HMRC - VATSC51940 - Grants: Office Des Produits Wallons ASBL V Belgium

Court Reference: C-184/00

This was a referral to the ECJ from Belgium concerning OPW which was a private non-profit-making association carrying out the advertising and sale of Walloon agricultural and horticultural products and agricultural foodstuffs.

OPW received an annual subsidy from the Walloon Region through a framework subsidy agreement. Under that agreement, it was responsible for activities such as the publication of a catalogue and a magazine, the running of local offices and participating in local events. The payment also covered running costs such as staff wages, renting premises, purchasing equipment etc. The Belgian authorities thought the subsidy was taxable consideration, whilst POW thought it was a grant outside the scope of VAT because it was not directly linked to the price of the goods or services they supplied.

The decision was based on Article 11A(1) of the Sixth Directive (now article 73 of Dir 2006/112) which set out the basis of liability to VAT on transactions within the territory of the country:

‘The taxable amount shall be: (a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies.’

At para 35, the judgment stated: ‘I consider the decisive factor to be whether the operating subsidies are directly related to a specific economic activity pursued by the beneficiary which consists in the supply of specific goods or services. That will be the case if the subsidies lead to a reduction in the price of goods or services which the beneficiary supplies to the consumer or if as a result there is an increase in the quantity of the goods or services supplied. An operating subsidy can also lead to the beneficiary’s producing an increased quantity, knowing that a proportion of the costs is incurred at the risk of the authority which granted the subsidy’.

 The decision was that there was no general subsidy but rather a payment for services supplied to the public authorities, for example the service of publishing a magazine ‘at the behest or at any rate on behalf of the Walloon Region’. Therefore the payment was consideration because it consisted of ‘the price of the transaction’ and was not a subsidy which was linked to the price.

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