Provisional text

JUDGMENT OF THE COURT (First Chamber)

12 November 2020 (*)

(Reference for a preliminary ruling – Value added tax (VAT) – Sixth Directive 77/388/EEC – Article 4 – Concept of 'taxable person' – Mixed holding company – Article 17 – Right to deduct input VAT – Input VAT paid by a mixed holding company in respect of consultancy services relating to a market study with a view to the possible acquisition of shareholdings in other companies – Abandonment of proposed acquisition – Input VAT paid on a bank commission for organising and putting together a bond loan, intended to provide subsidiaries with the necessary means to make investments – Investments not made)

In Case C?42/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal), made by decision of 5 December 2018, received at the Court on 24 January 2019, in the proceedings

Sonaecom SGPS SA

v

Autoridade Tributária e Aduaneira,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 February 2020,

after considering the observations submitted on behalf of:

– Sonaecom SGPS SA, by J. Vieira Peres, A. Lobo Xavier, G. Machado Borges, I. Santos Fidalgo and A. Carrilho Ribeiro, advogados,

– the Portuguese Government, by L. Inez Fernandes, R. Campos Laires, T. Larsen and P. Barros da Costa, acting as Agents,

– the European Commission, by M. Afonso, P. Costa de Oliveira and N. Gossement, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 May 2020,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 4(1) and (2) and Article 17(1)(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 (OJ 1977 L 145, p. 1) ('the Sixth Directive').

2 The request has been made in proceedings between Sonaecom SGPS SA ('Sonaecom') and the Autoridade Tributária e Aduaneira (Tax and Customs Authority, Portugal) concerning the deductibility of input value added tax (VAT) paid by Sonaecom in respect of expenditure relating, first, to consultancy services connected with a market study commissioned with a view to possible acquisitions of shareholdings in other companies and, secondly, to the payment to BCP Investimento SA of a commission for organising and putting together a bond loan, where neither the acquisition nor the investments, in view of which the loan was taken out, materialised.

Legal context

EU law

3 The Sixth Directive was repealed and replaced by 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').

4 Article 4 (1) and (2) of the Sixth Directive, applicable *ratione temporis* in the case in the main proceedings, 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 Article 13 of the Sixth Directive, entitled 'Exemptions within the territory of the country', states, in point B thereof, relating to 'other exemptions':

'Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

…

(d) the following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it;

…'

6 Article 17 of that directive, entitled 'Origin and scope of the right to deduct', provides:

'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 in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) value added tax due or paid in respect of imported goods;

(c) value added tax due under Articles 5(7)(a) and 6(3).

…

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, Member States may:

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

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

(d) authorise or 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 value added tax which is not deductible by the taxable person is insignificant it shall be treated as nil.'

7 Article 19 of the Sixth Directive, entitled 'Calculation of the deductible proportion', provides in paragraph 1 thereof:

'The proportion deductible under the first subparagraph of Article 17(5) shall be made up of a fraction having:

– as numerator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions in respect of which value added tax is deductible under Article 17(2) and (3),

– as denominator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible. The Member States may also include in the denominator the amount of subsidies, other than those specified in Article 11 A(1)(a).

The proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a

figure not exceeding the next unit.’

8 Article 20 of the Sixth Directive, entitled ‘Adjustments of deductions’, provides in paragraph 6 thereof:

‘Where the taxable person transfers from being taxed in the normal way to a special scheme or vice versa, Member States may take all necessary measures to ensure that the taxable person neither benefits nor is prejudiced unjustifiably.’

9 Under Article 413 of the VAT Directive, that directive entered into force on 1 January 2007.

Portuguese law

The CIVA

10 In accordance with Article 9(28) of the Código do Imposto sobre o Valor Acrescentado (Portuguese Code on Value Added Tax), in the version applicable at the material time (‘the CIVA’):

‘The following shall be exempt from tax:

‘(a) the granting and negotiation of credit, in any form, including discount and rediscount transactions, and the administration and management of credit by the person who granted it;

…

(f) transactions and services, including negotiation, but excluding mere safekeeping, administration or management, relating to shares, other interests in companies or associations, debentures and other securities, excluding documents establishing title to goods’.

11 Article 20 of the CIVA, which lists the situations in which input VAT paid by a taxable person may be deducted, provides in paragraph 1 thereof:

‘Only tax charged on goods or services acquired, imported or used by a taxable person for the purpose of carrying out the following transactions may be deducted:

(a) the supply of goods and the provision of services which are subject to tax and are not exempt;

…’

12 Article 23(1) and (4) of the CIVA is worded as follows:

‘1. Where the taxable person, in the course of his or her business, makes supplies of goods or services some of which do not give rise to the right to deduct, input tax shall be deductible only in direct proportion to the annual amount of the transactions which give rise to the right to deduct.

…

4. The specific proportion of deduction referred to in paragraph 1 shall be made up of a fraction having, as numerator, the amount, exclusive of VAT, of turnover per year attributable to the supply of goods and provision of services in respect of which VAT is deductible under Articles 19 and 20(1) and, as denominator, the amount, exclusive of VAT, of turnover per year of all the transactions carried out by the taxable person, including exempt transactions and those outside the scope of the tax, particularly grants not subject to VAT which are not subsidies for plant or equipment.

…'

Decree-Law No 495/88

13 Article 1(1) and (2) of Decreto-Lei No 495/88 (Decree-Law No 495/88) of 30 December 1988 (*Diário da República* I, Serie I, No 301 of 30 December 1988), which governs the legal status and activities of *sociedades gestoras de participações sociais* (SGPS), in the version applicable to the facts in the main proceedings, provides:

'1. The sole business purpose of [SGPS] is to manage the shares of other undertakings, as an indirect means of pursuing economic activities.

2. For the purposes of this Decree-Law, the shareholding in a company is regarded as an indirect means of pursuing economic activities when it is not simply occasional and concerns at least 10% of the minimum share capital, with voting rights, either directly or through share in other companies in which SGPS occupy a dominant position.'

14 Article 4 of Decree-Law No 495/88 provides:

'1. SGPS are authorised to provide technical administrative and management services to some or all companies in which they have a shareholding as defined in Article 1(2) and Article 3(3)(a) to (c), or with which they have concluded a subordination agreement.

2. The supply of services must be the subject of a written contract, in which the corresponding remuneration must be indicated.'

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

15 The applicant in the main proceedings is a holding company which, in addition to its business of acquiring, holding and managing shareholdings, provides strategic management and coordination services to companies operating in the telecommunications, media, software and systems integration markets.

16 In the course of its business, during 2005 Sonaecom purchased, under the VAT rules, external consultancy services in the form of a market study with a view to acquiring shares in the telecommunications operator Cabovisão. According to its statements, Sonaecom intended to carry out the economic activity of providing Cabovisão with management services subject to VAT. The share acquisition did not ultimately materialise.

17 In addition, in June 2005, the applicant in the main proceedings paid the investment bank BCP Investimento a commission for services relating to the organisation, putting together and guarantee of a placement of a bond loan amounting to EUR 150 million. It is apparent from the order for reference that that loan was intended to provide the subsidiaries of Sonaecom with the resources they needed to make direct investments in 'triple play' technology. According to the information provided by Sonaecom at the hearing, by contrast, the company intended to use the

capital thus obtained to acquire shares in Cabovisão and thus to invest in the new ‘triple play’ business segment.

18 Since those proposed investments did not materialise, the applicant in the main proceedings subsequently chose to make that capital available to its parent company, Sonae SGPS, in the form of a loan.

19 In the same tax year, Sonaecom deducted in full from the VAT payable the corresponding amounts of input VAT paid in relation to the services purchased.

20 Following an inspection carried out by the tax authorities, those authorities challenged the VAT deduction thus made, taking the view that the purpose of purchasing the services at issue in the main proceedings was not to carry out taxed output transactions, in accordance with Article 17(2) and (3) of the Sixth Directive and Article 20 of the CIVA.

21 The tax authorities therefore made arithmetical adjustments, which gave rise to notices of assessment to VAT and compensatory interest in a total amount of EUR 1 088 675.77.

22 Sonaecom brought an action against those assessments before the Tribunal Administrativo e Fiscal do Porto (Administrative and Tax Court, Porto, Portugal). By judgment of 28 June 2016, that court dismissed the action on the ground that the VAT paid by the applicant was not deductible.

23 Sonaecom appealed against that judgment to the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal).

24 Before the referring court, the applicant in the main proceedings, which relies on its status as a mixed holding company and maintains that its involvement in the management of its subsidiaries is recurrent in nature, submits that the services at issue in the main proceedings were linked not to the activity of ‘holding and managing shareholdings’ but to the activity which it carries out in the field of providing technical and management services to its subsidiaries, an activity subject to VAT and for which it receives consideration.

25 Consequently, since there is undeniably a direct link between the services supplied for the benefit of its subsidiaries and the purchase of the services at issue in the main proceedings, the input VAT paid is deductible.

26 The applicant in the main proceedings adds that the fact that the acquisition of shareholdings has not materialised is irrelevant and does not call into question the fact that the services were purchased in the context of an activity which entails carrying out transactions subject to VAT.

27 In those circumstances the Supremo Tribunal Administrativo (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is it compatible with the deductibility rules laid down in the [Sixth Directive], specifically Articles 4(1) and (2) and 17(1),(2) and (5), to deduct tax borne by the appellant, [Sonaecom], in respect of consultancy services connected with a market study commissioned with a view to acquiring shares, where that acquisition did not materialise?

(2) Is it compatible with the deductibility rules laid down in the [Sixth Directive], specifically Articles 4(1) and (2) and 17(1),(2) and (5), to deduct tax borne by the appellant, [Sonaecom], in respect of the payment to [BCP Investimento] of a commission for organising and putting together

a bond loan, allegedly taken out with a view to integrating the financial structure of its affiliated companies, and which, since those investments failed to materialise, was ultimately transferred to Sonae, SGPS, the parent company of the group?'

Consideration of the questions referred

The first question

28 By its first question, the referring court asks the Court, in essence, whether Article 4(1) and (2) and Article 17 (1),(2) and (5) of the Sixth Directive must be interpreted as meaning that a holding company whose involvement in the management of its subsidiaries is recurrent is entitled to deduct the input VAT paid on the purchase of consultancy services relating to a market study carried out with a view to acquiring shares in another company, where that acquisition did not ultimately take place.

29 As a preliminary point, it must be noted that the VAT Directive, which entered into force on 1 January 2007, repealed the Sixth Directive without making material changes to that directive. Since the relevant provisions of the VAT Directive have essentially the same scope as that of the relevant provisions of the Sixth Directive, the Court's case-law on the VAT Directive is also applicable to the Sixth Directive (see, by analogy, judgment of 3 July 2019, *The Chancellor, Masters and Scholars of the University of Cambridge*, C?316/18, EU:C:2019:559, paragraph 17).

30 In that context, it must be borne in mind, in the first place, that, according to settled case-law, 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 cannot be regarded as 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 5 July 2018, *Marle Participations*, C?320/17, EU:C:2018:537, paragraphs 27 and 28, and of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 16 and the case-law cited).

31 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 (judgments of 5 July 2018, *Marle Participations*, C?320/17, EU:C:2018:537, paragraph 29, and of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 17 and the case-law cited).

32 As the Advocate General observed in point 30 of her Opinion, a mixed holding company is a company that, in addition to its non-economic holding activity, which consists in the holding of shares in other companies and is not subject to VAT, also carries out an economic activity. According to the case-law, a mixed holding company which not only holds shares in companies, but also supplies remunerated, taxable services to some of those companies, is thus itself a taxable person, albeit entitled to only a pro rata deduction of input tax (see, to that effect, judgments of 27 September 2001, *Cibo Participations*, C?16/00, EU:C:2001:495, paragraph 22, and of 13 March 2008, *Securenta*, C?437/06, EU:C:2008:166, paragraph 31).

33 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. 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 (judgment of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 18 and the case-law cited).

34 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 consisting in 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 (see, to that effect, judgment of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 19).

35 In the present case, it is apparent from the documents before the Court that Sonaecom planned to provide to Cabovisão, whose shares it wished to acquire, management services subject to VAT and, on that basis, to pursue an economic activity within the meaning of the Sixth Directive. Therefore, and to that extent, Sonaecom, as a mixed holding company, must, in principle, be considered a taxable person, within the meaning of the Sixth Directive, which it is for the referring court to determine.

36 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 or she acquires goods or receives services, uses those goods or services for the purposes of his or her taxed transactions, he or she 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 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 21 and the case-law cited).

37 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 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 22 and the case-law cited).

38 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 or her 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 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 23).

39 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 or her 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 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 24 and the case-law cited).

40 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 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 or her control. 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 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 25 and the case-law cited).

41 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 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 26 and the case-law cited).

42 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 or her general costs and are, as such, components of the price of the goods or services which he or she supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole (judgment of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 27 and the case-law cited).

43 The Court has held 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 costs and the VAT paid on that expenditure must, in principle, be deducted in full, unless certain output 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 (judgment of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C?108/14 and C?109/14, EU:C:2015:496, paragraph 33).

44 In the present case, it appears from the documents before the Court that the consultancy services at issue in the main proceedings were purchased in the context of Sonaecom's intended acquisition of shareholdings in a company and that Sonaecom intended to carry out, for the benefit of that company, the economic activity of providing it with management services subject to VAT, which it is for the referring court to verify.

45 Thus, since, in accordance with the case-law of the Court, the costs relating to those consultancy services are part of Sonaecom's general costs in respect of the economic activity which it carries out in its capacity as a mixed holding company, that company enjoys, in principle, the right to deduct in full the VAT paid on those services.

46 In addition, as has been pointed out in paragraph 40 above, the fact that, ultimately, the transaction did not materialise has no effect on the right to deduct VAT, which is retained.

47 It should nevertheless be specified that if it should transpire that the applicant in the main proceedings supplied services subject to VAT, which are characteristic of its economic activity, only to some of its subsidiaries, which it is for the referring court to verify, the VAT paid on the general costs can be deducted only in proportion to those inherent to the economic activity of the

applicant in the main proceedings in its capacity as a taxable person, in accordance with a method which it is for the Member States to determine (see, to that effect, judgment of 5 July 2018, *Marle Participations*, C?320/17, EU:C:2018:537, paragraph 37).

48 In that regard, it must be borne in mind that, when exercising that power, Member States 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 each of the economic and non-economic activities (see, to that effect, judgment of 5 July 2018, *Marle Participations*, C?320/17, EU:C:2018:537, paragraph 37 and the case-law cited).

49 In the light of all the foregoing considerations, the answer to the first question referred for a preliminary ruling is that Article 4(1) and (2) and Article 17(1), (2) and (5) of the Sixth Directive must be interpreted as meaning that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is entitled to deduct the input VAT paid on the purchase of consultancy services relating to a market study carried out with a view to acquiring shares in another company, including where that acquisition did not ultimately take place.

The second question

50 By its second question referred for a preliminary ruling, the referring court asks the Court, in essence, whether Article 4(1) and (2) and Article 17(1),(2) and (5) of the Sixth Directive must be interpreted as meaning that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is entitled to deduct the input VAT paid on the commission paid to a credit institution for organising and putting together a bond loan intended for making investments in a given sector, where those investments did not ultimately take place and the capital obtained by means of that loan was paid in full to the parent company of the group in the form of a loan.

51 In order to answer that question it is necessary to determine whether, in accordance with Article 17 of the Sixth Directive, for the purposes of deducting input VAT paid on services, account is to be taken of the intended use or actual use made of those services by the taxable person.

52 Under Article 17(2)(a) of the Sixth Directive, the taxable person is entitled to deduct input tax in so far as the goods and services ‘are used’ for the purposes of his or her taxable transactions.

53 Consequently, and as the Advocate General observed in point 54 of her Opinion, it follows from the wording of that provision that the right to deduct input tax is founded on an approach which is principally based on the actual use of the goods and services purchased by the taxable person.

54 An analysis of the context of which that provision forms part and of its purpose and that of the Sixth Directive support that literal interpretation.

55 As regards the context of which Article 17(2)(a) of the Sixth Directive forms part, it should be noted that, with regard to the deductibility of input tax paid on mixed-use goods, sub-subparagraphs (a) to (d) of the third subparagraph of Article 17(5) of that directive list various corrective measures which the Member States may adopt in order, inter alia, to apply more precise rules for calculating the deductible proportion than that laid down in the second subparagraph of Article 19(1) of that directive, taking account of the specific characteristics of the activities of the taxable person concerned.

56 In that context, as the Advocate General observed in point 55 of her Opinion, Member States may provide for calculation methods different from the turnover-based allocation key

provided for in the Sixth Directive if the method chosen guarantees a more precise result (see, to that effect, judgment of 8 November 2012, *BLC Baumarkt*, C?511/10, EU:C:2012:689, paragraphs 23 to 26, and of 9 June 2016, *Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft*, C?332/14, EU:C:2016:417, paragraph 33).

57 In addition, it is apparent from Article 20(6) of the Sixth Directive, which concerns the adjustment of the deduction of input tax, that that deduction must, as the Advocate General observed in point 55 of her Opinion, be adjusted as precisely as possible to actual use in order to avoid ‘unjustified benefits’ or ‘unjustified prejudice’ for the taxable person.

58 Thus, it follows not only from Article 17(2)(a), but also from other provisions of the Sixth Directive that that directive is based on the logic that the deduction of input tax paid by the taxable person must correspond as precisely as possible to the actual use of the goods and services purchased by him or her.

59 Consequently, an actual use of goods and services takes precedence over the initial intention.

60 As regards the purpose of Article 17(2)(a) of the Sixth Directive and that directive taken as a whole, it should be noted that an approach according to which the right to deduct input VAT is based solely on the intention of the taxable person as regards the use of the goods and services purchased, not on their actual use, would risk undermining the very functioning of the VAT system.

61 As pointed out, in paragraph 38 above, the deduction arrangement is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his or her economic activities. The common system of VAT therefore ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT (judgments of 14 February 1985, *Rompelman*, 268/83, EU:C:1985:74, paragraph 19, and of 28 February 2018, *Imofloresmira – Investimentos Imobiliários*, C?672/16, EU:C:2018:134, paragraph 38 and the case-law cited).

62 The principle of fiscal neutrality, inherent in the common system of VAT, precludes, in particular, economic operators who carry out transactions which are, in fact, similar from being treated differently as far as the levying of VAT is concerned, in order to avoid distortions of competition (see, to that effect, judgment of 10 September 2002, *Kügler*, C?141/00, EU:C:2002:473, paragraph 30 and the case-law cited).

63 The application of that principle thus implies, first, that all taxable persons who carried out transactions taxed during the same tax period have the right to deduct input VAT, but it also implies that, *a contrario*, those who have carried out similar transactions, but which are exempt from VAT, are not entitled to such a right.

64 In that context, Article 17(2) and (3) of the Sixth Directive provides that a taxable person is entitled to deduct input tax paid only in respect of the goods and services which have a link with taxable output transactions. On the other hand, where goods or services acquired by a taxable person are used for purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted (see, to that effect, judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 30 and the case-law cited).

65 As the Advocate General observed in point 58 of her Opinion, a right to deduct input tax existing solely on the basis of a former intention of the taxable person to carry out transactions subject to VAT and which does not, therefore, take account of the nature of the transactions

actually carried out by that taxable person would afford him or her a competitive advantage over other undertakings which have carried out similar transactions, which would as a consequence be contrary to the principle of fiscal neutrality.

66 Thus, in accordance with Article 17 of the Sixth Directive, for the purposes of deducting input VAT paid on services, account must be taken of the actual use of the goods and services purchased by the taxable person, not of the use intended by him or her.

67 In the present case, as has been noted in paragraphs 17 and 18 above, it is apparent from the order for reference that, during 2005, the applicant in the main proceedings paid VAT on the payment of a commission to BCP Investimento for organising and putting together a bond loan of EUR 150 million, in order to finance its investments in the ‘triple play’ sector. Nevertheless, as those proposed investments did not materialise, the applicant in the main proceedings subsequently chose to make that amount available to its parent company, Sonae SGPS, in the form of a loan.

68 Since that loan transaction, which represents the actual use made of the services purchased by the applicant in the main proceedings, is among the transactions exempted under Article 13B(d)(1) of the Sixth Directive, that company cannot be entitled, under Article 17 of that directive, to deduct from the tax which it is liable to pay the input VAT paid on the commission paid to BCP Investimento.

69 As noted in paragraph 17 above, according to the information provided by it at the hearing, Sonaecom intended to use the capital obtained by means of the loan to acquire shares in Cabovisão and thus to invest in the new ‘triple play’ business segment, not to provide its subsidiaries with resources enabling them to make investments in that sector, as is apparent from the order for reference. Nevertheless, even if it were established, that circumstance does not alter the conclusion in paragraph 68 above, since it relates not to the actual use of the services purchased by the applicant in the main proceedings but only to that initially intended by it.

70 Nor can that conclusion be called into question by the applicant’s argument that, although there is no direct link between the costs incurred for the issue of the bond loan and a taxed output transaction, those costs are deductible as general costs of the undertaking.

71 As the Advocate General observed in point 64 of her Opinion, there is a direct and immediate link between the upstream services purchased by the applicant in the main proceedings and an exempt output transaction, namely the grant of a loan to its parent company.

72 In the light of those considerations, the answer to the second question is that Article 4(1) and (2) and Article 17(1),(2) and (5) of the Sixth Directive must be interpreted as meaning that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is not entitled to deduct input VAT on the commission paid to a credit institution for organising and putting together a bond loan, which was intended for making investments in a given sector, where those investments did not ultimately take place and the capital obtained by means of that loan was paid in full to the parent company of the group in the form of a loan.

Costs

73 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:

1. **Article 4(1) and (2) and Article 17(1), (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 must be interpreted as meaning that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is entitled to deduct the input value added tax paid on the purchase of consultancy services relating to a market study carried out with a view to acquiring shares in another company, including where that acquisition did not ultimately take place.**

2. **Article 4(1) and (2) and Article 17(1),(2) and (5) of Sixth Directive 77/388 must be interpreted as meaning that a mixed holding company whose involvement in the management of its subsidiaries is recurrent is not entitled to deduct input value added tax paid on the commission paid to a credit institution for organising and putting together a bond loan, which was intended for making investments in a given sector, where those investments did not ultimately take place and the capital obtained by means of that loan was paid in full to the parent company of the group in the form of a loan.**

[Signatures]

* Language of the case: Portuguese