HMRC - VATSC43000 - Subsidies And Third Party Consideration

Article 73 of the Principal VAT Directive (2006/112) provides:

In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained from the customer or a third party, including subsidies directly linked to the price of supply.

Consideration can therefore include subsidies from third parties that do not actually receive the supply. This is illustrated by the European Court’s decision in Keeping Newcastle Warm (C-353/00).

Keeping Newcastle Warm

This case concerned the question of whether a payment by a national agency to Keeping Newcastle Warm (KNW) in connection with energy advice which KNW provides to householders is liable to VAT. The ECJ found that the taxable amount in respect of a supply of services was everything which made up the consideration for the service. It was clear that the sum paid by the agency to KNW was received by the latter in consideration for the service supplied by it to the householders. As consideration in respect of a supply, that sum formed part of the taxable amount within the meaning of Art 11A(1)(a) of the Sixth VAT Directive (now Article 73 of the Principal VAT Directive (2006/112)).

The Advocate General too found that the subsidy was clearly attributable to the supply of energy advice, intended to pay in full or part for the supply and therefore granted by way of third party consideration. In her Opinion she gave some helpful interpretation of when a subsidy can be subject to VAT. She concluded that a subsidy is generally understood to mean a sum paid from public funds, usually in the general interest. The fact that there was a reference to subsidies in Article 11A(1)(a), established the principle that subsidies can be subject to VAT under certain circumstances. There is, however, a difference between a global subsidy, paid to cover general operating costs, and a subsidy granted by a donor to the recipient to enable a third party to obtain a specific service - or obtain it more cheaply. As a rule, there can only be a taxable transaction where the subsidy is of the latter type, one granted in the context of a tripartite relationship.

The reason for this is that subsidies from public funds are made in the furtherance of the public interest, not to procure goods or services for the State. In order for there to be a supply, and therefore a taxable transaction for the purposes of Article 2 of the Sixth Directive [Article 2 of Principal VAT Directive], the beneficiary of the supply must be a third party.

Further guidance is given by the ECJ on including subsidies in the basis of assessment and the requirement for a direct link between the subsidy and goods or services in a Flemish case, Office des produits wallons ASBL v Belgium [2001] (Case C-184/00).

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