HMRC - VATSC53520 - Grants: Lanboden-Agrardienste Gmbh & Co KG

Court Reference: C-384/95

In this case, a potato farmer refrained from marketing 20% of his crop in return for a payment of a subsidy. The German tax authorities maintained it was consideration for a supply under Article 6(1) of the Sixth VAT Directive (77/388/EEC) (now Articles 24(1) and 25 of the Principal VAT Directive (2006/112)) since the wording of the law was that a supply of services was:

any transaction which does not constitute a supply of goods within the meaning of Article 5. Such transactions may include, inter alia, obligations to refrain from an act or to tolerate an act or situation.

The ECJ based its decision on the Mohr case

The judgement also said that the German authority’s argument circumvented the rule that only subsidies linked to price form part of the basis of the assessment. To have accepted the German argument would have taxed not only the subsidy but also the increased price of potatoes as a result of the reduction in supply, an increase that might well be greater than the amount of the subsidy. Therefore the payment was not seen as consideration for a supply and so was outside the scope of VAT.

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