JUDGMENT OF THE COURT (Sixth Chamber)

18 October 2018 (*)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 168 and 173 — Deduction of input tax — Vehicle hire purchase transactions — Goods and services used for both taxable transactions and exempt transactions — Origin and scope of the right to deduct — Proportional deduction)

In Case C?153/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom, made by decision of 22 March 2017, received at the Court on 27 March 2017, in the proceedings

Commissioners for Her Majesty’s Revenue and Customs

v

Volkswagen Financial Services (UK) Ltd,

THE COURT (Sixth Chamber),

composed of E. Regan, President of the Fifth Chamber, acting as President of the Sixth Chamber, C.G. Fernlund (Rapporteur) and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 February 2018,

after considering the observations submitted on behalf of:

– Volkswagen Financial Services (UK) Ltd, by N. Shaw QC, and M. Jones, Barrister, instructed by A. Brown, Solicitor,

– the United Kingdom Government, by S. Brandon, acting as Agent, O. Thomas QC, and A. Mannion, Barrister,

– the European Commission, by N. Gossement and R. Lyal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 May 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 168 and 173 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 VAT Directive’).

2 The request has been made in proceedings between the Commissioners for Her Majesty's Revenue and Customs ('the tax authority') and Volkswagen Financial Services (UK) Ltd ('VWFS') concerning the method applicable for determining the recoverable part of the input value added tax (VAT) incurred by that company in the context of its business consisting inter alia in offering supplies of motor vehicles by hire purchase.

Legal context

European Union law

3 The first and second subparagraphs of Article 1(2) of the VAT Directive provide:

'The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

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 According to Article 135(1)(b) of that directive, Member States are to exempt 'the granting and the negotiation of credit and the management of credit by the person granting it'.

5 Article 168 of that directive provides:

'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;

(b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;

(c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);

(d) the VAT due on transactions treated as intra-Community acquisitions in accordance with Articles 21 and 22;

(e) the VAT due or paid in respect of the importation of goods into that Member State.'

6 Article 173 of that directive provides:

'1. In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170, and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.

The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.

2. Member States may take the following measures:

(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 or require the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph of paragraph 1, 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 is to be treated as nil.'

United Kingdom law

7 The provisions of the VAT Directive in relation to the deduction of input VAT have been implemented in the UK by section 26 of the Value Added Tax Act 1994 and regulations 101 and 102 of the Value Added Tax Regulations 1995. Regulation 101(2)(d) of those regulations provides for the standard method of determining the right to deduction.

8 A derogation from that standard method is laid down in regulation 102 of those regulations, which allows the tax authority to adopt a special method of determining the deductible proportion of input VAT.

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

9 VWFS is a financial company which is wholly owned by Volkswagen Financial Services AG and which is part of the Volkswagen AG Group. That group manufactures and sells motor vehicles under various brands, such as Volkswagen, Audi and Škoda.

10 The finance offered by VWFS is intended solely for the purchase of vehicles of that group's brands.In addition to finance options, that company supports the marketing of those brands' cars by the training of dealers' sales forces.However, the costs associated with that support are generally amortised across VWFS's whole operating budget and are not charged to the other group undertakings which, whilst belonging to the same group of companies, did not accede with VWFS to a group tax scheme for the purposes of VAT.

11 VWFS's business comprises several different sectors, in particular the retail sector. In that sector, that company offers three types of products, to both professionals and individuals, including the hire purchase of motor vehicles. When it concludes a hire purchase agreement, VWFS purchases the vehicle from the dealer and supplies it to the customer, that agreement providing that ownership of the vehicle does not pass to the customer until all payments due under the terms of the agreement have been made.

12 According to the legislation applicable in the United Kingdom, when it concludes such an agreement, VWFS is regarded as the supplier of the vehicle concerned by that agreement, which must inter alia contain a contractual condition that the vehicle is of satisfactory quality. Thus, the service provided by VWFS is not limited to the provision of credit, but extends to the provision of

support in terms of the vehicle itself, such as dealing with complaints regarding its quality.

13 According to the terms of such a hire purchase agreement, the price paid to VWFS in respect of the purchase of the vehicle is equal to the price paid by VWFS to the dealership, without any profit margin. However, when setting the interest rate relating to the ‘finance’ aspect of the transaction, VWFS applies a margin for overheads, a profit margin and an allowance for bad debts to its own cost of financing the vehicle. Thus, according to the accounting system that VWFS uses for that type of transaction, the part of the repayments corresponding to interest is included in the turnover, unlike the part corresponding to the repayment of the purchase price of the vehicle.

14 It is agreed between the parties that whilst it is a single commercial transaction, a hire purchase agreement, as a matter of United Kingdom VAT law, comprises a number of separate supplies, including, on the one hand, a taxable supply of a vehicle, and, on the other, exempt supplies of credit.

15 As regards the input VAT incurred by VWFS on its entire business, some of it is used only for making taxable or exempt supplies and some of it is used for both types of supplies. This latter VAT is described in the United Kingdom as ‘residual’. Specifically, that residual VAT concerns general costs relating to everyday administration, such as those associated with staff training and recruitment, staff meals and drinks, maintenance and enhancement of IT infrastructure, and premises- and stationery-related overheads. In the light of VWFS’s status as a partially exempt trader, the parties disagree on the extent to which VWFS is entitled to deduct that residual VAT.

16 In order to determine the amount of input tax that it could deduct, VWFS agreed a ‘partial exemption special method’ with the tax authority. Under that method, the input tax on costs incurred solely for the making of taxed supplies is deductible, while the tax on costs incurred solely for the making of exempt supplies is not.

17 On 2 February 2007, VWFS wrote to the tax authority to suggest that, in the context of that special method, the residual input VAT be apportioned between its business sectors in particular in proportion to the turnover of each sector, which would however be calculated without taking into account the value of vehicles sold on under hire purchase agreements. A particular methodology would then be applied to quantify the deductible residual VAT for each sector.

18 The dispute between the tax authority and VWFS relates to the extent to which the residual VAT thus allocated to the retail sector must be regarded, according to such a particular methodology, as ‘used or to be used’ by VWFS to make taxable supplies within that sector.

19 In that regard, VWFS suggests relying on the proportion of the number of taxable transactions to the total number of transactions in that sector. According to its methodology, the hire purchase transactions should be regarded as two separate transactions, one of them taxable and the other exempt, and the number of transactions is related not to the number of contracts, but to the number of payments, usually monthly, made under those contracts.

20 For its part, the tax authority submits that each amount of residual VAT allocated to the hire purchase agreements must be apportioned between the taxable and the exempt supplies based on the value of those supplies, but excluding the initial value of the vehicle when it is supplied. Given that the value of the hire purchase transaction is thus largely attributable to the grant of finance, which is an exempt supply, only the portion of the residual VAT relating to the value of the other taxable supplies made under such contracts, such as settlement charges and option to purchase fees, is recoverable.

21 On 16 June 2008, the tax authority issued a notice of assessment in respect of the VAT due

by VWFS, on the basis of its interpretation of the right to deduct. Subsequently, on 30 September 2008, the tax authority issued a decision setting out the basis for its assessment.

22 VWFS challenged that notice of assessment before the First-tier Tribunal (Tax Chamber) (United Kingdom), which upheld that complaint by judgment of 18 August 2011.

23 The tax authority brought an appeal against that judgment before the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom). On 12 November 2012, that court delivered a judgment upholding that appeal.

24 VWFS's appeal before the Court of Appeal ((England & Wales) (Civil Division), United Kingdom) was upheld by the latter, by judgment of 28 July 2015.

25 The referring court, the Supreme Court of the United Kingdom, granted the tax authority permission to appeal on 23 December 2015, and it heard the appeal on 3 November 2016.

26 In those circumstances, the Supreme Court of the United Kingdom decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Where general overhead costs attributed to hire purchase transactions (which consist of exempt supplies of finance and taxable supplies of cars), have been incorporated only into the price of the taxable person's exempt supplies of finance, does the taxable person have a right to deduct any of the input tax on those costs?

(2) What is the proper interpretation of paragraph 31 of [the judgment of 8 June 2000, *Midland Bank* (C?93/98, EU:C:2000:300)], and specifically the statement that overhead costs "are part of the taxable person's general costs and are, as such, components of the price of an undertaking's products"?

In particular:

(a) Should this passage be interpreted to mean that a Member State must always attribute some input tax to every supply in any special method adopted under Article 173(2)(c) of the Directive?

(b) Is this the case even if the factual circumstances are that the overhead costs are not incorporated in the price of taxable supplies made by the undertaking?

(3) Does the fact that the overhead costs have been actually used, at least to some extent, in making taxable supplies of cars,

(a) entail that some proportion of the input tax on those costs must be deductible;

(b) is this the case even if the factual circumstances are that overhead costs are not incorporated in the price of the taxable supplies of cars?

(4) Can it be legitimate in principle to ignore the taxable supplies of cars (or their value) for the purposes of arriving at a special method under Article 173(2)(c) of the Directive?'

Consideration of the questions referred

27 By its four questions, which it is appropriate to consider together, the referring court seeks, in essence, to ascertain whether Article 168 and Article 173(2)(c) of the VAT Directive must be interpreted as meaning that, first, even where the general costs relating to supplies of moveable

goods by hire purchase, such as the supplies at issue in the main proceedings, are passed on not in the amount due by the customer in respect of the supply of the goods concerned, that is to say the taxable part of the transaction, but in the amount of the interest due in respect of the 'finance' part of the transaction, that is to say the exempt part thereof, those general costs must nonetheless be considered, for the purposes of VAT, to be a component of the price of that supply and, second, Member States may apply a method of apportionment which does not take account of the initial value of the goods concerned when they are supplied.

Preliminary observations

28 As a preliminary point, it is appropriate to determine whether, for VAT purposes, the various transactions relating to hire purchase supplies, such as those at issue in the main proceedings, namely the grant of finance and the supply of vehicles, must be treated as distinct transactions which are taxable separately or as single complex transactions, composed of several elements.

29 According to the Court's case-law, where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine whether that operation gives rise, for the purposes of VAT, to two or more distinct supplies or to one single supply (judgment of 18 January 2018, *Stadion Amsterdam*, C?463/16, EU:C:2018:22, paragraph 21 and the case-law cited).

30 The Court has also held, first, that it follows from the second subparagraph of Article 1(2) of the VAT Directive that every transaction must normally be regarded as distinct and independent and, secondly, that a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (see, to that effect, order of 14 April 2016, *Gabarel*, C?555/15, not published, EU:C:2016:272, paragraph 44, and judgment of 4 October 2017, *Federal Express Europe*, C?273/16, EU:C:2017:733, paragraphs 37 and 38 and the case-law cited).

31 There is also a single supply where one or more elements are to be regarded as constituting the principal supply, while other elements are to be regarded, by contrast, as one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied (judgment of 18 January 2018, *Stadion Amsterdam*, C?463/16, EU:C:2018:22, paragraph 23 and the case-law cited).

32 In the context of the cooperation established by Article 267 TFEU, it is for the national courts to determine whether that is the situation in a particular case and to make all definitive findings of fact in that regard (judgment of 10 March 2011, *Bog and Others*, C?497/09, C?499/09, C?501/09 and C?502/09, EU:C:2011:135, paragraph 55 and the case-law cited).

33 Thus, in order to determine whether a commercial transaction constitutes independent services or a single service for the purposes of VAT, it is for the national court to examine the characteristic elements of the transaction concerned, taking into account the economic objective of that transaction and the interests of the recipients thereof (see, to that effect, judgment of 8 December 2016, *Stock '94*, C?208/15, EU:C:2016:936, paragraphs 28 and 29 and the case-law cited).

34 In this case, the referring court takes the view that each car hire purchase agreement consists of several separate supplies, namely, on the one hand, the supply of a vehicle, and, on the other, supplies of credit. In that regard, it must be stated that there is nothing in the order for

reference or the observations submitted to the Court to show that that categorisation was not carried out in accordance with the abovementioned criteria.

35 In particular, as the United Kingdom Government contended, that breakdown of the hire purchase transaction appears to be compatible with the Court's case-law, according to which although the exemptions laid down in Article 135 of the VAT Directive must be interpreted strictly, the fact remains that, in the absence of any precision as to the identity of the lender or the borrower, the expression 'the granting and the negotiation of credit, within the meaning of paragraph 1(b) of that article, cannot refer solely to loans and credit granted by banking and financial institutions.

36 Accordingly, deferred payment of the purchase price of goods, in return for payment of interest, may be regarded as a grant of credit, which constitutes an exempt transaction under that provision, provided that the payment of interest does not constitute part of the consideration obtained for the supply of goods or services, but consideration for the grant of that credit (see, to that effect, judgment of 27 October 1993, *Muys' en De Winter's Bouw- en Aannemingsbedrijf*, C?281/91, EU:C:1993:855, paragraphs 12, 13 and 19).

The method for calculating the deductible proportion of VAT

37 In order to answer the questions referred, as reformulated in paragraph 27 of this judgment, it is necessary to recall the case-law of the Court relating to the origin and scope of the right to deduct VAT.

38 The Court has already held that it is apparent from Article 168 of the VAT Directive that a taxable person is, in principle, entitled to deduct input tax where it is established that the goods and services relied on to give entitlement to that right are used by that taxable person for the purposes of his own taxed transactions, and that, as inputs, those goods or services are supplied by another taxable person (see, to that effect, judgment of 22 June 2016, *Gemeente Woerden*, C?267/15, EU:C:2016:466, paragraphs 34 and 35).

39 According to settled case-law of the Court, that right of taxable persons is a fundamental principle of the common system of VAT established by EU law, so that that right is an integral part of the VAT scheme and in principle may not be limited (see, to that effect, judgment of 22 June 2016, *Gemeente Woerden*, C?267/15, EU:C:2016:466, paragraphs 30 and 31 and the case-law cited).

40 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 complete neutrality of taxation of all economic activities, whatever the purpose or results of those activities, provided that they are themselves subject to VAT (judgment of 22 June 2016, *Gemeente Woerden*, C?267/15, EU:C:2016:466, paragraph 32).

41 In accordance also with the Court's 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 the right to deduct is necessary, in principle, before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement. 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 (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 28 and the case-law cited).

42 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 (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 29 and the case-law cited).

43 In this case, it is apparent from the order for reference that the general costs at issue in the main proceedings have a direct and immediate link with the activities of VWFS as a whole, and not merely with some of them. In that regard, the fact that VWFS decided to include those costs not in the price of the taxable transactions, but solely in the price of the exempt transactions, can have no effect whatsoever on such a finding of fact.

44 Thus, in so far as those general costs were in fact incurred, at least to a certain extent, for the purpose of the supply of vehicles, which are taxed transactions, those costs are, as such, components of the price of those transactions. Accordingly, a right to deduct VAT arises, in principle, in accordance with the considerations set out in paragraphs 38 to 42 of this judgment.

45 So far as concerns the fact that the general costs at issue in the main proceedings are not clearly reflected in the price of the taxed transactions of supplies of vehicles, it should be recalled that the result of those economic transactions is irrelevant for the right to deduct provided that the activity itself is subject to VAT (judgment of 22 June 2016, *Gemeente Woerden*, C?267/15, EU:C:2016:466, paragraph 40 and the case-law cited).

46 As the Court has already held, the right to deduct VAT must be guaranteed, without it being subjected to a criterion relating, inter alia, to the result of the economic activity of the taxable person, in accordance with Article 9(1) of the VAT Directive under which a taxable person 'shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity' (judgment of 5 July 2018, *Marle Participations*, C?320/17, EU:C:2018:537, paragraph 44).

47 Nevertheless, the extent of the right to deduct varies according to the intended use of the goods and services at issue. Whilst, for goods and services intended to be used exclusively for the carrying out of taxable transactions, taxable persons are entitled to deduct all the tax that has been charged on their acquisition or supply, for goods and services intended for a mixed use, it is apparent from Article 173(1) of the VAT Directive that the right to deduct is limited to such proportion of the VAT as is attributable to the transactions in respect of which VAT is deductible that are carried out by means of those goods or services (see, to that effect, judgment of 9 June 2016, *Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft*, C?332/14, EU:C:2016:417, paragraph 25).

48 In this case, given that the general costs allocated to VWFS's retail sector concern goods and services used to effect both transactions giving rise to a right to deduct and transactions not giving rise to a right to deduct, a deductible proportion must be established, in accordance with the relevant provisions of that directive.

49 As a general rule, under the second paragraph of Article 173(1) of the VAT Directive, the deductible proportion is to be determined, in accordance with Articles 174 and 175 of that directive, for all the transactions carried out by the taxable person by reference to turnover.

50 Nevertheless, under Article 173(2)(c) of that directive, Member States may 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.

51 According to the Court’s case-law, Member States may, as a result of that provision, apply, for a given transaction, a method or allocation key other than the turnover-based method, on condition that the method used guarantees a more precise determination of the deductible proportion of the input VAT than that arising from the application of the turnover-based method (judgment of 8 November 2012, *BLC Baumarkt*, C?511/10, EU:C:2012:689, paragraph 24).

52 Thus, any Member State which decides to authorise or compel the taxable person to make the deduction on the basis of the use made of all or part of the goods and services must ensure that the method for calculating the right to deduct makes it possible to ascertain with the greatest possible precision the portion of VAT relating to transactions in respect of which VAT is deductible. The principle of neutrality, which forms an integral part of the common system of VAT, requires that the method by which the deduction is calculated objectively reflects the actual share of the expenditure resulting from the acquisition of mixed use goods and services that may be attributed to transactions in respect of which VAT is deductible (see, to that effect, judgment of 10 July 2014, *Banco Mais*, C?183/13, EU:C:2014:2056, paragraphs 30 and 31).

53 In that regard, the Court has nevertheless specified that the method chosen must not necessarily be the most precise possible, but that, as is apparent from paragraph 51 of this judgment, it must be able to guarantee a more precise result than the result which would arise from the application of the turnover-based allocation key (see, to that effect, judgment of 9 June 2016, *Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft*, C?332/14, EU:C:2016:417, paragraph 33).

54 Admittedly, the Court, in paragraph 33 of the judgment of 10 July 2014, *Banco Mais* (C?183/13, EU:C:2014:2056), held, with respect to a bank carrying out leasing transactions in the automotive sector, that, subject to verification by the national court, while the carrying out by a bank of such transactions may require the use of certain mixed use goods or services, such as buildings, electricity consumption or certain cross-cutting services, most often that use is primarily a consequence of the financing and management of the contracts entered into by the lessor and its customers, not of the provision of the vehicles.

55 It was in those particular circumstances that, in paragraph 34 of that judgment, the Court held that calculating the right of deduction by applying the turnover-based method, which takes account of the amounts relating to the part of the rental payments that customers make to offset the provision of the vehicles, leads to a determination of the deductible proportion of the input VAT that is less accurate than that arising from the method based on just the part of the rental payments representing the interest that constitutes the consideration for the lessor’s costs of financing and managing the contracts, since those two activities occasion the major part of the mixed use goods and services used with a view to carrying out leasing transactions in the automotive sector.

56 However, it cannot be inferred from the Court’s reasoning in relation to the leasing transactions at issue in the case that gave rise to the judgment of 10 July 2014, *Banco Mais* (C?183/13, EU:C:2014:2056), that Article 173(2)(c) of the VAT Directive enables Member States, generally, to apply to all similar types of transactions in the automotive sector, such as the hire purchase transactions at issue in the main proceedings, a method of apportionment which does not take account of the value of the vehicle when it is supplied.

57 In particular, in the light of the fundamental nature of the right to deduct, recalled in paragraph 39 of this judgment, where the method by which the deduction is calculated does not take account of an actual and non-negligible allocation of a share of the general costs to transactions giving rise to a right to deduct, such a method cannot be regarded as objectively

reflecting the actual share of the expenditure resulting from the acquisition of mixed use goods and services that may be attributed to those transactions. Consequently, such a method is not capable of ensuring a more precise apportionment than that which would arise from the application of the turnover-based allocation key.

58 Thus, in this case, as regards the method applied by the tax authority for calculating the deductible proportion of VAT, it is for the national court to ascertain whether that method takes account of the actual and non-negligible allocation of a share of the general costs for the purposes of the transaction giving rise to a right to deduct.

59 In the light of all the foregoing considerations, the answer to the questions referred is that Article 168 and Article 173(2)(c) of the VAT Directive must be interpreted as meaning that, first, even where the general costs relating to supplies of moveable goods by hire purchase, such as the supplies at issue in the main proceedings, are passed on not in the amount due by the customer in respect of the supply of the goods concerned, that is to say the taxable part of the transaction, but in the amount of the interest due in respect of the 'finance' part of the transaction, that is to say the exempt part thereof, those general costs must nonetheless be considered, for the purposes of VAT, to be a component of the price of that supply and, second, Member States may not apply a method of apportionment which does not take account of the initial value of the goods concerned when they are supplied, since that method is not capable of ensuring a more precise apportionment than that which would arise from the application of the turnover-based allocation key.

Costs

60 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 (Sixth Chamber) hereby rules:

Article 168 and Article 173(2)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, first, even where the general costs relating to supplies of moveable goods by hire purchase, such as the supplies at issue in the main proceedings, are passed on not in the amount due by the customer in respect of the supply of the goods concerned, that is to say the taxable part of the transaction, but in the amount of the interest due in respect of the 'finance' part of the transaction, that is to say the exempt part thereof, those general costs must nonetheless be considered, for the purposes of value added tax (VAT), to be a component of the price of that supply and, second, Member States may not apply a method of apportionment which does not take account of the initial value of the goods concerned when they are supplied, since that method is not capable of ensuring a more precise

apportionment than that which would arise from the application of the turnover-based allocation key.

Regan

Fernlund

Rodin

Delivered in open court in Luxembourg on 18 October 2018.

A. Calot Escobar

K. Lenaerts

Registrar

President

* Language of the case: English.