on VAT Treatment of Public Service Broadcasters' Programme Fees: GIS (Case C-249/22) (VAT) (25 May 2023), News IBFD.

Exported / Printed on 9 Mar. 2024 by hkermadi@deloitte.lu.