HMRC - VATSC51950 - Grants: Keeping Newcastle Warm

Court Reference: C-353/00

This was a referral from the UK to the ECJ on whether a payment formed part of the consideration under Art 11A(1)(a) of the Sixth VAT Directive (now Article 73 of the Principal VAT Directive (2006/112))which provides:

‘… 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’.

Whether a payment by the Energy Action Grants Agency (responsible for implementing the Home Energy Efficiency Scheme) to Keeping Newcastle Warm (KNW) was liable to VAT. KNW gave advice on improving energy efficiency in dwellings to householders and sometimes carried out the work. There was a maximum grant of £10 for each piece of energy advice given and in practice that amount was paid for every piece of energy advice given. Output tax had been accounted for on these sums and although KNW agreed the sum was consideration, they argued the amount was not directly linked to the final price and so was outside the scope of VAT.

The contract with the consumer referred to the payment as a grant, but the ECJ found this money was part of the taxable amount in respect of a supply of services as it was included in ‘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, indeed KNW’s right to receive the subsidy only arose where it agreed to provide the energy advice. As consideration in respect of a supply, that sum formed part of the taxable amount within the meaning of the EC legislation. The fact that the payment was capped did not have any relevance as whatever was received was still payment for the supply of advice.

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.

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