JUDGMENT OF THE COURT (Second Chamber)

16 July 2015 (*)

(Reference for a preliminary ruling — VAT — Sixth Council Directive 77/388/EEC — Article 17 — Right to deduction — Partial deduction — VAT paid by holding companies for the acquisition of capital invested in their subsidiaries — Services supplied to subsidiaries — Subsidiaries constituted in the form of partnerships — Article 4 — Establishment of a group of persons capable of being regarded as a single taxable person — Conditions — Need for a relationship of subordination — Direct effect)

In Joined Cases C?108/14 and C?109/14,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Germany), made by decision of 11 December 2013, received at the Court on 6 March 2014, in the proceedings

Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG

v

Finanzamt Nordenham (C?108/14),

and

Finanzamt Hamburg-Mitte

v

Marenave Schiffahrts AG (C?109/14),

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot (Rapporteur), A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos, Judges,

Advocate General: P. Mengozzi,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 7 January 2015,

after considering the observations submitted on behalf of:

– Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG, by M. Hertwig and G. Jorewitz, Steuerberaterinnen, and by C. Hensell, Rechtsanwalt,

– Marenave Schiffahrts AG, by A. Fresh, Prozessbevollmächtigter,

– the German Government, by T. Henze and K. Petersen, acting as Agents,

– Ireland, by E. Creedon and J. Quaney, and by A. Joyce, acting as Agents, and by N.J.

Travers, Barrister,

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the Polish Government, by B. Majczyna and A. Kramarczyk-Sza?adzi?ska, acting as Agents,

– the United Kingdom Government, by V. Kaye, acting as Agent, and by O. Thomas, Barrister,

– the European Commission, by M. Wasmeier and L. Lozano Palacios, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 March 2015,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Articles 4 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 2006/69/EC of 24 July 2006 (OJ 2006 L 221, p. 9) (‘the Sixth Directive’).

2 The requests have been made in two sets of proceedings, first, between Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG (‘Larentia + Minerva’) and the Finanzamt Nordenham (Tax Office, Nordenham, Germany) (C?108/14) and, second, between the Finanzamt Hamburg-Mitte (Tax Office, Hamburg-Centre, Germany) and Marenave Schiffahrts AG (‘Marenave’) (C?109/14), concerning the conditions for deduction of value added tax (‘VAT’) which those holding companies paid for the procurement of capital for the acquisition of a shareholding in subsidiaries constituted in the form of partnerships and to which it later made supplies subject to VAT.

Legal context

EU law

3 Article 4 of the Sixth Directive provides:

‘(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.

…

(4) The use of the word “independently” in paragraph 1 shall exclude employed and other persons from the tax in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

Subject to the consultations provided for in Article 29, each Member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State, exercising the option provided for in the second subparagraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.

…'

4 According to Article 17 of the Sixth Directive:

'(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) value added tax 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;

…

(5) As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible, only such proportion of the value added tax shall be deductible as is attributable to the former transactions.

This proportion shall be determined, in accordance with Article 19, for all the transactions carried out by the taxable person.

However, the Member States may decide to:

(a) authorise the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) require the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

(c) authorise or require the taxable person to make the deduction on the basis of the use made of all or part of the goods and services;

(d) authorise of compel the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph, in respect of all goods and services used for all transactions referred to therein;

(e) provide that where the [VAT] which is not deductible by the taxable person is insignificant it shall be treated as nil.

…'

German law

5 According to Paragraph 2 of the Law of 2005 on turnover tax (Umsatzsteuergesetz 2005, BGBl. I, p. 386:

‘(1) A trader is any person who independently carries out a commercial or professional activity. An undertaking comprises the whole of a trader’s commercial or professional activity. An “industrial, commercial or occupational activity” shall mean any permanent activity performed for the purpose of obtaining income, even where there is no intention to make a profit or a group of persons carries out its activities only in relation to its members.

(2) A commercial or professional activity is not exercised independently:

(1) if natural persons are, individually or as a group, integrated in an undertaking so that they are required to follow the instructions of the trader,

(2) if, in the light of the overall actual circumstances, a legal person is integrated in financial, economic or organisational terms into the undertaking of the controlling company (fiscal unity). The effects of fiscal unity are limited to internal supplies between the branches of the undertaking established in the country. Those branches must be treated as a single undertaking. If the management of the controlling company is situated abroad, the most economically important branch of the undertaking in the country shall be treated as the trader.

…’

6 Under Paragraph 15 of that law:

‘(1) A trader may deduct the following forms of input tax:

(1) tax lawfully payable on supplies and other services provided by another trader to meet the requirements of his undertaking …

(2) There shall be no deduction of tax in respect of the supply, importation or intra-Community acquisition of goods, or in respect of supplies of services, which the trader uses for the purposes of the following transactions:

1. exempt transactions;

…

(3) The exclusion of the deduction referred to in Paragraph 15(2) shall not apply where the transactions:

(1) in the cases referred to in Paragraph 15(2)(1),

(a) are exempt in accordance with Paragraph 4(1) to (7), Paragraph 25(2) or the provisions referred to in Paragraph 26(5), …

…

(4) If a trader uses any goods supplied, imported or acquired in the Community only in part to perform transactions in respect of which there is no right to deduction, the part of the input tax which is economically attributable to those transactions shall not be deductible. The trader may make an appropriate estimate of the non-deductible amounts. Determination of the non-deductible part of the tax in accordance with the ratio between the turnover in respect of which the right to deduct is excluded and the turnover in respect of which there is a right of deduction shall be permissible only if no other economic allocation is possible …’

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

Case C?108/14

7 Larentia + Minerva holds, as a limited partner, 98% of the shares in two subsidiaries constituted in the form of limited partnerships with a limited liability company as general partner (GmbH & Co. KG). It also provides those subsidiaries, as a ‘management holding company’, with administrative and business services for remuneration.

8 In respect of those services subject to VAT, Larentia + Minerva deducted in full the input VAT paid in procuring capital from a third party which was used to fund the acquisition of its shareholdings in the subsidiaries and its services, in particular administrative and consultancy services.

9 The Finanzamt Nordenham allowed that deduction only in part, since the mere holding of shares in the subsidiaries does not, according to that body, give a right to deduction. The amendment notice of 24 September 2007 relating to VAT payable for 2005 was contested by Larentia + Minerva before the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony, Germany), which, by judgment of 12 May 2011, dismissed its action. Larentia + Minerva brought an appeal on a point of law before the Bundesfinanzhof (Federal Finance Court) against that judgment.

10 The referring courts seeks clarification, first, as to the method for calculating the input VAT deduction where that deduction may be only partial and, secondly, as to the scope of Article 4(4) of the Sixth Directive relating to the ‘VAT group’, relied on by Larentia + Minerva. With regard to the latter point, that court questions in particular whether the national law is compatible with that provision where it excludes partnerships from the benefit of such a provision and requires a relationship of subordination of the subsidiaries in relation to the controlling company.

11 In those circumstances, the Bundesfinanzhof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Which calculation method is to be used to calculate a holding company’s (pro rata) input tax deduction in respect of input supplies connected with the procurement of capital for the purchase of shares in subsidiaries, if that holding company subsequently (as intended from the outset) provides various taxable services to those subsidiaries?

(2) Does the provision on the consolidation of several persons into a single taxable person in the second subparagraph of Article 4(4) of the Sixth Directive … preclude national legislation under which (first) only a legal person, but not a partnership, can be integrated into the undertaking of another taxable person (a so-called “Organträger” (controlling company)) and which (secondly) requires that this legal person “is integrated into the undertaking of the Organträger” in financial, economic and organisational terms (in the sense of a relationship of control and subordination)?

(3) If the previous question is answered in the affirmative: can a taxable person rely directly on the second subparagraph of Article 4(4) of the Sixth Directive …?’

Case C?109/14

12 Marenave increased its capital in 2006 and the issue costs connected with that increase resulted in the payment of VAT amounting to EUR 373 347.57.

13 In the same year that company, as a holding company, acquired shares in four ‘limited shipping partnerships’, in the business management of which it was involved for remuneration. From the VAT payable in respect of the revenue from those management activities, it deducted, inter alia, the entire sum of EUR 373 347.57 as input VAT.

14 By decision of 15 January 2009, the Finanzamt Hamburg-Mitte did not allow the deduction corresponding to that amount. By judgment of 10 December 2012, the Finanzgericht Hamburg-Mitte (Finance Court, Hamburg-Mitte) upheld the action brought by Marenave against that decision. The Finanzamt Hamburg-Mitte lodged an appeal on a point of law with the Bundesfinanzhof against that judgment.

15 The referring court decided to stay the proceedings and to refer the same questions as those set out in paragraph 11 of the present judgment to the Court for a preliminary ruling.

16 By order of the President of the Court of 26 March 2014, Cases C?108/14 and C?109/14 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

The first question

17 By its first question, the referring court, which starts from the premiss that deduction of input VAT is permitted only to the extent that the expenses incurred by the taxable person may be attributed only in part to his economic activity, has doubts concerning the methods of calculation under which input VAT thus paid by a holding company for the acquisition of capital intended for the purchase of shares must be apportioned between the economic and non-economic activities of that company.

18 In that regard, it should be noted, in the first place, that a holding company whose sole purpose is to acquire shares in other undertakings and which does not involve itself directly or indirectly in the management of those undertakings, without prejudice to its rights as a shareholder, does not have either the status of taxable person, within the meaning of Article 4 of the Sixth Directive, or the right to deduct tax under Article 17 of that directive (see, inter alia, judgments in *Cibo Participations*, C?16/00, EU:C:2001:495, paragraph 18, and *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 31).

19 The mere acquisition and holding of shares in a company is not to be regarded as an economic activity, within the meaning of the Sixth Directive, conferring on the holder the status of a taxable person. The mere acquisition of financial holdings in other undertakings does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis because any dividend yielded by that holding is merely the result of ownership of the property (see, inter alia, judgments in *Cibo Participations*, C?16/00, EU:C:2001:495 paragraph 19, and *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 32).

20 It is otherwise where the holding is accompanied by direct or indirect involvement in the management of the companies in which the holding has been acquired, without prejudice to the rights held by the holding company as shareholder (see, inter alia, judgments in *Cibo Participations*, C?16/00, EU:C:2001:495, paragraph 20, and *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 33).

21 The involvement of a holding company in the management of companies in which it has acquired a shareholding constitutes an economic activity within the meaning of Article 4(2) of the

Sixth Directive where it entails carrying out transactions which are subject to VAT by virtue of Article 2 of that directive, such as the supply by a holding company to its subsidiaries of administrative, financial, commercial and technical services (see, inter alia, judgments in *Cibo Participations*, C?16/00, EU:C:2001:495, paragraph 22, and *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 34).

22 In the second place, it should also be noted that the right to deduct provided for in Article 17 et seq. 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 transactions relating to inputs. Any limitation of the right to deduct VAT affects the level of the tax burden and must be applied in a similar manner in all the Member States. Consequently, derogations are permitted only in the cases expressly provided for in the Sixth Directive (see, inter alia, judgment in *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 35).

23 For VAT to be deductible, the input transactions must have a direct and immediate link with the output transactions giving rise to a right of deduction. Thus, 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, in particular, judgments in *Cibo Participations*, C?16/00, EU:C:2001:495 paragraph 31, and *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 36).

24 However, a taxable person also 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, judgments in *Cibo Participations*, C?16/00, EU:C:2001:495, paragraph 33, and *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 37).

25 In those circumstances, as the Advocate General stated in point 39 of his Opinion, the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity, as was noted in paragraph 21 of the present judgment, must be regarded as attributed to that company’s economic activity and the VAT paid on that expenditure gives rise to the right to full deduction, pursuant to Article 17(2) of the Sixth Directive.

26 The deduction system provided for in Article 17(5) of the Sixth Directive covers only cases in which the goods and services are used by a taxable person to carry out both economic transactions which give rise to a right to deduct and those which do not, that is to say, goods and services for mixed use. Member States may use one of the methods of deduction referred to in the third subparagraph of Article 17(5) only for those goods and services (judgment in *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 40).

27 The rules in Article 17(5) of the Sixth Directive concern the input tax chargeable on expenses relating exclusively to economic transactions. The determination of the methods and criteria for apportioning input VAT between economic and non-economic activities within the meaning of the Sixth Directive is in the discretion of the Member States which, when exercising that discretion, must have regard to the aims and broad logic of the directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to those two types of activity (judgments in *Securenta*, C?437/06, EU:C:2008:166, paragraphs 33 and 39, and *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraph 42).

28 In this case, it is apparent from the information provided by the referring court that, in the main proceedings, the holding companies are subject to VAT in respect of the economic activity consisting of the supplies which they provide for remuneration to their subsidiaries. Therefore, the VAT paid on the costs of acquiring those services should be fully deducted, unless the input economic operations are exempt from VAT under the Sixth Directive, in which case the right to deduct will be based on the method laid down by Article 17(5) of that directive.

29 It is therefore only in the event that the referring court finds that the shareholdings resulting from the capital transactions carried out by the holding companies at issue in the main proceedings were attributed in part to other subsidiaries in the management of which those holding companies were not involved that, as is envisaged in the referring court's first question, the VAT paid on the costs of those operations could be deducted only in part. In that case, the mere holding of their shares in those subsidiaries could not be considered to be an economic activity of those holding companies and it would be necessary therefore to apportion the input VAT between that which relates to economic activities and that which relates to the non-economic activities of those holding companies.

30 In that context, the Member States have the right to apply, where appropriate, an investment formula or a transaction formula or any other appropriate formula, without being required to restrict themselves to only one of those methods (judgment in *Securenta*, C?437/06, EU:C:2008:166, paragraph 38).

31 Therefore, it is solely for the national authorities, under the supervision of the courts, to determine the criteria for the distinction between economic and non-economic activities reflecting the part of the input expenditure actually to be attributed, respectively, to those two types of activity, having regard to the aims and broad logic of the Sixth Directive (judgment in *Securenta*, C?437/06, EU:C:2008:166, paragraph 39).

32 In those circumstances, and for the same reasons as those set out by the Advocate General in points 20 and 21 of his Opinion, it is not for the Court to substitute itself either for the EU legislature or for the national authorities in order to determine a general method for calculating the proportion of economic activities to non-economic activities.

33 In view of all the foregoing considerations, the answer to the first question is that Article 17(2) and (5) of the Sixth Directive must be interpreted as meaning that:

– the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity must be regarded as belonging to its general expenditure and the VAT paid on that expenditure must, in principle, be deducted in full, unless certain input economic transactions are exempt from VAT under the Sixth Directive, in which case the right to deduct should have effect only in accordance with the procedures laid down in Article 17(5) of that directive;

– the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the management only of some of those subsidiaries and which, with regard to the others, does not, by contrast, carry out an economic activity must be regarded as only partially belonging to its general expenditure, so that the VAT paid on that expenditure may be deducted only in proportion to that which is inherent to the economic activity, according to the criteria for apportioning defined by the Member States, which when exercising that power, must have regard to the aims and broad logic of the Sixth Directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to economic and to non-economic activity, which it is for the

national courts to establish.

The second question

34 By its second question, the referring court asks, in essence, whether the second subparagraph of Article 4(4) of the Sixth Directive must be interpreted as precluding legislation of a Member State from reserving the right to form a group of persons which may be regarded as a sole taxable person for VAT purposes ('VAT group'), as provided for in that provision, solely to entities with legal personality and linked to the controlling company of that group in a relationship of subordination.

35 The referring court questions the scope of that provision to the extent that the benefit thereof was invoked before it. As the Advocate General stated in point 55 of his Opinion, contrary to the doubts expressed in that regard by Ireland in its written observations, the answer to that question is likely to be of relevance to the solution of the disputes in the main proceedings. The status of VAT group conferred on the holding company and its subsidiaries could result in that group, in respect of transactions effected for remuneration between the subsidiaries and third-party undertakings, being eligible to the benefit of full deduction of input VAT linked to capital transactions carried out by the holding company.

36 As regards the answer to be given to the second question, it should be noted that the Court, when considering the interpretation of the first paragraph of Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), the wording of which reproduces that of the second subparagraph of Article 4(4) of the Sixth Directive, has held that those provisions, which allow each Member State to treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links, do not make the application thereof subject to other conditions (see, to that effect, judgment in *Commission* v *Ireland*, C?85/11, EU:C:2013:217, paragraph 36).

37 Therefore, it must be observed, in the first place, that, unlike other provisions of the Sixth Directive, in particular Articles 28a and 28b thereof, which expressly refer to 'legal persons', the second subparagraph of Article 4(4) of the Sixth Directive, which refers to 'persons', does not exclude, of itself, from its scope of application entities which, like the limited partnerships at issue in the main proceedings, do not have legal personality.

38 Nor does the second subparagraph of Article 4(4) of the Sixth Directive expressly provide for the possibility for Member States to impose other conditions on economic operators in order to form a VAT group (see, to that effect, judgment in *Commission* v *Sweden*, C?480/10, EU:C:2013:263, paragraph 35), and, in particular, the possibility for Member States to insist that only entities having legal personality may be members of a VAT group.

39 It is therefore necessary to establish whether the margin of discretion enjoyed by the Member States, which have the option to allow the formation of VAT groups in their territory, allows them to exclude entities which do not have legal personality from the scope of application of Article 4(4) of the Sixth Directive.

40 It is apparent from the Commission Proposal (COM(73) 950 final) which resulted in the adoption of the Sixth Directive that the EU legislature, by adopting the second subparagraph of Article 4(4) of that directive, intended, either in the interests of simplifying administration or with a view to combating abuses such as, for example, the splitting-up of one undertaking among several taxable persons so that each might benefit from a special scheme, to ensure that Member States would not be obliged to treat as taxable persons those whose 'independence' is purely a legal

technicality (see, to that effect, judgment in *Commission* v *Sweden*, C?480/10, EU:C:2013:263, paragraph 37).

41 In that regard, the Court has already held that, for the application of the first paragraph of Article 11 of Directive 2006/112, the Member States, in the context of their margin of discretion, were entitled to make the application of the VAT group scheme subject to certain restrictions provided that they fall within the objectives of that directive to prevent abusive practices and behaviour or to combat tax evasion or tax avoidance (see, to that effect, inter alia, judgment in *Commission* v *Sweden*, C?480/10, EU:C:2013:263, paragraphs 38 and 39).

42 However, although the Sixth Directive did not contain, before the entry into force of the third subparagraph of Article 4(4), inserted by Directive 2006/69, express provisions similar to the second paragraph of Article 11 of Directive 2006/112, that fact does not deprive the Member States of the possibility of adopting, before the entry into force thereof, equivalent effective measures, since the prevention, by the Member States, of tax evasion and tax avoidance is an objective recognised and encouraged by the Sixth Directive, even in the absence of express powers granted by the EU legislature (see, to that effect, inter alia, judgment in *Halifax and Others*, C?255/02, EU:C:2006:121, paragraphs 70 and 71).

43 It is, however, for the referring court to determine whether the exclusion of entities lacking legal personality from the benefit of the VAT group scheme, as provided for in the national law applicable to the cases in the main proceedings, constitutes a measure which is necessary and appropriate for attaining objectives of that kind which seek to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance.

44 It follows, in the second place, from the wording itself of the second subparagraph of Article 4(4) of the Sixth Directive that each Member State may treat as a single taxable person persons established in their territory who are legally independent, but closely bound to one another by financial, economic and organisational links. The fact that the nature of the relationship binding those persons is merely one of ‘closeness’ may, in the absence of any other requirement, not therefore lead to the conclusion that the EU legislature intended to reserve the benefit of the VAT group scheme only to entities in a relationship of subordination with the controlling company of the group of undertakings considered.

45 Although the existence of such a relationship of subordination allows it to be presumed that relations between the persons at issue are close, it cannot however, in principle, be regarded as a condition which is necessary for the constitution of a VAT group, as was noted by the Advocate General in point 99 of his Opinion. It could be so regarded only in exceptional circumstances where such a condition is, in a given national context, a measure which is both necessary and appropriate for attaining the objectives seeking to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance.

46 In light of the above considerations, the answer to the second question is that the second subparagraph of Article 4(4) of the Sixth Directive must be interpreted as precluding national legislation which reserves the right to form a VAT group, as laid down by that provision, solely to entities with legal personality and linked to the controlling company of that group in a relationship of subordination, except where those two requirements constitute measures which are appropriate and necessary in order to achieve the objectives seeking to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance, which it is for the referring court to determine.

The third question

47 By its third question, the referring court asks, in essence, whether Article 4(4) of the Sixth Directive may be considered to have direct effect allowing taxable persons to claim the benefit thereof against their Member State in the event that that State’s legislation is not compatible with that provision and cannot be interpreted in a way compatible with it.

48 In that regard, it should be noted that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see, inter alia, judgment in *GMAC UK*, C?589/12, EU:C:2014:2131, paragraph 29).

49 A provision of EU law is unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States (see, inter alia, judgment in *GMAC UK*, C?589/12, EU:C:2014:2131, paragraph 30).

50 As stated by the Advocate General in point 112 of his Opinion, the condition laid down in Article 4(4) of the Sixth Directive that the formation of a VAT group is subject to the existence of close financial, economic and organisational links between the persons concerned needs to be specified at national level. That article is thus conditional inasmuch as it involves the application of national provisions determining the actual scope of such links.

51 As a consequence, Article 4(4) of the Sixth Directive does not satisfy the conditions necessary for it to produce direct effect.

52 Therefore, the answer to the third question is that Article 4(4) of the Sixth Directive may not be considered to have direct effect allowing taxable persons to claim the benefit thereof against their Member State in the event that that State’s legislation is not compatible with that provision and cannot be interpreted in a way compatible with it.

Costs

53 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 (Second Chamber) hereby rules:

1. **Article 17(2) and (5) 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 2006/69/EC of 24 July 2006, must be interpreted as meaning that:**

– **the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity must be regarded as belonging to its general expenditure and the value added tax paid on that expenditure must, in principle, be deducted in full, unless certain input economic transactions are exempt from value added tax under Sixth Directive 77/388, as amended by Directive 2006/69, in which case the right to deduct should have effect only in accordance with the procedures laid down in Article 17(5) of that directive;**

– **the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the management only of some of those subsidiaries and which, with regard to the others, does not, by contrast, carry out an economic activity must be regarded as only partially belonging to its general expenditure, so that the value added tax paid on that expenditure may be deducted only in proportion to that which is inherent to the economic activity, according to the criteria for apportioning defined by the Member States, which when exercising that power, must have regard to the aims and broad logic of the Sixth Directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to economic and to non-economic activity, which it is for the national courts to establish.**

2. **The second subparagraph of Article 4(4) of Sixth Directive 77/388, as amended by Directive 2006/69, must be interpreted as precluding national legislation which reserves the right to form a value added tax group, as provided for in those provisions, solely to entities with legal personality and linked to the controlling company of that group in a relationship of subordination, except where those two requirements constitute measures which are appropriate and necessary in order to achieve the objectives seeking to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance, which it is for the referring court to determine.**

3. **Article 4(4) of Sixth Directive 77/388, as amended by Directive 2006/69, may not be considered to have direct effect allowing taxable persons to claim the benefit thereof against their Member State in the event that that State's legislation is not compatible with that provision and cannot be interpreted in a way compatible with it.**

[Signatures]

* Language of the case: German.