HMRC - VATSC51840 - Grants: Factors Indicating The Payment Is Consideration For A Supply

The following factors are taken from precedent cases. They are not presented in any particular order, all factors should be considered when making a decision. The more there are in your situation, the more likely it is that the payment is consideration for a supply. The factors to consider are:

who initiates the agreement? If the funder is seeking services in return for their payment then this indicates the payment is consideration for supplies made to them if the funder is the direct beneficiary of the supplies. The funder believes they are receiving something in return for the payment.

the supplier undertakes outsourced activities on behalf of the funder where the services provided are ones ordinarily provided by the funder so the supplier is acting as a subcontractor. Examples include the provision of functions ordinarily undertaken by local authorities that they have a statutory duty to perform and would face sanctions if they did not happen

the contract is commercial in nature ie it is a legally binding contract connected to a business activity. This means looking for indicators such as penalty clauses being in place if the supplier does not fulfil their responsibilities and so is in breach of contract

the supplies are undertaken as an economic activity. It is not necessary for the supplier to have a profit motive, but the type of supplies should have the potential to make a profit

the relationship between the funder and supplier will be at ‘arms length’ and there will be an absence of control from the funder in the supplier’s decision making process

the payments made by the funder to the supplier are made specifically for the supplier to provide particular services to its clients. The fact that the funder does not know at the time the service is provided the identity of the client or the even the specific service which is being provided is not relevant

each activity carried out by the funder gives rise to a specific and identifiable payment. This is an agreed sum, either a single payment or a sum per activity ie the more work done, the greater the payment. For this to happen there is probably a detailed recording system for timekeeping, outputs achieved etc

the funder will attempt to control how the money is spent, maybe imposing specific targets in terms of quantity, quality, timeframes etc. Any monitoring is more than simply ensuring the payments are spent properly and is to ensure that specific supplies are made

if the funding is withdrawn there is legal redress for the supplier to have the payment reinstated or claim compensation

the payments are treated as trading income or expenditure in the accounts of either party

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