JUDGMENT OF THE COURT (First Chamber)

17 October 2018 (*)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Concept of taxable person — Holding company — Deduction of input tax — Expenditure for consultancy services received for the purpose of the acquisition of another company's shares — Acquiring company's intention to provide management services to the target company — Those services not provided — Right to deduct VAT charged on the services received)

In Case C?249/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 8 May 2017, received at the Court on 12 May 2017, in the proceedings

Ryanair Ltd

v

The Revenue Commissioners,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice President, acting as President of the First Chamber, J.-C. Bonichot, A. Arabadjiev, E. Regan and C.G. Fernlund (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: R. ?ere?, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2018,

after considering the observations submitted on behalf of:

– Ryanair Ltd, by T. Mc Namara, Solicitor, R. Aylward, Barrister-at-Law, and M. Hayden, Senior Counsel,

– The Revenue Commissioners, by M. Browne and L. Williams and by A. Joyce, acting as Agents,

– Ireland, by M. Browne, L. Williams and A. Joyce, acting as Agents, and S. Davey, Solicitor, Ú. Tighe, Barrister-at-Law, and G. Clohessy, Senior Counsel,

– the European Commission, by N. Gossement and by 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 reference for a preliminary ruling concerns 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, 'the Sixth Directive').

2 The request has been made in proceedings between Ryanair Ltd and the Revenue Commissioners (Ireland) concerning the latter's refusal to grant Ryanair the deduction of input value added tax (VAT) relating to consultancy services provided to it in the context of a bid to takeover another company.

Legal context

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

4 Article 4(1) and (2) of that 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.'

5 Pursuant to the first subparagraph of Article 10(2) of the Sixth Directive, 'the chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed'.

6 Article 17 of that directive, entitled 'Origin and scope of the right to deduct' provides, in paragraph 1, that the right to deduct arises at the time when the deductible tax becomes chargeable.

7 Article 17(2)(a) of the Sixth Directive states that in so far as the goods and services are used for the purposes of his taxable transactions, the taxable person is entitled to deduct from the tax which he is liable to pay VAT due or paid in respect of goods or services supplied or to be supplied to him by another taxable person.

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

8 In the course of 2006, the Ryanair launched a takeover bid for all the shares of another airline ('the target company'). It incurred, on that occasion, expenditure relating to consultancy services and other services in connection with the planned acquisition ('the services at issue'). Nevertheless, it was not possible to carry out that transaction fully for reasons relating to compliance with competition law, so that Ryanair was able to acquire only a part of the share capital of the target company.

9 Ryanair requested the deduction of input VAT paid on that expenditure, stating that its intention, after it gained control of the target company, had been to involve itself in its management by providing management services subject to VAT.

10 The tax authority having refused that deduction, Ryanair brought an appeal before the Tax Appeals Commission (Ireland), which dismissed the appeal. Ryanair brought a second appeal before the Circuit Court (Ireland), which took the same position as the tax authority. The Circuit Court nevertheless referred the case to the High Court (Ireland) for an opinion. After that court

upheld the decision of the Circuit Court, Ryanair appealed to the Supreme Court (Ireland).

11 The referring court asks, in essence, about the relationship between the judgment of 14 February 1985, *Rompelman* (268/83, EU:C:1985:74), on the right to deduct VAT paid in the course of the preparation of an economic activity, and the judgment of 27 September 2001, *Cibo Participations* (C?16/00, EU:C:2001:495), on the right of a holding company to deduct the VAT on input services provided to it in the context of the acquisition of shares in its subsidiaries.

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

‘(1) Can a future intention to provide management services to a takeover target, in the event that the takeover is successful, be sufficient to establish that the potential acquirer is engaged in economic activity for the purposes of Article 4 of the [Sixth Directive] so that VAT charged to the potential acquirer on goods or services provided for the purposes of seeking to progress the relevant acquisition can potentially be considered as VAT on an input to the intended economic activity of providing such management services; and

(2) Can there be a sufficient “direct and immediate link”, as identified as a requirement by the Court of Justice of the European Union [in the judgment of 27 September 2001, *Cibo Participations* (C?16/00, EU:C:2001:495)], between professional services rendered in the context of such a potential takeover and output, being the potential provision of management to the acquisition target in the event that the takeover is successful, so as to permit a deduction to be made in respect of the VAT payable on those professional services?’

Consideration of the questions referred

13 By its questions, which should be examined together, the referring court asks, in essence, whether Articles 4 and 17 of the Sixth Directive must be interpreted as meaning that they confer on a company, such as that at issue in the main proceedings, which intends to acquire all the shares of another company in order to pursue an economic activity consisting in the provision of management services subject to VAT to the latter company, the right to deduct input VAT paid on expenditure relating to consultancy services provided in the context of a takeover bid, even if ultimately that economic activity was not carried out.

14 As a preliminary point, it must be noted, first, that Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), which entered into force on 1 January 2007, repealed the Sixth Directive without making material changes compared with that earlier directive. Accordingly, since the relevant provisions of the Sixth Directive have an essentially identical scope to those of Directive 2006/112, the Court’s case-law pertaining to the latter directive is also applicable to the Sixth Directive.

15 In order to answer the questions asked, it is necessary to determine whether a company which intends to acquire all the shares of another company in order to pursue an economic activity consisting in the provision of management services subject to VAT to that latter company may be considered a taxable person within the meaning of Article 4 of the Sixth Directive and,if that be the case, first, whether it acted as a taxable person when the services at issue were provided to it and, second, whether and to what extent the input VAT paid on the expenditure incurred for such provision of services is deductible.

16 It must be noted, in the first place, that a company whose sole object is to acquire shares in other companies without direct or indirect involvement in the management of those companies neither has the status of taxable person within the meaning of Article 4 of the Sixth Directive nor

the right to deduct tax under Article 17 of that directive. The mere acquisition and holding of shares in a company do not, in themselves, amount to an economic activity within the meaning of the Sixth Directive, conferring on the holder the status of a taxable person, since 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. Any dividend yielded by that holding is merely the result of ownership of the property (judgments of 30 May 2013, *X*, C?651/11, EU:C:2013:346, paragraph 36, and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C?108/14 and C?109/14, EU:C:2015:496, paragraph 19 and the case-law cited).

17 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, if that entails carrying out transactions which are subject to VAT, such as the supply of administrative, financial, commercial and technical services, without prejudice to the rights held by the holding company as shareholder (see, to that effect, judgments of 30 May 2013, *X*, C?651/11, EU:C:2013:346, paragraph 37, and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C?108/14 and C?109/14, EU:C:2015:496, paragraphs 20 and 21 and the case-law cited).

18 Furthermore, since economic activities within the meaning of the Sixth Directive may consist of several consecutive transactions, the preparatory acts must themselves be treated as constituting economic activity (judgment of 29 February 1996, *INZO*, C?110/94, EU:C:1996:67, paragraph 15 and the case-law cited). Thus, any person with the intention, as confirmed by objective elements, of independently starting an economic activity, and who incurs the initial investment expenditure for those purposes must be regarded as a taxable person (judgments of 8 June 2000, *Breitsohl*, C?400/98, EU:C:2000:304, paragraph 34, and of 14 March 2013, *Ablessio*, C?527/11, EU:C:2013:168, paragraph 25 and the case-law cited).

19 It follows that a company which carries out preparatory acts which are part of a proposed acquisition of shares in another company with the intention of pursuing an economic activity consistingin involvement in the management of that other company by providing management services subject to VAT must be considered a taxable person, within the meaning of the Sixth Directive.

20 In the present case, it is apparent from the file before the Court that, by the planned acquisition of shares in the target company, Ryanair’s intention was to provide the target company with management services subject to VAT and, on that basis, to pursue an economic activity within the meaning of the Sixth Directive. Therefore, it must be concluded that Ryanair must, in the context of that acquisition, be considered a taxable person, within the meaning of the Sixth Directive.

21 As regards, in the second place, the right to deduct, it follows from Article 17 of the Sixth Directive that, in so far as the taxable person, acting as such at the time when he acquires goods or receives services, uses those goods or services for the purposes of his taxed transactions, he is entitled to deduct the VAT paid or payable in respect of those goods or services. In accordance with the first subparagraph of Article 10(2) and Article 17 of the Sixth Directive, that right to deduct arises at the time when the tax becomes chargeable, namely when the goods are delivered or the services are performed (judgment of 22 March 2012, *Klub*, C?153/11, EU:C:2012:163, paragraph 36 and the case-law cited).

22 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. It is exercisable immediately in respect of all the taxes charged on input transactions (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 25 and the case-law cited).

23 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 (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 26 and the case-law cited).

24 The principle that VAT should be neutral as regards the tax burden on a business requires that the first investment expenditure incurred for the purposes of, and with the view to, commencing a business must be regarded as an economic activity; it would be contrary to that principle if such an activity commences only when taxable income arises. Any other interpretation would burden the trader with the cost of VAT in the course of his economic activity without allowing him to deduct it and would create an arbitrary distinction between investment expenditure incurred for the needs of a business before actual exploitation of the business or expenditure incurred during exploitation (judgment of 21 March 2000, *Gabalfrisa and Others*, C?110/98 to C?147/98, EU:C:2000:145, paragraph 45 and the case-law cited).

25 Moreover, the right to deduct,once it has arisen, is retained even if the intended economic activity was not carried out and, therefore, did not give rise to taxed transactions (judgment of 29 February 1996, *INZO*, C?110/94, EU:C:1996:67, paragraph 20) or the taxable person was unable to use the goods or services which gave rise to a deduction in the context of taxable transactions by reason of circumstances beyond his control (judgments of 8 June 2000, *Midland Bank*, C?98/98, EU:C:2000:300, paragraph 22, and of 15 January 1998, *Ghent Coal Terminal*, C?37/95, EU:C:1998:1, paragraph 20). Any other interpretation would be contrary to the principle that VAT should be neutral as regards the tax burden on a business. It would be liable to create, as regards the tax treatment of the same investment activities, unjustified differences between businesses already carrying out taxable transactions and other businesses seeking by investment to commence activities which will in future be a source of taxable transactions. Likewise, arbitrary differences would be established between the latter businesses, in that final acceptance of the deductions would depend on whether or not the investment resulted in taxed transactions (judgment of 29 February 1996, *INZO*, C?110/94, EU:C:1996:67, paragraph 22).

26 Furthermore, in accordance with 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, in principle, necessary 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 is a component of the cost of the output transactions giving 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).

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

28 When the tax authorities and national courts apply the direct-link test, they should consider all the circumstances surrounding the transactions concerned and take account only of the transactions which are objectively linked to the taxable person’s taxable activity. The existence of

such a link must thus be assessed in the light of the objective content of the transaction in question (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 31 and the case-law cited).

29 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 (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 30 and the case-law cited).

30 It follows that in order for the VAT paid to be deducted in full, the exclusive reason for the expenditure incurred must be found, in principle, in the intended economic activity, namely the provision to the target company of management services subject to VAT (see, to that effect, judgments of 8 February 2007, *Investrand*, C?435/05, EU:C:2007:87, paragraphs 33 and 36; of 13 March 2008, *Securenta*, C?437/06, EU:C:2008:166, paragraphs 29 and 30; and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C?108/14 and C?109/14, EU:C:2015:496, paragraph 25). In the event that the expenditure is attributed in part also to an exempt or non-economic activity, VAT paid on that expenditure may only be deducted in part (see, to that effect, judgments of 6 September 2012, *Portugal Telecom*, C?496/11, EU:C:2012:557, paragraphs 46 and 47, and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C?108/14 and C?109/14, EU:C:2015:496, paragraphs 28 to 30).

31 In the present case, it is apparent from the file before the Court that the services at issue were provided to Ryanair when it intended, by the planned acquisition of shares in the target company, to pursue an economic activity consisting in providing to that company management services subject to VAT. Thus, it appears that, first, Ryanair acted as a taxable person at the time it incurred the expenditure linked to the services at issue. By doing so, Ryanair thus benefits, in principle, from the right to deduct VAT paid on the services at issue immediately, even if, ultimately, that economic activity, which was to give rise to taxable transactions, was not carried out and, accordingly, did not give rise to such transactions. Second, as regards the conditions for the exercise of the right to deduct and more specifically the scope of that right, the expenditure incurred for the purpose of the acquisition of the shares of the target company must be regarded as being attributable to the performance of that economic activity which consisted in carrying out transactions giving rise to a right to deduct. On that basis, that expenditure has a direct and immediate link with that economic activity as a whole and, consequently, is part of its general costs. It follows that the corresponding VAT gives rise to the right to deduction in full.

32 Having regard to all of the foregoing considerations, the answer to the questions referred is that Articles 4 and 17 of the Sixth Directive must be interpreted as conferring on a company, such as that at issue in the main proceedings, which intends to acquire all the shares of another company in order to pursue an economic activity consisting in the provision of management services subject to VAT to that other company, the right to deduct, in full, input VAT paid on expenditure relating to consultancy services provided in the context of a takeover bid, even if ultimately that economic activity was not carried out, provided that the exclusive reason for that expenditure is to be found in the intended economic activity.

Costs

33 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 (First Chamber) hereby rules:

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 must be interpreted as conferring on a company, such as that at issue in the main proceedings, which intends to acquire all the shares of another company in order to pursue an economic activity consisting in the provision of management services subject to value added tax (VAT) to that other company, the right to deduct, in full, input VAT paid on expenditure relating to consultancy services provided in the context of a takeover bid, even if ultimately that economic activity was not carried out, provided that the exclusive reason for that expenditure is to be found in the intended economic activity.

Silva de Lapuerta

Bonichot

Arabadjiev

Regan

Fernlund

Delivered in open court in Luxembourg on 17 October 2018.

A. Calot Escobar

K. Lenaerts

Registrar

President

* Language of the case: English.