Case C-29/08

Skatteverket

v

AB SKF

(Reference for a preliminary ruling from the Regeringsrätten)

(Sixth VAT Directive – Articles 2, 4, 13B(d)(5) and 17 – Directive 2006/112/EC – Articles 2, 9, 135(1)(f) and 168 – Disposal by a parent company of a subsidiary and of its holding in a controlled company – Scope of VAT – Exemption – Supplies of services acquired as part of share disposal transactions – Deductibility of VAT)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Economic activities within the meaning of Article 4 of the Sixth Directive – Meaning*

(Council Directives 77/388, Arts 2(1) and 4(1) and (2), and 2006/112, Arts 2(1) and 9(1))

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Exemptions provided for in the Sixth Directive – Transactions in securities covered by Article 13B(d)(5)*

(Council Directives 77/388, Art. 13B(d)(5) and 2006/112, Art. 135(1)(f))

3. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax*

(Council Directives 77/388, Art. 17(1) and (2), and 2006/112, Art. 168)

1. Articles 2(1) and 4(1) and (2) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 95/7, and Articles 2(1) and 9(1) of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that where a parent company disposes of all the shares in a wholly-owned subsidiary and of its remaining shareholding in a controlled company which was previously wholly owned by it, and where it has supplied to those companies services that are subject to value added tax, that disposal is an economic activity coming within the scope of those directives.

By the disposal of all its shares in a subsidiary and in a controlled company, a parent company brings to an end its holdings in those companies. Where that parent company, as the parent company of an industrial group, was involved in the management of that subsidiary and that controlled company by supplying to them, for consideration, a variety of administrative, accounting and marketing services, in respect of which it was liable to pay VAT, that disposal, carried out in order to enable that parent company to restructure a group of companies, can be regarded as a transaction that consists in obtaining income on a continuing basis from activities which go beyond the compass of the simple sale of shares. That transaction has a direct link with the organisation of the activity carried out by the group and constitutes accordingly the direct, permanent and necessary extension of the taxable activity of the taxable person. Such a transaction consequently

comes within the scope of VAT.

However, to the extent that the disposal of shares can be regarded as equivalent to a transfer of a totality of the assets of an undertaking or part thereof, within the meaning of Article 5(8) of the Sixth Directive, as amended by Directive 95/7, or of the first paragraph of Article 19 of Directive 2006/112, and provided the Member State concerned has exercised the option provided for in those provisions, that transaction does not constitute an economic activity subject to VAT.

Those conclusions are not affected by the fact that the disposal of shares is carried out by way of several successive transactions.

(see paras 32-33, 41, operative part 1, 4)

2. Where a parent company disposes of all the shares in a wholly-owned subsidiary and of its remaining shareholding in a controlled company which was previously wholly owned by it, and where it has supplied to those companies services that are subject to VAT, that disposal must be exempted from VAT pursuant to Article 13B(d)(5) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 95/7, and Article 135(1)(f) of Directive 2006/112 on the common system of value added tax.

The words ‘transactions … in securities’ within the meaning of those provisions refer to transactions which are liable to create, alter or extinguish parties’ rights and obligations in respect of securities, excluding administrative, material or technical services and activities involving the supply of financial information which do not alter the legal and financial position of the parties. Since a sale of shares changes the legal and financial position of the parties to the transaction, it is therefore, in so far as it comes within the scope of VAT, covered by the exemption laid down those provisions.

Those conclusions are not affected by the fact that the disposal of shares is carried out by way of several successive transactions.

(see paras 48-50, 53, operative part 2, 4)

3. There is a right, under Article 17(1) and (2) of Sixth Directive 77/338 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 95/7, and under Article 168 of Directive 2006/112, to deduct input value added tax paid on services supplied for the purposes of a disposal of shares by a parent company of all the shares in a wholly-owned subsidiary and of its remaining shareholding in a controlled company which was previously wholly owned by it, if there is a direct and immediate link between the costs associated with the input services and the overall economic activities of the taxable person.

It is for the referring court to take account of all the circumstances surrounding the transactions at issue and to determine whether the costs incurred are likely to be incorporated in the price of the shares sold or whether they are among only the cost components of transactions within the scope of the taxable person’s economic activities.

Those conclusions are not affected by the fact that the disposal of shares is carried out by way of several successive transactions.

(see para. 73, operative part 3-4)

JUDGMENT OF THE COURT (Third Chamber)

29 October 2009 (*)

(Sixth VAT Directive – Articles 2, 4, 13B(d)(5) and 17 – Directive 2006/112/EC – Articles 2, 9, 135(1)(f) and 168 – Disposal by a parent company of a subsidiary and of its holding in a controlled company – Scope of VAT – Exemption – Supplies of services acquired as part of share disposal transactions – Deductibility of VAT)

In Case C?29/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Regeringsrätten (Sweden), made by decision of 17 January 2008, received at the Court on 25 January 2008, in the proceedings

Skatteverket

v

AB SKF,

THE COURT (Third Chamber),

composed of P. Lindh, President of the Sixth Chamber, acting as President of the Third Chamber, A. Rosas and U. Lõhmus (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 4 December 2008,

after considering the observations submitted on behalf of:

– the Skatteverket, by B. Persson, acting as Agent,

– AB SKF, by R. Treutiger and O. Henkow, advokater,

– the Swedish Government, by K. Petkovska and A. Engman, acting as Agents,

– the German Government, by M. Lumma and C. Blaschke, acting as Agents,

– the United Kingdom Government, by Z. Bryanston-Cross, acting as Agent, and I. Hutton, Barrister,

– the Commission of the European Communities, by J. Enegren and D. Triantafyllou, acting

as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 February 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2, 4, 13B(d)(5) and 17 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18) ('the Sixth Directive'), and of Articles 2, 9, 135(1)(f) and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The reference was made in proceedings in which the opposing parties are the Skatteverket (the local tax board) and the company AB SKF ('SKF') in relation to a preliminary decision given by the Skatterättsnämnden (Revenue Law Commission) in response to an application by SKF that it be entitled to deduct input value added tax ('VAT') paid on supplies of services acquired by SKF as part of a share disposal transaction.

Legal context

Community legislation

3 The second paragraph of Article 2 of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14) provides that 'on each transaction, [VAT], calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of [VAT] borne directly by the various cost components'.

4 Under Article 2(1) of the Sixth Directive, the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such is subject to VAT.

5 Article 4 of that directive is worded as follows:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

…'

6 Under Article 5(8) of the Sixth Directive:

'In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and in that event the recipient shall be treated as the successor to the transferor …'

7 Under the first indent of the second subparagraph of Article 6(1) of the Sixth Directive, a supply of services may consist of, inter alia, an assignment of intangible property, whether or not it is the subject of a document establishing title.

8 Article 13B(d)(5) of the Sixth Directive provides that Member States are to exempt from VAT 'transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities …'.

9 Article 17 of that directive, in the version resulting from Article 28f(1) thereof, relates to the origin and scope of the right to deduct. Paragraphs 1 and 2 of that article are worded as follows:

'1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) [VAT] due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

…'

10 With effect from 1 January 2007, Directive 2006/112 repealed and replaced the existing Community legislation relating to VAT, including the Sixth Directive. According to recitals 1 and 3 in the preamble to Directive 2006/112, the recasting of the Sixth Directive was necessary in order to present all the applicable provisions clearly and rationally in a recast structure and wording without, in principle, bringing about material changes.

11 Article 2 of Directive 2006/112 provides:

'1. The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

…

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

…'

12 Article 9(1) of Directive 2006/112 provides:

'"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

13 The first paragraph of Article 19 of Directive 2006/112 corresponds to the first sentence of Article 5(8) of the Sixth Directive.

14 Under Article 25(a) of Directive 2006/112, a supply of services may consist, inter alia, in the assignment of intangible property, whether or not the subject of a document establishing title.

15 In accordance with Article 135(1)(f) of that directive, Member States are to exempt 'transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2)'.

16 Article 168 of Directive 2006/112 provides as follows:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

…'

National legislation

17 The mervärdesskattelagen (1994:200) (Swedish Law No 200 of 30 March 1994 on VAT) provides in Chapter 1, Paragraph 1, that VAT is to be paid to the State on taxable supplies of goods or services which are made within Swedish territory as part of a professional activity.

18 Chapter 3, Paragraph 9, of that law exempts, inter alia, transactions in transferable securities, such as the supply and trading, as an intermediary, of shares, other interests and debts, whether or not represented by securities, and the management of investment funds.

19 Chapter 8, Paragraph 3, of that law provides that, in so far as goods and services are used for the purposes of his business, the taxable person has the right to deduct input VAT paid on acquisitions or imports.

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 The share company SKF is the parent company of an industrial group which carries on activities in a number of countries. It plays an active role in the management of its subsidiaries and supplies to them, for consideration, services, including management, administration and marketing policy. Those services are invoiced to the subsidiaries and SKF is liable for VAT on them.

21 SKF intends to restructure its group and, in that connection, to dispose of the business of one of its wholly-owned subsidiaries ('the subsidiary') by transferring all the shares in the latter. In addition, SKF intends to dispose of its 26.5% shareholding in another company, which was in the past wholly owned ('the controlled company') and to which SKF supplied, as the parent company, services which were subject to VAT. The reason for those disposals is to obtain funds to finance other activities of the group. In order to carry out those disposals, SKF proposes to acquire supplies of services in the area of valuation of shares, assistance with negotiations and specialised legal advice for the drafting of the contracts. Those supplies of services will be subject to VAT.

22 In order to obtain clarification on the tax consequences of those disposals, SKF applied to the Skatterättsnämnden for a preliminary decision on the right to deduct input VAT paid on the supplies of services acquired as part of the disposal of shares in the subsidiary and the controlled

company.

23 In its preliminary decision of 12 January 2007, the Skatterättsnämnden held that, in both cases, SKF was entitled to deduct the input VAT paid on those supplies of services. It took the view that the supplies of services provided by SKF to the subsidiary and to the controlled company were part of an economic activity and that the VAT paid on the costs which SKF had incurred when those companies were acquired was deductible. In the same way, the VAT paid on costs when that activity was brought to an end ought also to be deductible. The fact that that activity was, for the benefit of the controlled company, to be brought to an end gradually did not affect that assessment.

24 The Skatteverket appealed against that decision to the referring court, claiming that the VAT paid on the supplies of the services acquired was not deductible. SKF, for its part, contended that the preliminary decision of the Skatterättsnämnden should be upheld.

25 In those circumstances, the Regeringsrätten (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Are Articles 2 and 4 of the Sixth Directive … and Articles 2 and 9 of Directive 2006/112 … to be interpreted as meaning that, where a taxable person liable for [VAT] on supplies of services to a subsidiary disposes of shares in that subsidiary, that disposal is a transaction subject to [VAT]?

(2) If the answer to the first question is that the disposal constitutes a taxable transaction, is it then covered by the exemption provided for by Article 13B(d)(5) of the [Sixth] Directive … and Article 135(1)(f) of Council Directive 2006/112 in respect of transactions in shares?

(3) Irrespective of the answer to the above two questions, can there be a right to deduct for expenditure directly attributable to the disposal transaction, in the same way as there is for general costs?

(4) Is it of significance for the answers to the above questions if the disposal of interests in a subsidiary takes place in stages?’

The questions referred for a preliminary ruling

The first question

26 By its first question, the referring court asks, in essence, whether Article 2(1) and Article 4(1) and (2) of the Sixth Directive and Articles 2(1) and 9(1) of Directive 2006/112 must be interpreted as meaning that, when a parent company disposes of all the shares in a wholly-owned subsidiary and of its remaining shareholding in a controlled company which was previously wholly owned by it, these being companies to which it has supplied services subject to VAT, that disposal is an economic activity coming within the scope of those directives.

27 It must be recalled, at the outset, that it is clear from Article 2 of the Sixth Directive and from Article 2(1) of Directive 2006/112, in which the scope of VAT is defined, that, within a Member State, only activities of an economic nature are subject to VAT. Under Article 4(1) of the Sixth Directive and Article 9 of Directive 2006/112, ‘taxable person’ means any person who independently carries out such an economic activity. Economic activities are defined in Article 4(2) of the Sixth Directive as encompassing all activities of producers, traders and persons supplying services, including the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.

28 According to settled case-law, the mere acquisition, holding and sale of shares do not, in themselves, constitute economic activities within the meaning of the Sixth Directive (see, inter alia, Case C?77/01 *EDM* [2004] ECR I?4295, paragraph 59, and Case C?435/05 *Investrand* [2007] ECR I?1315, paragraph 25 and the case-law there cited). Those transactions cannot amount to exploitation of an asset intended to produce revenue on a continuing basis, as the only consideration for those transactions consists of a possible profit on the sale of those shares (see, to that effect, *EDM*, paragraph 58).

29 The Court has stated that only payments which are the consideration for a transaction or an economic activity come within the scope of VAT and that such is not the case in respect of payments which arise simply from ownership of the asset, as in the case of dividends or other yields from a shareholding (see, to that effect, Case C?333/91 *Sofitam* [1993] ECR I?3513, paragraph 13; Case C?80/95 *Harnas & Helm* [1997] ECR I?745, paragraph 15; and *EDM*, paragraph 49).

30 However, the Court has held that the position is otherwise where a financial holding in another company is accompanied by direct or indirect involvement in the management of the company in which the holding has been acquired, without prejudice to the rights held by the holding company as shareholder (see Case C?60/90 *Polysar Investments Netherlands* [1991] ECR I?3111, paragraph 14; Case C?142/99 *Floridienne and Berginvest* [2000] ECR I?9567, paragraph 18; the order in Case C?102/00 *Welthgrove* [2001] ECR I?5679, paragraph 15; and Case C?16/00 *Cibo Participations* [2001] ECR I?6663, paragraph 20), in so far as involvement of that kind entails carrying out transactions which are subject to VAT by virtue of Article 2 of the Sixth Directive, such as the supply of administrative, accounting and information-technology services (*Floridienne and Berginvest*, paragraph 19; order in *Welthgrove*, paragraph 16; *Cibo Participations*, paragraph 21; and Case C?305/01 *MKG-Kraftfahrzeuge-Factoring* [2003] ECR I?6729, paragraph 46).

31 Moreover, it is clear from the Court’s case-law that transactions relating to shares or holdings in a company are subject to VAT when they are carried out as part of a commercial share-dealing activity or in order to secure a direct or indirect involvement in the management of the companies in which the holding has been acquired, or where they constitute the direct, permanent and necessary extension of the taxable activity (see, inter alia, Case C?155/94 *Wellcome Trust* [1996] ECR I?3013, paragraph 35, and *Harnas & Helm*, paragraph 16 and the case-law there cited).

32 In the present case, it is clear from the order for reference that SKF, as the parent company of an industrial group, was involved in the management of the subsidiary and the controlled company by supplying to them, for consideration, a variety of administrative, accounting and marketing services, in respect of which it was liable to pay VAT.

33 By the disposal of all its shares in the subsidiary and in the controlled company, SKF brought to an end its holdings in those companies. That disposal, carried out in order to enable the

parent company to restructure a group of companies, can be regarded as a transaction that consists in obtaining income on a continuing basis from activities which go beyond the compass of the simple sale of shares (see, to that effect, Case C?465/03 *Kretztechnik* [2005] ECR I?4357, paragraph 20, and the case-law there cited). That transaction has a direct link with the organisation of the activity carried out by the group and constitutes accordingly the direct, permanent and necessary extension of the taxable activity of the taxable person within the terms of the case-law cited in paragraph 31 of this judgment. Such a transaction consequently comes within the scope of VAT.

34 As stated by the Advocate General in point 34 of his Opinion, that finding is also consistent with the principles of equal treatment and tax neutrality, which require that the Court's recognition of the economic nature of the acquisition of holdings accompanied by an involvement by the parent company in the management of its subsidiaries and of companies controlled by it should be extended to the disposals of holdings which bring about the end of such involvement (see, by way of analogy, *Wellcome Trust*, paragraph 33, and *Kretztechnik*, paragraph 19).

35 As regards the nature of the transaction at issue, the Commission of the European Communities argues that it should be regarded as equivalent to a transfer of a totality of assets or part thereof within the meaning of Article 5(8) of the Sixth Directive which, as it is a supply of goods, must be deemed to be an economic activity. According to the Commission, the sale of all the assets of a company and the sale of all its shares are, in functional terms, equivalent.

36 In that regard, it must be observed that the first sentence of Article 5(8) of the Sixth Directive and of the first paragraph of Article 19 of Directive 2006/112 provide that Member States may, in the event of a transfer of a totality of assets or part thereof, consider that no supply of goods has taken place and that the recipient is the successor to the transferor. It follows that, when a Member State has exercised that option, the transfer of a totality of assets or part thereof is not regarded as a supply of goods for the purposes of the Sixth Directive. Under Article 2 of that directive, such a transfer is therefore not subject to VAT (see Case C?408/98 *Abbey National* [2001] ECR I?1361, paragraph 30, and Case C?497/01 *Zita Modes* [2003] ECR I?14393, paragraph 29).

37 Furthermore, the concept of a 'transfer … of a totality of assets or part thereof' has been interpreted by the Court as covering the transfer of a business or an independent part of an undertaking, including tangible elements and, as the case may be, intangible elements which, together, constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity, but that it does not cover the simple transfer of assets, such as the sale of a stock of products (see *Zita Modes*, paragraph 40).

38 In the present case, it is not possible, on the basis of the case-file submitted to the Court, to determine whether the effect of the sale of shares in the subsidiary and in the controlled company was the total or partial disposal of the assets of the undertakings concerned. Furthermore, SKF stated at the hearing that the possible application of Article 5(8) of the Sixth Directive to the present case had not even been broached before the national court.

39 In such circumstances, the Court must take account, under the division of jurisdiction between the Community Courts and the national courts, of the factual and legislative context in which the questions put to it are set, as described in the order for reference (see, inter alia, Joined Cases C?482/01 and C?493/01 *Orfanopoulos andOliveri* [2004] ECR I?5257, paragraph 42; Case C?341/05 *Laval un Partneri* [2007] ECR I?11767, paragraph 47; and Case C?244/06 *Dynamic Medien* [2008] ECR I?505, paragraph 19).

40 In any event, even if Article 5(8) of the Sixth Directive or the first paragraph of Article 19 of Directive 2006/112 could be applied to a transaction such as that at issue in the main proceedings,

a matter which it is for the national court to determine, it must be observed that both SKF and the Swedish Government stated at the hearing that the Kingdom of Sweden has chosen to exercise the option, provided for by those provisions, of treating the transfer of a totality of assets as not coming within the scope of the Sixth Directive. That being the case, a disposal of shares which amounts to a transfer of a totality of assets does not constitute an economic activity subject to VAT.

41 It follows from the foregoing that the answer to the first question is that Articles 2(1) and 4(1) and (2) of the Sixth Directive and Articles 2(1) and 9(1) of Directive 2006/112 must be interpreted as meaning that, where a parent company disposes of all the shares in a wholly-owned subsidiary and of its remaining shareholding in a controlled company which was previously wholly owned by it, and where it has supplied to those companies services that are subject to VAT, that disposal is an economic activity coming within the scope of those directives. However, in so far as the disposal of shares is equivalent to the transfer of a totality of assets or part thereof of an undertaking, within the meaning of Article 5(8) of the Sixth Directive or the first paragraph of Article 19 of Directive 2006/112, and where the Member State concerned has chosen to exercise the option provided for by those provisions, that transaction does not constitute an economic activity subject to VAT.

The second question

42 By its second question, the referring court asks, in essence, whether a disposal of shares such as that at issue in the main proceedings, in the event that it comes within the scope of VAT, must be exempted from VAT pursuant to Article 13B(d)(5) of the Sixth Directive and Article 135(1)(f) of Directive 2006/112.

43 The Swedish and German Governments take the view that any sale of shares, in so far as it constitutes an economic activity, is exempt from VAT pursuant to those provisions.

44 The Commission, by contrast, considers that the exemption provided for by Article 13B(d)(5) of the Sixth Directive and by Article 135(1)(f) of Directive 2006/112 covers only transactions which are carried out as part of a commercial share-dealing business. The transaction at issue in the main proceedings, however, should be regarded as a strategic redeployment of the assets of the parent company carried out with the purpose of securing funds to finance other activities of the group. According to the Commission, that transaction is not part of that company's normal commercial business and is not covered by the exemption in the abovementioned provisions.

45 It must be recalled that under Article 13B(d)(5) of the Sixth Directive and Article 135(1)(f) of Directive 2006/112 Member States are required to exempt from VAT 'transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities …'.

46 While, admittedly, it is true that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, inter alia, *MKG-Kraftfahrzeuge-Factoring*, paragraph 63, and Case C?455/05 *Velvet & Steel Immobilien* [2007] ECR I?3225, paragraph 14), the interpretation proposed by the Commission would nevertheless restrict the exemption in question in a manner which is not justified by the relevant wording. The term 'transactions … in shares' referred to in Article 13B(d)(5) of the Sixth Directive and Article 135(1)(f) of Directive 2006/112 is broad enough not to be restricted to the business of trading in shares.

47 If the interpretation advocated by the Commission were to be accepted, transactions which

were substantively identical would be treated differently for the purposes of levying VAT depending on whether or not they were part of the taxable person's normal and usual business. Such a practice would be contrary to the VAT system's objectives of ensuring legal certainty and facilitating application of the tax by having regard, save in exceptional cases, to the objective character of the transaction in question (see, to that effect, Case C?4/94 *BLP Group* [1995] ECR I?983, paragraph 24).

48 With regard to the scope of that exemption, the Court has held that transactions in shares and other securities are transactions on the market in marketable securities and that trade in securities involves acts which alter the legal and financial situation as between the parties (see, to that effect, Case C?2/95 *SDC* [1997] ECR I?3017, paragraphs 72 and 73). The words 'transactions … in securities' within the meaning of Article 13B(d)(5) of the Sixth Directive refer, therefore, to transactions which are liable to create, alter or extinguish parties' rights and obligations in respect of securities (Case C?235/00 *CSC Financial Services* [2001] ECR I?10237, paragraph 33).

49 It follows that administrative, material or technical services and activities involving the supply of financial information which do not alter the legal and financial position of the parties are not covered by the exemption laid down in Article 13B(d)(5) of the Sixth Directive (see *SDC*, paragraph 66, and *CSC Financial Services*, paragraphs 28 and 30).

50 By contrast, it is clear that a sale of shares changes the legal and financial position of the parties to the transaction. That transaction is therefore, in so far as it comes within the scope of VAT, covered by the exemption laid down in Article 13B(d)(5) of the Sixth Directive and Article 135(1)(f) of Directive 2006/112.

51 That interpretation is supported by the Court's settled case-law, which states that among the transactions which do come within the scope of the Sixth Directive, but are exempted from VAT under Article 13B(d)(5) of that directive, are transactions in shares, interests in companies or associations, debentures and other securities that consist in obtaining income on a continuing basis from activities which go beyond the compass of the simple acquisition and sale of securities (see, inter alia, *Kretztechnik*, paragraph 20). As has been stated in paragraph 31 of this judgment, that also applies to transactions carried out as part of a commercial share-dealing activity or in order to secure a direct or indirect involvement in the management of the companies in which the holding has been acquired, or where they constitute the direct, permanent and necessary extension of the taxable activity (see, inter alia, *Harnas & Helm*, paragraph 16 and the case-law there cited, and *EDM*, paragraph 59).

52 In the present case, the sale of shares by SKF is more than a mere sale of securities because it constitutes an involvement by SKF in the management of the subsidiary and the controlled company. Moreover, it is apparent that the sale of shares at issue in the main proceedings is also directly linked to and necessary for SKF's taxable economic activity. It follows that that transaction is exempt from VAT pursuant to both Article 13B(d)(5) of the Sixth Directive and Article 135(1)(f) of Directive 2006/112.

53 Consequently, the answer to the second question is that a disposal of shares such as that at issue in the main proceedings must be exempted from VAT pursuant to both Article 13B(d)(5) of the Sixth Directive and Article 135(1)(f) of Directive 2006/112.

The third question

54 By its third question, the referring court asks, in essence, whether there is a right to deduct input VAT, pursuant to Article 17(1) and (2) of the Sixth Directive, in the version resulting from

Article 28f(1) thereof, and Article 168 of Directive 2006/112, on services required for a disposal of shares, on the ground that the costs of those services form part of the taxable person's general costs.

55 First, it should be recalled that the right of deduction provided for in Articles 17 to 20 of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. The right to deduct is exercisable immediately in respect of all the taxes charged on input transactions (see, inter alia, *Kretztechnik*, paragraph 33; Case C?437/06 *Securenta* [2008] ECR I?1597, paragraph 24; and Case C?102/08 *SALIXGrundstücks-Vermietungsgesellschaft* [2009] ECR I?0000, paragraph 70).

56 The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see, inter alia, Case C?137/02 *Faxworld* [2004] ECR I?5547, paragraph 37; *Investrand*, paragraph 22; *Securenta*, paragraph 25; and *SALIX Grundstücks-Vermietungsgesellschaft*, paragraph 71).

57 According to settled case-law, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct is, in principle, necessary before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement (see Case C?98/98 *Midland Bank* [2000] ECR I?4177, paragraph 24; *Abbey National*, paragraph 26; and *Investrand*, paragraph 23). The right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct (see *Cibo Participations*, paragraph 31; *Kretztechnik*, paragraph 35; *Investrand*, paragraph 23; and *Securenta*, paragraph 27).

58 It is, however, also accepted that a taxable person has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole (see, inter alia, *Midland Bank*, paragraphs 23 and 31; *Abbey National*, paragraph 35; *Kretztechnik*, paragraph 36; and *Investrand*, paragraph 24).

59 On the other hand, where goods or services acquired by a taxable person are used for purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted (see, to that effect, Case C?184/04 *Uudenkaupungin kaupunki* [2006] ECR I?3039, paragraph 24; Case C?72/05 *Wollny* [2006] ECR I?8297, paragraph 20; and Case C?515/07 *Vereniging Noordelijke Land- en Tuinbouw Organisatie* [2009] ECR I?0000, paragraph 28).

60 It follows that whether there is a right to deduct is determined by the nature of the output transactions to which the input transactions are assigned. Accordingly, there is a right to deduct when the input transaction subject to VAT has a direct and immediate link with one or more output transactions giving rise to the right to deduct. If that is not the case, it is necessary to examine whether the costs incurred to acquire the input goods or services are part of the general costs linked to the taxable person's overall economic activity. In either case, whether there is a direct and immediate link will depend on whether the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities.

61 In the present case, the referring court describes the costs linked to the services acquired by SKF, first, as ‘directly attributable’ to the disposal of shares and, second, as forming part of the general costs associated with SKF’s overall economic activities.

62 In that regard, it must be held that it is not possible from the case-file submitted to the Court to determine whether those costs have a direct and immediate link, within the meaning of the case-law cited in paragraphs 57 and 58 of this judgment, with the envisaged share disposals or with SKF’s overall economic activity, given that, according to the referring court, the purpose of those transactions was to secure funds to finance other activities of the group. In order to establish whether there is such a direct and immediate link, it is necessary to ascertain whether the costs incurred are likely to be incorporated in the prices of the shares which SKF intends to sell or whether they are only among the cost components of SKF’s products.

63 However, in proceedings brought under Article 234 EC, since the Court has no jurisdiction to assess or characterise the factual circumstances which gave rise to the questions referred for a preliminary ruling, it is for the referring court to apply the direct and immediate-link test to the facts of the case in the main proceedings and to take account of all the circumstances surrounding the transactions at issue (see, to that effect, *Midland Bank*, paragraph 25).

64 In order to give a useful answer to the referring court, it must be recalled that the Court has held, on numerous occasions, that there is a right to deduct VAT paid on consultancy services used for the purposes of various financial transactions, on the ground that those services were directly attributable to the economic activities of the taxable persons (see, inter alia, *Midland Bank*, paragraph 31; *Abbey National*, paragraphs 35 and 36; *Cibo Participations*, paragraphs 33 and 35; *Kretztechnik*, paragraph 36; and *Securenta*, paragraphs 29 and 31).

65 Admittedly, the output transactions in shares in the cases which led to the abovementioned judgments, unlike those in the main proceedings in the present case, were outside the scope of VAT. However, as is clear from the case-law cited in paragraphs 28 and 30 of this judgment, the main factor distinguishing the legal classification of those transactions from that of transactions which come within the scope of VAT but are exempt from it is whether the company which is liable to the tax is or is not involved in the management of the companies in which a shareholding has been taken.

66 However, if the right to deduct input VAT paid on consultancy costs relating to a disposal of shares which is exempted because of involvement in the management of the company whose shares are sold was not allowed, and if the right to deduct input VAT in respect of such costs relating to a disposal which is outside the scope of VAT was allowed on the ground that those costs constitute general costs of the taxable person, that would amount to treating objectively similar transactions differently for tax purposes, and would be an infringement of the principle of fiscal neutrality.

67 In that regard, the Court has ruled that the principle of fiscal neutrality, which is a fundamental principle of the common system of VAT, precludes treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes (see, inter alia, Case C?498/03 *Kingscrest Associates and Montecello* [2005] ECR I?4427, paragraph 41; Case C?246/04 *Turn- und Sportunion Waldburg* [2006] ECR I?589, paragraph 33; and Case C?409/04 *Teleos and Others* [2007] ECR I?7797, paragraph 59) and, further, precludes economic operators who carry out the same activities from being treated differently as far as the levying of VAT is concerned (see, inter alia, Case C?216/97 *Gregg* [1999] ECR I?4947, paragraph 20, and Case C?288/07 *Isleof Wight Council and Others* [2008] ECR I?7203, paragraph 42).

68 It follows that, if the consultancy costs relating to disposals of shareholdings are considered to form part of the taxable person's general costs in cases where the disposal itself is outside the scope of VAT, the same tax treatment must be allowed if the disposal is classified as an exempted transaction.

69 That interpretation is borne out by the purpose of the common system introduced by the Sixth Directive, which is, in particular, to secure equal treatment for taxable persons (see, inter alia, Case C?281/91 *Muys' en De Winter's Bouw- en Aannemingsbedrijf* [1993] ECR I?5405, paragraph 14). That principle would be disregarded if the costs incurred by a parent company managing a group of companies in connection with a sale of shares which is part of its economic activity were to be taxable, while a holding company which carries out the same transaction outside the scope of VAT would be entitled to deduct VAT paid on the same costs by reason of the fact that those costs form part of the general costs of its overall economic activity.

70 Any other interpretation would burden the trader with the cost of VAT in the course of his economic activity without giving him the possibility of deducting it (see, to that effect, Joined Cases C?110/98 to C?147/98 *Gabalfrisa andOthers* [2000] ECR I?1577, paragraph 45, and *Abbey National*, paragraph 35).

71 In the case in the main proceedings, while it is admittedly true, as is correctly argued by the Skatteverket and by the Swedish, German and United Kingdom Governments, that a disposal of shares which is exempt from VAT does not give rise to a right to deduct, the fact remains that that interpretation holds true only if a direct and immediate link is established between the input services and the exempted disposal of shares as an output transaction. If, on the other hand, there is no such link and the cost of the input transactions is incorporated in the prices of SKF's products, the right to deduct VAT charged on the input services should be allowed.

72 It must, lastly, be stated that there is a right to deduct input VAT in respect of services carried out in connection with financial transactions if the capital acquired by means of those transactions is used in connection with the economic activities of the person concerned. Furthermore, the costs associated with input services have a direct and immediate link to the taxable person's economic activities in circumstances where they are solely attributable to downstream economic activities and consequently are among only the cost components of transactions within the scope of those activities (see *Securenta*, paragraphs 28 and 29).

73 It follows from the foregoing that the answer to the third question is that there is a right to deduct input VAT paid on services supplied for the purposes of a disposal of shares, under Article 17(1) and (2) of the Sixth Directive, in the version resulting from Article 28f(1) thereof, and Article 168 of Directive 2006/112, if there is a direct and immediate link between the costs associated with the input services and the overall economic activities of the taxable person. It is for the referring court to take account of all the circumstances surrounding the transactions at issue in the main proceedings and to determine whether the costs incurred are likely to be incorporated in the price of the shares sold or whether they are among only the cost components of transactions within the scope of the taxable person's economic activities.

The fourth question

74 By its fourth question, the referring court asks, in essence, whether the answers to the preceding questions might be affected by the fact that the disposal of shares is carried out by way of several successive transactions.

75 In that regard, it is clear from the Court's case-law that an economic activity within the

meaning of the Sixth Directive need not consist of a single act but may consist of a series of consecutive acts (see Case 268/83 *Rompelman* [1985] ECR 655, paragraph 22, and Case C?32/03 *Fini H* [2005] ECR I?1599, paragraph 21).

76 Moreover, as has been correctly observed by the United Kingdom Government, to treat differently transactions which are objectively similar would be contrary to the principles of tax neutrality, as stated in paragraph 67 of this judgment, and of legal certainty, principles which are inherent in the common system of VAT.

77 As regards the principle of legal certainty, the Court has stated on numerous occasions that Community legislation must be certain and its application foreseeable by those subject to it (see, inter alia, Case C?301/97 *Netherlands* v *Council* [2001] ECR I?8853, paragraph 43, and Case C?255/02 *Halifax and Others* [2006] ECR I?1609, paragraph 72). That requirement of legal certainty must be observed all the more strictly in the case of rules which are liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which those rules impose on them (see *Teleos and Others*, paragraph 48, and *Isle of Wight Council and Others*, paragraph 47).

78 It follows that the tax treatment of a disposal of shares must be based on the objective characteristics of the transaction at issue and cannot vary according to whether the transaction is carried out in one or several stages.

79 The answer to the fourth question is therefore that the answers to the preceding questions are not affected by the fact that the disposal of shares is carried out by way of several successive transactions.

Costs

80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Articles 2(1) and 4(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, and Articles 2(1) and 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, where a parent company disposes of all the shares in a wholly-owned subsidiary and of its remaining shareholding in a controlled company which was previously wholly owned by it, and where it has supplied to those companies services that are subject to value added tax, that disposal is an economic activity coming within the scope of those directives. However, in so far as the disposal of shares is equivalent to the transfer of a totality of assets or part thereof of an undertaking, within the meaning of Article 5(8) of Sixth Directive 77/388, as amended by Directive 95/7, or the first paragraph of Article 19 of Directive 2006/112, and where the Member State concerned has chosen to exercise the option provided for by those provisions, that transaction does not constitute an economic activity subject to value added tax.**

2. **A disposal of shares such as that at issue in the main proceedings must be exempted from value added tax pursuant to both Article 13B(d)(5) of Sixth Directive 77/388, as amended by Directive 95/7, and Article 135(1)(f) of Directive 2006/112.**

3. **There is a right to deduct input value added tax paid on services supplied for the purposes of a disposal of shares, under Article 17(1) and (2) of Sixth Directive 77/338, as amended by Directive 95/7, and Article 168 of Directive 2006/112, if there is a direct and immediate link between the costs associated with the input services and the overall economic activities of the taxable person. It is for the referring court to take account of all the circumstances surrounding the transactions at issue in the main proceedings and to determine whether the costs incurred are likely to be incorporated in the price of the shares sold or whether they are among only the cost components of transactions within the scope of the taxable person's economic activities.**

4. **The answers to the preceding questions are not affected by the fact that the disposal of shares is carried out by way of several successive transactions.**

[Signatures]

* Language of the case: Swedish.