Provisional text

JUDGMENT OF THE COURT (First Chamber)

1 December 2022 (*)

Reference for a preliminary ruling – Value added tax (VAT) – Sixth Directive 77/388/EEC – Second subparagraph of Article 4(4) – Taxable persons – Option for Member States to treat as a single taxable person persons who are legally independent but closely bound to one another by financial, economic and organisational links ('VAT group') – National legislation designating the controlling company of a VAT group as a single taxable person – Internal supplies within the VAT group – Article 6(2)(b) – Supplies of services provided free of charge – Concept of 'purposes other than those of the business')

In Case C?269/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 7 May 2020, received at the Court on 18 June 2020, in the proceedings

Finanzamt T

v

S,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, P.G. Xuereb (Rapporteur), T. von Danwitz, A. Kumin and I. Ziemele, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the German Government, by J. Möller and S. Heimerl, acting as Agents,

– the European Commission, by A. Armenia and R. Pethke, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(4) and Article 6(2)(b) 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 the Finanzamt T (Tax Office T, Germany) (‘the tax authority’) and S, a German foundation governed by public law, concerning that foundation’s liability for value added tax (VAT) for the 2005 tax year.

Legal context

European Union law

3 The Sixth Directive was repealed and replaced, from 1 January 2007, by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1). However, in view of the date of the facts at issue in the dispute in the main proceedings, the dispute is still governed by the Sixth Directive.

4 Article 2 of the Sixth Directive provided:

‘The following shall be subject to [VAT]:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

…’

5 Article 4 of that directive provided:

‘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.

…

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

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

5. States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where treatment as non-taxable persons would lead to significant distortions of competition.

In any case, these bodies shall be considered taxable persons in relation to the activities listed in Annex D, provided they are not carried out on such a small scale as to be negligible.

Member States may consider activities of these bodies which are exempt under Article 13 or 28 as activities which they engage in as public authorities.’

6 Under Article 6(2) of that directive:

‘The following shall be treated as supplies of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible;

(b) supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business.

Member States may derogate from the provisions of this paragraph provided that such derogation does not lead to distortion of competition.’

7 Article 17(2) of that directive provided:

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

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

…’

German law

8 Paragraph 2(2) of the Umsatzsteuergesetz (Law on turnover tax), in the version applicable to the dispute in the main proceedings (‘the UStG’), is worded as follows:

‘The industrial activity, commercial activity, craft or professional activity is not exercised independently:

…

2. if, in the light of the overall actual circumstances, a legal entity is financially, economically and organisationally integrated into the undertaking of the controlling company (tax group). The effects of the affiliation are limited to internal supplies between the constituent parts of the undertaking located in the country. These constituent parts are to be treated as a single undertaking. …

…’

9 Paragraph 3(9)a of the UstG provides:

‘The following shall be treated as another supply for consideration:

1. the use by a trader of goods forming part of the assets of a business which gave rise to the right to full or partial deduction of input tax, for purposes other than those of his business or for the private use of his staff, in so far as they are not courtesy gifts [to them]; that does not apply where the deduction of input tax is excluded under Paragraph 15(1)(b) or where an adjustment of the deduction of input tax is to be made pursuant to Paragraph 15a(6a);

2. supplies of other services free of charge by a trader for purposes other than those of his business or for the private use of his staff, in so far as they are not courtesy gifts [to them].'

10 Paragraph 73 of the Abgabenordnung (Tax Code), in the version applicable to the dispute in the main proceedings ('the AO'), provides:

'A controlled company shall be liable for the taxes of the controlling company for which their tax group is relevant for tax purposes. …'

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

11 S, a German foundation governed by public law, is the controlling company of both a university medicine department and U-GmbH. S is liable for VAT in respect of the services which it supplies for consideration, whilst not being regarded as a taxable person for the activities which it carries out in the exercise of its powers as a public authority.

12 For the tax year in question in the main proceedings, U-GmbH provided S with cleaning, hygiene and laundry services, as well as patient transport services. As regards, in particular, the cleaning services, they were supplied for all of the building complex forming the university medicine department, which includes patients' rooms, corridors, operating theatres, lecture rooms and laboratories.

13 It is apparent from the explanations provided by the referring court that, first, the hospital area, as such, in so far as it is dedicated to patient care, falls within the exercise of the economic activities carried out by S, for which S is liable for VAT. Second, the lecture rooms, laboratories and other premises are used for the teaching of students, an activity which that foundation carries out in the exercise of its powers as a public authority and in respect of which it is not considered to be liable for that tax. The proportion of the surface area of the building complex in question, for which cleaning services were supplied in respect of the latter type of activity, amounts to 7.6% of the total surface area of that building complex. For its services, U-GmbH received remuneration amounting to EUR 76 085.48 from S.

14 Following an audit, the tax authority adjusted S's tax assessment for the tax year in question, taking the view that S's establishments formed a single undertaking for which a single VAT return had to be drawn up and, therefore, a single tax assessment had to be issued.

15 According to the tax authority, the cleaning services received by S in respect of activities falling within its powers as a public authority were supplied to it by U-GmbH as part of the tax group (*Organschaft*) which those entities formed, for the purposes of Paragraph 2(2)(2) of the UStG, which is intended to implement, in German law, the possibility, provided for in the second subparagraph of Article 4(4) of the Sixth Directive, of treating as a single taxable person persons who are legally independent but closely bound to one another by financial, economic and organisational links.

16 Accordingly, those cleaning services thus supported an activity other than that of the business and generated a 'benefit in kind' to S, in accordance with Paragraph 3(9)a(2) of the UStG, read in the light of Article 6(2)(b) of the Sixth Directive.

17 In the light of those factors, the tax authority formed the view, taking into account the 7.6% proportion of the surface area of the building complex in question, attributed to the activities carried out by S in the exercise of its powers as a public authority, that the sum corresponding to the cleaning of that proportion of the surface area by U-GmbH was EUR 5 782.50. After deduction

of a profit mark-up, assessed at EUR 525.66, the tax authority set the taxable amount for the ‘benefit in kind’ at EUR 5 257 and thus increased the tax charge by EUR 841.12.

18 The rejection of the administrative complaint lodged by S against that amended tax notice was the subject of an action before the Finanzgericht (Finance Court, Germany). That court upheld that action, stating, in essence, that the tax group (*Organschaft*) which brought together, in a single undertaking, the controlling company S and U-GmbH, as a controlled company, also extended to the activities carried out by that controlling company in the exercise of its powers as a public authority. Furthermore, according to that court, the conditions for a ‘benefit in kind’ under Paragraph 3(9)a(2) of the UStG were not met.

19 The tax authority brought an appeal on a point of law against that judgment before the Bundesfinanzhof (Federal Finance Court, Germany).

20 The referring court states at the outset that, under the first sentence of Paragraph 2(2)(2) of the UStG, a company which is controlled by and integrated into the undertaking of the controlling company of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links (‘the VAT group’) is not to be regarded as carrying out its economic activity independently. That controlled company, which, if it were taken into account separately, would have to be liable for VAT, would, in fact, in the light of the financial, economic and organisational links which it has with that controlling company, be regarded as being an employee of that controlling company. That would have repercussions as regards the transactions which it carries out both with regard to third parties and with respect to that controlling company.

21 The referring court states, first, as regards the transactions which a controlled company carries out with regard to third parties, that the requirement that there be a single taxable person within the meaning of the second subparagraph of Article 4(4) of the Sixth Directive is guaranteed, even if that taxable person is not the controlled company but the controlling company of the group. The latter is thus liable for the VAT, not only for its own transactions, but also for those carried out by the controlled company vis-à-vis third parties. Accordingly, in the present case, S is liable for that tax in respect of the transactions carried out by U-GmbH vis-à-vis third parties.

22 Secondly, as regards the transactions carried out between a controlled company and the controlling company of a VAT group, they are deemed to be carried out within the same taxable person, with the result that they should be regarded as not falling within the scope of VAT. In the present case, the cleaning services provided by U-GmbH to S are precisely such internal transactions.

23 In the light of the foregoing, the referring court asks whether the option available to the Member States under the second subparagraph of Article 4(4) of the Sixth Directive to designate a single taxable person of a VAT group must be interpreted as meaning that that taxable person must be regarded as either a member of that group, who is liable for VAT in respect of all the transactions carried out by the other members of that group (‘the proposed answer A’), or the VAT group itself, which is separate from its members. In the second situation, such a group would be understood as a fictitious entity created solely for the purposes of VAT (‘the proposed answer B’).

24 If, according to the referring court, the proposed answer A corresponded to decades of the case-law of the Bundesfinanzhof (Federal Finance Court), it would nevertheless be necessary for the Court of Justice to provide additional clarification in the light, in particular, of the guidance set out in the judgment of 17 September 2014, *Skandia America (USA), filial Sverige* (C?7/13, EU:C:2014:2225, paragraphs 28 and 29), as regards the question of whether the second subparagraph of Article 4(4) of the Sixth Directive may be interpreted as authorising a Member

State to designate, as a single taxable person, not the VAT group itself, but a member of that group, namely that group's controlling company.

25 In that regard, the referring court considers that the first sentence of Paragraph 2(2)(2) of the UStG, in so far as it focuses on the payment of VAT by one of the members of the group, simplifies the application of VAT law, thus meeting the objective of 'administrative simplification' pursued by the second subparagraph of Article 4(4) of the Sixth Directive.

26 However, according to that court, no administrative simplification can be inferred from the approach whereby it is necessary to create an independent VAT group in the sense of a 'fictitious entity'.

27 In addition, the judgments of 22 May 2008, *Ampliscientifica and Amplifin* (C?162/07, EU:C:2008:301, paragraph 19), of 9 April 2013, *Commission* v *Ireland* (C?85/11, EU:C:2013:217, paragraphs 40 and 48), and of 17 September 2014, *Skandia America (USA), filial Sverige* (C?7/13, EU:C:2014:2225, paragraphs 28, 29, 35 and 37), cannot be interpreted as meaning that a Member State is not authorised to designate, as a single taxable person of a VAT group, a representative member of that group, namely that group's controlling company.

28 Furthermore, the fact that a single member of the VAT group is liable for tax for the group as a whole does not preclude the other members of the group from being jointly and severally liable. In that regard, the first sentence of Paragraph 73 of the AO provides, in essence, for the joint and several liability of the controlled companies as regards the tax debt of that group's controlling company.

29 According to that court, if the question raised in paragraph 23 of the present judgment were to receive the proposed answer B, set out in paragraph 23, that would mean, in essence, that, in the present case, the view could not be taken that the controlling company S and the controlled company U-GmbH are part of a tax group. Thus, the application of Article 6(2)(b) of the Sixth Directive would be precluded, given that, in the absence of a tax group, U-GmbH would have to be considered to be an independent taxable person which provided services to S, for which it would be liable to pay VAT, pursuant to Article 4(1) of the Sixth Directive.

30 In the event that the proposed answer A, set out in paragraph 23 of the present judgment, were, however, to prevail, the referring court asks, in addition, whether the Court's case-law concerning Article 6(2) of the Sixth Directive and, in particular, the case-law deriving from the judgment of 12 February 2009, *Vereniging Noordelijke Land-en Tuinbouw Organisatie* (C?515/07, EU:C:2009:88), must be interpreted as meaning that, in a situation such as that in the main proceedings – as regards an entity such as S which carries out, first, economic activities in respect of which it is liable for tax, and, secondly, activities which it carries out in exercise of its powers as a public authority, for which it is not considered to be liable for VAT under Article 4(5) of that directive – the supply, free of charge, of services falling within the field of economic activity of the entity concerned and intended for its field of activity as a public authority could be taxed under Article 6(2)(b) of that directive.

31 The referring court states that, if the answer to the first question were to be the proposed answer A and that, therefore, Paragraph 2(2)(2) of the UStG should be interpreted as being consistent with the Sixth Directive, the consequence would be that, in the present case, U-GmbH would have to be regarded, in accordance with that provision of German law, as not carrying out its activity independently, with the result that it would constitute a single taxable person with the controlling company S. Thus, no supply of services for consideration, within the meaning of Article 2(1) of the Sixth Directive, would have been provided by U-GmbH to S, since U-GmbH's activity would have to be regarded as an activity specific to that controlling company S.

32 It is therefore necessary to determine whether the controlling company must be regarded as having provided, through its business resources – which, pursuant to Paragraph 2(2)(2) of the UStG and the second subparagraph of Article 4(4) of the Sixth Directive, also include U-GmbH's resources – cleaning services free of charge for purposes other than those of its business, within the meaning of Article 6(2)(b) of the Sixth Directive, on account of the fact that those services were provided for its area of activity as a public authority, as a 'non-economic activity'.

33 In those circumstances, the Bundesfinanzhof (Federal Finance Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the authorisation granted to Member States in the second subparagraph of Article 4(4) of [the Sixth Directive] to treat as a single taxable person persons established in their territory who, while legally independent, are closely bound to one another by financial, economic and organisational links to be exercised in such a way that:

(a) treatment as a single taxable person is effected through one of those persons, who is the taxable person for all of the transactions performed by those persons; or in such a way that:

(b) treatment as a single taxable person must of necessity – and thus, in addition, under sufferance of substantial tax losses – lead to a VAT group separate from the persons closely bound to one another, which constitutes a fictitious entity to be set up specifically for VAT purposes?

(2) If the correct answer to the first question is [the proposed answer A]: does it follow from the case-law of the Court of Justice of the European Union concerning non-business purposes within the meaning of Article 6(2) of [the Sixth Directive] [(judgment of 12 February 2009, *Vereniging Noordelijke Land- en Tuinbouw Organisatie*, C?515/07, EU:C:2009:88)] that, in the case of a taxable person who

(a) on the one hand, pursues an economic activity and, in so doing, provides services for consideration within the meaning of Article 2(1) of [the Sixth Directive], and

(b) on the other hand, pursues at the same time an activity which is incumbent upon it in the exercise of public authority (an activity it carries on in an official capacity) and in respect of which it is not considered to be a taxable person, in accordance with Article 4(5) of [the Sixth Directive],

a service falling within the sphere of its economic activity which it provides free of charge for a purpose falling within the sphere of the activity it carries on in an official capacity is not subject to tax, in accordance with Article 6(2)(b) of [the Sixth Directive]?'

Consideration of the questions referred for a preliminary ruling

The first question

34 By its first question, the referring court asks, in essence, whether the second subparagraph of Article 4(4) of the Sixth Directive must be interpreted as precluding a Member State from designating, as a single taxable person for VAT purposes, not the VAT group itself, but a member of that group, namely the controlling company of that group.

35 It should be noted that, in accordance with settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the legislation of which it forms part (see, inter alia, judgment of 24 February 2022, *Airhelp (Delay of re-routing flight)* (C?451/20, EU:C:2022:123, paragraph 22 and the case-law cited).

36 Furthermore, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (see, to that effect, judgment of 25 April 2013, *Commission* v *Sweden*, C?480/10, EU:C:2013:263, paragraph 33 and the case-law cited).

37 It is specifically important, for the uniform application of the Sixth Directive that the concept of ‘close financial links’, within the meaning of the second subparagraph of Article 4(4) of that directive, is given an autonomous and uniform interpretation. Such an interpretation is necessary, despite the optional nature, as regards the Member States, of the scheme for which that article provides, in order to avoid differences in application of that scheme between one Member State and another when it is implemented (see, to that effect, by analogy, judgment of 15 April 2021, *Finanzamt für Körperschaften Berlin*, C?868/19, not published, EU:C:2021:285, paragraph 44 and the case-law cited).

38 In that regard, it is apparent from the wording of the second subparagraph of Article 4(4) of the Sixth Directive that that directive permits each Member State to regard a number of entities as a single taxable person if they are established in the territory of that Member State and if, although they are legally independent, they are closely bound to one another by financial, economic and organisational links. The application of that article is not, according to its wording, made subject to other conditions. Nor does it provide that the Member States are able to impose other conditions on economic operators in order to form a VAT group (see, to that effect, judgment of 25 April 2013, *Commission* v *Sweden*, C?480/10, EU:C:2013:263, paragraph 35 and the case-law cited).

39 The effect of implementing the scheme established in the second subparagraph of Article 4(4) of the Sixth Directive is that national legislation adopted on the basis of that provision allows entities which are bound to one another by financial, economic and organisational links no longer to be treated as separate taxable persons for the purposes of VAT but to be treated as a single taxable person. Thus, where that provision is implemented by a Member State, the closely linked entity or entities within the meaning of that provision cannot be treated as a taxable person or persons within the meaning of Article 4(1) of the Sixth Directive (see, to that effect, judgment of 22 May 2008, *Ampliscientifica and Amplifin*, C?162/07, EU:C:2008:301, paragraph 19 and the case-law cited).

40 It follows that treatment as a single taxable person under the second subparagraph of Article 4(4) of the Sixth Directive precludes members of the VAT group from continuing to submit VAT declarations separately and from continuing to be identified, within and outside their group, as individual taxable persons, since the single taxable person alone is authorised to submit such declarations. That provision therefore necessarily requires, where it is implemented by a Member State, the national implementing legislation to provide that the taxable person is a single taxable

person and that a single VAT number be allocated to the group (judgment of 22 May 2008, *Ampliscientifica and Amplifin* (C?162/07, EU:C:2008:301, paragraphs 19 and 20).

41 It follows that, in such a situation, supplies of services provided by a third party to a member of a VAT group must be considered, for VAT purposes, to have been provided not to that member but to the actual VAT group to which that member belongs (see, to that effect, judgment of 18 November 2020, *Kaplan International Colleges UK*, C?77/19, EU:C:2020:934, paragraph 46 and the case-law cited).

42 As regards the context of the second subparagraph of Article 4(4) of the Sixth Directive, it is not apparent from either that provision or the system established by that directive, that it is a derogating or special provision which must be interpreted narrowly. As follows from the Court's case-law, the condition relating to the existence of a close financial link cannot be interpreted narrowly (see by analogy, as regards Article 11 of Directive 2006/112, judgments of 25 April 2013, *Commission* v *Sweden*, C?480/10, EU:C:2013:263, paragraph 36, and of 15 April 2021, *Finanzamt für Körperschaften Berlin*, C?868/19, not published, EU:C:2021:285, paragraph 45).

43 As regards the objectives pursued by the second subparagraph of Article 4(4) of the Sixth Directive, it should be noted at the outset that it is apparent from the Commission Proposal (COM(73) 950 final) which resulted in the adoption of the Sixth Directive that the EU legislature, by adopting that provision, intended, either in the interests of simplifying administration or with a view to combating abuses such as the splitting-up of one undertaking among several taxable persons so that each might benefit from a special scheme, to ensure that Member States would not be obliged to treat as taxable persons those whose 'independence' is purely a legal technicality (see to that effect, judgments of 25 April 2013, *Commission* v *Sweden*, C?480/10, EU:C:2013:263, paragraph 37 and the case-law cited, and of 15 April 2021, *Finanzamt für Körperschaften Berlin*, C?868/19, not published, EU:C:2021:285, paragraph 35 and the case-law cited).

44 In that regard, although the Sixth Directive did not contain, before the entry into force of the third subparagraph of Article 4(4) thereof, inserted by Council Directive 2006/69/EC of 24 July 2006 amending Directive 77/388 as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decisions granting derogations (OJ 2006 L 221, p. 9), express provisions conferring on Member States the power to adopt measures necessary for the purpose of combating tax evasion or avoidance, that fact did not deprive the Member States of the possibility of adopting, before the entry into force thereof, such measures, since the prevention, by the Member States, of tax evasion and tax avoidance is an objective recognised and encouraged by the Sixth Directive, even in the absence of express powers granted by the EU legislature (see, to that effect, judgment of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C?108/14 and C?109/14, EU:C:2015:496, paragraph 42 and the case-law cited).

45 Thus, for the application of the second subparagraph of Article 4(4) of the Sixth Directive, the Member States, in the context of their margin of discretion, were entitled to make the application of the VAT group scheme subject to certain restrictions provided that they fall within the objectives of that directive to prevent abusive practices and behaviour or to combat tax evasion or tax avoidance (see, to that effect, judgment of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C?108/14 and C?109/14, EU:C:2015:496, paragraph 41 and the case-law cited).

46 In the present case, it follows from the explanations provided by the referring court and by the German Government that the German legislature exercised the option offered by the second subparagraph of Article 4(4) of the Sixth Directive, by means of Paragraph 2(2)(2) of the UStG, which provides for the possibility of forming 'tax groups'.

47 It also follows from those same explanations that, under German law, although the controlling company of a VAT group is treated as the single taxable person of that group, within the meaning of the second subparagraph of Article 4(4) of the Sixth Directive, Paragraph 73 of the AO provides, however, that a controlled company may, where appropriate, be liable for the taxes corresponding to the other members of the tax group of which that company forms part, including the controlling company of that tax group. In respect of those taxes, the tax group which they form is relevant for tax purposes.

48 As regards, first of all, the question of whether the second subparagraph of Article 4(4) of the Sixth Directive precludes the German practice of designating, as a single taxable person, not the VAT group itself but a member of that group, namely its controlling company, it must be stated that, although the Court has, in essence, ruled, in the judgments of 22 May 2008, *Ampliscientifica and Amplifin*, (C?162/07, EU:C:2008:301, paragraphs 19 and 20), and of 17 September 2014, *Skandia America (USA), filial Sverige* (C?7/13, EU:C:2014:2225, paragraphs 34, 35 and 37), that the VAT group is, as a taxable person, liable for VAT, the fact remains that, where several legally independent members of a VAT group together constitute a single taxable person, there must be a single interlocutor, which assumes that VAT group's obligations vis-à-vis the tax authorities. The second subparagraph of Article 4(4) of the Sixth Directive does not contain any requirement concerning the designation of the representative entity of the VAT group or regarding the manner in which that entity is to take on the obligations as the taxable person of such a group.

49 In that regard, and irrespective of the possibility of providing for a representation of the VAT group by one of those members, the objectives referred to in paragraph 43 may justify the designation of the controlling company of the VAT group as a single taxable person, where that controlling company is in a position to impose its will on the other entities forming part of that group, to ensure the correct levying of VAT.

50 That being so, it is still necessary that the fact that it is not the VAT group itself but the controlling company representing it that fulfils the role of a single taxable person, within the meaning of the second subparagraph of Article 4(4) of the Sixth Directive, does not entail a risk of tax losses.

51 It is apparent from those explanations provided by the referring court, as set out in paragraph 28 of the present judgment, and by the German Government in its written observations, that, in so far as that controlling company's obligation to submit a tax declaration extends to the services provided and received by all the members of that group and in so far as the resulting tax debt includes all those services, that would lead to the same result as if the VAT group were itself liable for that tax.

52 It is also apparent from those explanations that, even if, under German law, that controlling company bore all the VAT obligations, in its capacity as the VAT group's representative with the tax authorities, the fact remains that those tax authorities may, where appropriate, turn to the other entities forming part of that group, by relying on Paragraph 73 of the AO.

53 In view of the foregoing, it must be held that the second subparagraph of Article 4(4) of the Sixth Directive must be interpreted as not precluding a Member State from designating, as a single taxable person for VAT purposes, not the VAT group itself but a member of that group, namely the controlling company of that group, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.

The second question

54 By its second question, the referring court asks, in essence, whether, in the case of an entity which is the single taxable person of a VAT group and which carries out, on the one hand, economic activities for which it is a taxable person and, on the other, activities in the exercise of its powers as a public authority, in respect of which it is not considered to be a taxable person liable for VAT under Article 4(5) of the Sixth Directive, the provision, by an entity forming part of that group, of services in connection with that exercise of powers, must be regarded as a provision of services falling within the field of economic activity of that single taxable person and intended for its field of activity as a public authority, and is taxable under Article 6(2)(b) of that directive.

55 It should be noted at the outset that, under Article 6(2)(b) of the Sixth Directive, supplies of services by the taxable person for his or her own private use or that of his or her staff or, more generally, for purposes other than those of his or her business are to be treated supplies of services for consideration.

56 The Court has already held that Article 6(2)(b) of the Sixth Directive prevents a taxable person or members of his or her staff from obtaining, free of tax, services provided by the taxable person for which a private individual would have to have paid VAT (judgment of 20 January 2005, *Hotel Scandic Gåsabäck*, C?412/03, EU:C:2005:47, paragraph 23).

57 By contrast, Article 6(2)(b) of the Sixth Directive is not intended to establish a rule that transactions outside the scope of the system of VAT may be considered to be carried out for ‘purposes other than’ those of the business within the meaning of that provision (see, to that effect, judgment of 12 February 2009, *Vereniging Noordelijke Land- en Tuinbouw Organisatie*, C?515/07, EU:C:2009:88, paragraph 38).

58 It follows that, where a single taxable person of a VAT group receives a supply of services by an entity belonging to that group intended for its field of activity as a public authority, to consider that such a supply is taxable under Article 6(2)(b) of the Sixth Directive would amount to taking the view that that supply is carried out for purposes other than those of the business and therefore to treating the activity of a public authority which is outside the scope of VAT, in accordance with Article 4(5) of the Sixth Directive, as such an activity.

59 Such an interpretation would amount to rendering both Article 2(1) and Article 4(5) of the Sixth Directive meaningless.

60 Furthermore, it should be noted that, in any event, Article 6(2)(b) of the Sixth Directive relates only to transactions effected ‘free of charge’ which are treated as supplies effected for consideration for VAT purposes (see, to that effect, judgment of 20 January 2005, *Hotel Scandic Gåsabäck*, C?412/03, EU:C:2005:47, paragraph 24).

61 In the present case, as stated in paragraphs 13 and 17 of the present judgment and as the Advocate General also observed in point 50 of her Opinion, it is clear from the order for reference that financial consideration had been provided by the controlling company S for the cleaning services carried out by U-GmbH, whether in the context of its field of economic activity or in the context of its activity as a public authority.

62 Therefore, since the services concerned are supplied for consideration within the meaning of Article 2 of the Sixth Directive, Article 6(2)(b) of that directive is not applicable.

63 In the light of the foregoing considerations, the answer to the second question is that EU law

must be interpreted as meaning that, in the case of an entity which is the single taxable person of a VAT group and which carries out, on the one hand, economic activities for which it is a taxable person and, on the other, activities in the exercise of its powers as a public authority, in respect of which it is not considered to be a taxable person liable for VAT under Article 4(5) of the Sixth Directive, the provision, by an entity forming part of that group, of services in connection with that exercise of powers, must not be taxed under Article 6(2)(b) of that directive.

Costs

64 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. **The second subparagraph of Article 4(4) 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 not precluding a Member State from designating, as a single taxable person of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, the controlling company of that group, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.

2. **EU law**

must be interpreted as meaning that in the case of an entity which is the single taxable person of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, and which carries out, on the one hand, economic activities for which it is a taxable person and, on the other, activities in the exercise of its powers as a public authority, in respect of which it is not considered to be a taxable person liable for value added tax under Article 4(5) of the Sixth Directive, the provision, by an entity forming part of that group, of services in connection with that exercise of powers, must not be taxed under Article 6(2)(b) of that directive.

[Signatures]

* Language of the case: German.