OPINION OF ADVOCATE GENERAL

MAZÁK

delivered on 11 December 2007 (1)

Case C-437/06

Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG, as the legal successor of Göttinger Vermögensanlagen AG

v

Finanzamt Göttingen

(Reference for a preliminary ruling from the Niedersächsisches Finanzgericht (Germany))

(Taxation – VAT – Council Directive 77/388/EEC – Deduction of input tax – Expenditure connected with the issue of shares and atypical silent partnerships – Apportionment of the input tax between economic and non-economic activity)

1. In this reference for a preliminary ruling, the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony) (Germany) seeks an interpretation of Articles 2(1) and 17(5) of the Sixth VAT Directive (2) and essentially asks (i) how to determine the entitlement to deduct input tax in the case of a taxable person who simultaneously engages in an economic activity and a non-economic activity; and (ii) if deduction of tax is allowed only to the extent that that person's expenditure is correctly to be attributed to the economic activity, whether an 'investment formula' or a 'transaction formula' is appropriate for the purposes of apportioning the input tax between the economic activity and the non-economic activity.

I – **Legal framework**

A – *Community law*

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

3. Article 4 of the Sixth Directive sets out the following definitions:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining

income therefrom on a continuing basis shall also be considered an economic activity.

…’

4. Article 13B(d)(5) of the Sixth Directive provides that the Member States are to exempt from VAT ‘transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities’.

5. With respect to the right to deduct, Article 17 of the Sixth Directive states as follows:

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

...

5. As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which [VAT] is deductible, and for transactions in respect of which [VAT] is not deductible, only such proportion of the [VAT] 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.

…’ (3)

6. Finally, with regard to the calculation of the deductible proportion, Article 19 of the Sixth Directive provides as follows:

‘1. 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 [VAT], of turnover per year attributable to transactions in respect of which [VAT] is deductible under Article 17(2) and (3),

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

2. By way of derogation from the provisions of paragraph 1, there shall be excluded from the calculation of the deductible proportion, amounts of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business. Amounts of turnover attributable to transactions specified in Article 13B(d), in so far as these are incidental transactions, and to incidental real estate and financial transactions shall also be excluded. Where Member States exercise the option provided under Article 20(5) not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.

3. The provisional proportion for a year shall be that calculated on the basis of the preceding year's transactions. In the absence of any such transactions to refer to, or where they were insignificant in amount, the deductible proportion shall be estimated provisionally, under supervision of the tax authorities, by the taxable person from his own forecasts. However, Member States may retain their current rules.

Deductions made on the basis of such provisional proportion shall be adjusted when the final proportion is fixed during the next year.'

B – *National law*

7. Under Paragraph 1(1)(1) of the Umsatzsteuergesetz (Law on turnover tax, (4) in the version applicable to the case before the referring court, namely the 1993 version; 'the UStG'):

'The following transactions shall be subject to turnover tax:

1. Supplies of goods and services effected for consideration within the territory of the country by a trader in the course of its business …'

8. Paragraph 4(8)(f) of the UStG states that, inter alia, 'transactions [covered by Paragraph 1(1)(1)], including the negotiation of transactions, in interests in companies and other associations' are exempt.

9. Paragraph 15 of the UStG provides as follows:

'1. The trader may deduct the following amounts of input tax:

(1) tax shown separately in invoices within the meaning of Paragraph 14 for supplies of goods or services effected by other traders for the purposes of its business ...;

(2) the turnover tax on imports in respect of goods imported for the purposes of its business or which it uses for the purposes of effecting the transactions described in Paragraph 1(3);

(3) the tax in respect of the intra-Community acquisition of goods for the purposes of its business.

2. There is no deduction of tax in respect of supplies of goods, the import of goods, or the intra-Community acquisition of goods, or in respect of supplies of services, which the trader uses for effecting the following transactions:

(1) exempt transactions, …

…

4. If a trader uses, for the purposes of its business, any goods supplied, imported or acquired in the Community, or a service supplied to it, only in part for effecting transactions in respect of which the right to deduct is excluded, there shall be no deduction of the part of the input tax as is to be attributed economically to the transactions which result in the exclusion of the right to deduct. The trader may make an appropriate estimate of the non-deductible amounts ...'

II – **Factual and procedural background and the questions referred for a preliminary ruling**

10. In the relevant financial year, 1994, the applicant (SECURENTA Göttinger Immobilienanlagen und Vermögensmanagement AG, as the legal successor of Göttinger

Vermögensanlagen AG), carried on the business of acquiring, managing and selling real estate, securities, financial holdings and investments of all types. It acquired the capital necessary for that business by means of the issue of shares and atypical silent partnerships ('atypisch stille Beteiligungen'). In the course of the latter activity, it admitted a multitude of silent partners, as is usual for a 'Publikumsgesellschaft' (publicly owned company). Members of the public who participated in this way contributed capital to the applicant, which it then invested.

11. In 1994, the applicant effected taxable transactions worth DEM 2 959 800.10. Its total turnover was DEM 6 480 006.60. This included dividend earnings of DEM 226 641.89 and earnings of DEM 1 389 930.72 from the sale of securities (in total DEM 1 616 572.61).

12. Out of input tax totalling DEM 6 838 535.68, DEM 6 161 679.37 was not attributable to specific output transactions. Relying on Paragraph 15(2)(1) of the UStG, read in conjunction with Paragraph 4(8)(f) thereof, the Finanzamt Göttingen (Göttingen Tax Office, 'the Finanzamt') did not recognise a right of deduction in respect of the input tax attributable to expenditure connected with the issue of atypical silent partnerships (DEM 4 171 424.70). The Finanzamt therefore subtracted this sum from the total amount of input tax. After deducting the input tax attributed to the applicant's leasing transactions (DEM 676 856.31), the Finanzamt considered that the remaining input tax (DEM 1 990 254.67) was not attributable to specific output transactions. Of this it allowed a right of deduction in respect of the proportion calculated in accordance with a formula of 45.68%, resulting in deductible input tax in the amount of DEM 1 567 616.74 and a refund of DEM 1 123 647.00 for the relevant financial year.

13. The applicant contested that decision before the Fifth Chamber of the Niedersächsisches Finanzgericht ('the Finanzgericht') which, by judgment of 18 October 2001, dismissed the claim on the grounds that the Finanzamt had acted correctly in treating the expenditure which the applicant had incurred in connection with the issue of atypical silent partnerships as attributable to exempt transactions and in not allowing deduction of the corresponding input tax. The applicant appealed to the Bundesfinanzhof (Federal Finance Court) which, by judgment of 18 November 2004, overturned the Finanzgericht's judgment of 18 October 2001 and referred the case back to the Niedersächsisches Finanzgericht for a fresh hearing and decision.

14. The Niedersächsisches Finanzgericht considers that the applicant undertakes both business activity and non-business activity.

15. Being uncertain as to how, in the case before it, deductibility and apportionment fall to be determined in accordance with Community law, the Niedersächsisches Finanzgericht has referred the following two questions to the Court for a preliminary ruling:

'1. If a taxable person simultaneously engages in a business activity and a non-business activity, is the entitlement to deduct input tax determined according to the proportion of the assessable and taxable transactions, on the one hand, to the assessable and exempt transactions, on the other hand (the applicant's view), or is the deduction of tax allowed only to the extent that the expenditure connected with the issue of shares and silent partnerships is to be attributed to the applicant's economic activity within the meaning of Article 2(1) of Directive 77/388/EEC?

2. If the deduction of tax is allowed only to the extent that the expenditure connected with the issue of shares and silent partnerships is to be attributed to the applicant's economic activity, should the apportionment of the input tax between business activity and non-business activity be carried out according to an "investment formula" or is – as the applicant submits – a "transaction formula", applying Article 17(5) of Directive 77/388/EEC mutatis mutandis, also appropriate?'

16. Written observations have been submitted by the applicant, by the German, Portuguese and United Kingdom Governments and by the Commission. No hearing has been requested by the parties, and none has been held.

III – **Assessment**

A – *Main arguments of the parties*

17. The *applicant* essentially argues that all the input tax incurred in connection with the acquisition of new holdings is deductible. Referring to *Kretztechnik*, (5) the applicant submits that a share issue serves to increase its capital for the benefit of its economic activity in general. Since that activity comprises both taxable transactions and exempt transactions, deductibility falls to be determined, pursuant to Article 17(5) of the Sixth Directive, according to the proportion of assessable and taxable transactions, on the one hand, to assessable and exempt transactions, on the other hand.

18. The *German Government* argues that deduction of the input tax is allowed only to the extent that the expenditure connected with the issue of shares and silent partnerships is to be attributed to the applicant's business activity. It submits that a part of the capital thus acquired is allocated to areas in which the applicant does not carry on a business activity, notably financial holdings in other businesses. The German Government maintains that the apportionment of the input tax between business activity and non-business activity is to be carried out in accordance with the 'investment formula', that is to say, the ratio in accordance with which the earnings of the capital acquired by admitting atypical silent partners are allocated to business activity or non-business activity.

19. The *Portuguese Government* submits that the applicant's VAT is deductible only as regards the part relating to the transactions effected in the framework of its business activity and argues in essence that the investment formula is the more appropriate method of apportionment in the present case.

20. The *United Kingdom Government* essentially observes that the proportion of the overhead inputs that is linked to or used for the applicant's non-economic activity does not form part of any input tax deduction calculation, because that proportion of the inputs falls outside the system of deduction altogether and should be disregarded entirely. As to the apportionment, the United Kingdom Government argues in essence that this is not prescribed by the Sixth Directive and is a matter for the discretion of the Member States.

21. In the *Commission*'s view, the tax treatment of the applicant's business activity will depend on the applicability of one of the factors giving rise to the right to exemption. While transactions in securities are exempt from VAT, supplies of immovable goods may, where appropriate, be taxed. This explains the division of the applicant's activities into three parts: (i) non-taxable transactions; (ii) taxable but exempt transactions; and (iii) taxable transactions. It is for the referring court, however, to conduct a closer examination of this point, in the light of the circumstances of the case before it. As regards the apportionment itself, the Commission states that a more objective manner of proceeding would be to use the investment formula, which ought, however, sufficiently to reflect economic reality and should therefore be calculated for each fiscal year.

B – *Appraisal*

1. First question

22. The referring court finds as a fact that the applicant undertakes both an economic (6) activity and a non-economic activity. That said, it should be borne in mind that, although Article 4 of the Sixth Directive gives a very wide scope to VAT, only activities of an economic nature are covered by that provision. (7)

23. It is settled case-law that the mere acquisition and holding of shares is not to be regarded as an economic activity within the meaning of the Sixth Directive. 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. (8) If, therefore, the acquisition of financial holdings in other undertakings does not in itself constitute an economic activity within the meaning of the Sixth Directive, it follows that the same must be true of the opposite activity – namely the selling of financial holdings in other businesses. (9) By contrast, transactions affecting securities may come within the scope of VAT but are exempted from it. (10)

24. The Court has held that a partnership which admits a partner in return for payment of a cash contribution does not effect vis-à-vis that person a supply of services for consideration within the meaning of Article 2(1) of the Sixth Directive. (11) The same conclusion was drawn by the Court regarding the issue of shares for the purpose of raising capital. (12)

25. In *Kretztechnik* the Court held that a company that issues new shares is increasing its assets by acquiring additional capital, whilst at the same time granting the new shareholders a right of ownership of part of the capital thus increased. From the issuing company's point of view, the aim is to raise capital, not to provide services. As far as the shareholder is concerned, payment of the sums necessary for the increase of capital does not constitute payment of consideration, but rather the investment or employment of capital. (13)

26. In view of the fact that the applicant – notwithstanding its rights as shareholder or partner – is neither directly nor indirectly involved in the management (14) of the companies whose financial holdings it acquires, holds or transfers, the applicant's activities do not fall to be regarded as economic activity.

27. It was in *Rompelman* that the Court first pointed out that the deduction system is meant 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 value added tax consequently ensures that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way (principle of neutrality). (15)

28. The last-mentioned condition shows that, for VAT to be deductible, the input transactions must have a direct and immediate link with the output transactions giving rise to the right of deduction. In *Investrand* the Court held that '[t]he right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct'. (16)

29. In paragraph 36 of *Kretztechnik*, the Court held that 'in view of the fact that, first, a share issue is an operation not falling within the scope of the Sixth Directive and, second, that operation was carried out by Kretztechnik in order to increase its capital for the benefit of its economic activity in general, it must be considered that the costs of the supplies acquired by that company in connection with the operation concerned form part of its overheads and are therefore, as such, component parts of the price of its products. Those supplies have a direct and immediate link with the whole economic activity of the taxable person.' (17)

30. The Court went on to hold, in paragraph 37 of that judgment, that '[i]t follows that, under

Article 17(1) and (2) of the Sixth Directive, Kretztechnik is entitled to deduct all the VAT charged on the expenses incurred by that company for the various supplies which it acquired in the context of the share issue carried out by it, provided, however, that all the transactions carried out by that company in the context of its economic activity constitute taxed transactions. A taxable person who effects both transactions in respect of which VAT is deductible and transactions in respect of which it is not may, under the first subparagraph of Article 17(5) of the Sixth Directive, deduct only that proportion of the VAT which is attributable to the former transactions.' (18)

31. I agree with the referring court, the German Government and the Commission that the applicant's situation is hardly comparable to the situation in *Kretztechnik*, where the company concerned made only taxed output supplies. (19)

32. In the present case, the Commission is right to point out that, in so far as the applicant acquires, holds and transfers financial holdings and other rights without, however, aiming to carry out systematically a service for consideration, its activity is not of an economic character and is therefore not taxable. To the extent that VAT is not deductible in respect of this activity, because it is not of an economic character and does not fall within the scope of VAT, the deduction of the tax is excluded, all the more so as the activity effected by way of that expenditure is not concerned by the VAT system. To that extent, the expenditure incurred in the framework of the issue of shares and atypical silent partnerships cannot be regarded as overheads or component parts of the price, having a direct and immediate link with the whole economic activity of the applicant and as such deductible.

33. It follows that the deduction of the input tax on the expenditure connected with the issue of financial holdings is not justified unless the capital thereby acquired is allocated to the applicant's economic activity. However, the expenditure connected with the issue of shares or atypical silent partnerships and attributable to the applicant's non-economic activity (that is to say, to its acquisition, holding and sale of interests in other businesses) does not entitle the applicant to tax deduction.

34. Indeed, as the referring court points out, contrary to the situation in *Kretztechnik*, the applicant does not carry on a business which produces anything. It follows that the costs connected with its share issues were not overheads which had an effect *solely* in the context of its economic activity.

35. Instead, as is clear from the foregoing, the applicant's costs had – at least in part – an effect on its non-economic activity. It is important to note here that it is clear from the order for reference, as well as from the parties' observations, that the latter fact is not disputed by the parties.

36. As I recalled above, in *Kretztechnik*, the Court hastened to add that a taxable person who effects both transactions in respect of which VAT is deductible and transactions in respect of which it is not may, under the first subparagraph of Article 17(5) of the Sixth Directive, deduct only that proportion of the VAT which is attributable to the former transactions. (20)

37. I have to conclude that the expenditure connected with the applicant's issue of shares and atypical silent partnerships cannot be regarded as costs forming part of its overheads and, as such, component parts of the price of its products, having a direct and immediate link with the whole economic activity of the applicant. (21)

38. Therefore, where the taxable person simultaneously engages in an economic activity and a non-economic activity, the deduction of VAT on expenditure connected with the issue of shares or atypical silent partnerships is allowed only to the extent that that expenditure is correctly to be attributed to the taxable person's economic activity within the meaning of Article 2(1) of the Sixth

Directive.

2. Second question

39. Given the proposed answer to the first question, it is also necessary to consider the second question, which essentially relates to the method of apportionment of input tax between the applicant's economic and non-economic activities (and whether Article 17(5) of the Sixth Directive should be applied mutatis mutandis to that apportionment).

40. It is important to note that Article 17(5) of the Sixth Directive covers transactions in respect of which VAT is deductible (non-exempt taxable transactions) and transactions in respect of which VAT is not deductible (exempt taxable transactions). It can be inferred from the judgments in *Sofitam*, *Floridienne and Berginvest*, *Cibo Participations* and *EDM* that transactions outside the scope of the Sixth Directive must be excluded from the calculation of the deductible proportion referred to in Articles 17 and 19 of the Sixth Directive. (22)

41. However, neither Article 17 nor Article 19 – nor, for that matter, the Sixth Directive per se – contain any provision which deals with the methods or criteria which should be used by Member States when apportioning input tax between economic activities and non-economic activities.

42. In view of that silence on the part of the Community legislature, whether intentional or otherwise, I consider that the Court may not graft specific conditions relating to the apportionment of VAT inputs in relation to economic and non-economic activities on to the text of the Sixth Directive. I do not consider it appropriate, as argued in particular by the applicant, to apply the provisions of the Sixth Directive by analogy or mutatis mutandis.

43. Consequently, as the Sixth Directive makes no provision regarding the method for apportioning input tax between economic and non-economic activities, it must be concluded that this is a matter which lies within the discretion of the Member States. (23)

44. However, I would stress that when apportioning input tax between economic and non-economic activities, the Member States' discretion is not unfettered and they must comply with certain principles resulting from the Sixth Directive as interpreted in the case-law of the Court.

45. In that regard, it should be noted that in a case concerning a different area (namely, the use of property forming part of the assets of a business for private purposes) but a similar issue, after noting that the Sixth Directive did not 'contain the guidance necessary for defining uniformly and precisely the rules for establishing the full cost concerned', the Court held that 'it must be accepted that the Member States therefore have a certain margin of discretion as regards those rules provided that they do not fail to have regard to the aims and role of the provision at issue within the scheme of the Sixth Directive'. (24)

46. The right of deduction provided for in Article 17 et seq. of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. The Court has consistently held that any limitation on the right of deduction affects the level of the tax burden and must be applied in a similar manner in all the Member States. (25)

47. The method and criteria used by the Member States for the apportionment must be such as to ensure that the objectives pursued by the Sixth Directive are respected. Accordingly, they must not be contrary to the principle of fiscal neutrality on which the common system of VAT established by the Sixth Directive is based, and which precludes economic operators carrying out the same transactions from being treated differently in relation to the levying of VAT. (26)

IV – **Conclusion**

48. I am therefore of the opinion that the Court should give the following answers to the questions referred by the Niedersächsisches Finanzgericht:

(1) Where a taxable person simultaneously engages in an economic activity and a non-economic activity, the deduction of input tax on the expenditure connected with the issue of shares or silent partnerships is allowed only to the extent that that expenditure is correctly to be attributed to that person's economic activity within the meaning of Article 2(1) of Directive 77/388/EEC.

(2) The method of apportionment of the input tax between economic activities and non-economic activities is a matter which lies within the discretion of the Member States. When exercising that discretion, the Member States must ensure, in particular, that the principle of fiscal neutrality is respected.

1 – Original language: English.

2 – 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').

3 – Article 17(5) goes on to provide: '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.'

4 – BGBl 1979 I, p. 1953.

5 – Case C?465/03 [2005] ECR I?4357.

6 – I do not think it is necessary to draw a distinction between 'business activity' and 'economic activity' for the purposes of VAT. In the present discussion I shall only make use of the term 'economic activity', which is used by the Sixth Directive.

7 – See Case C?77/01 *EDM* [2004] ECR I?4295, paragraph 47 and the case-law cited therein. In this respect, see also *Kretztechnik*, cited in footnote 5, paragraph 18. The Court also held that the term 'economic activities' is objective in character, in the sense that the activity is considered per se and without regard to its purpose or results. See, inter alia, Case C?223/03 *University of Huddersfield* [2006] ECR I?1751, paragraph 47 and the case-law cited.

8 – See Case C?8/03 *Banque Bruxelles Lambert (BBL)* [*2004] ECR I?10157, paragraph 38.*

9 – See Case C?442/01 *KapHag* [2003] ECR I?6851, paragraph 40.

10 – See, inter alia, *BBL*, cited in footnote 8, paragraphs 36 to 41 and the case-law cited therein.

11 – *KapHag*, cited in footnote 9, paragraph 43.

12 – *Kretztechnik*, cited in footnote 5, paragraph 25.

13 – Ibid., paragraph 26.

14 – See, to that effect, Case C?16/00 *Cibo Participations* [2001] ECR I?6663.

15 – Case 268/83 [1985] ECR 655, paragraph 19. See also Case C?408/98 *Abbey National* [2001] ECR I?1361, paragraph 24 and the case-law cited.

16 – Case C?435/05 [2007] ECR I?0000, paragraph 23 and the case-law cited.

17 – *Kretztechnik*, cited in footnote 5, and the case-law cited therein.

18 – Ibid., and the case-law cited.

19 – Ibid. This meant that in that case Kretztechnik raised the capital in its capacity as a taxable person acting as such. Hence, VAT on inputs attributable as overheads to Kretztechnik's whole economic activity was wholly deductible. See, with regard to a more recent case decided by the Court, *Investrand*, cited in footnote 16.

20 – *Kretztechnik*, cited in footnote 5, paragraph 37 and the case-law cited therein.

21 – See *Kretztechnik*, ibid., paragraph 36.

22 – Case C?333/91 *Sofitam* [1993] ECR I?3513, paragraphs 13 and 14; Case C?142/99 *Floridienne and Berginvest* [2000] ECR I?9567, operating part; *Cibo Participations*, cited in footnote 14, paragraph 44; and *EDM*, cited in footnote 7, paragraph 54. In *Floridienne and Berginvest*, for example, the Court held that Article 19 of the Sixth Directive is to be interpreted as meaning that the following must be excluded from the denominator of the fraction used to calculate the deductible proportions: share dividends paid by its subsidiaries to a holding company which is a taxable person in respect of other activities and which supplies management services to those subsidiaries.

23 – I may note here that already in *Cibo Participations*, in its pleadings the Commission pointed out that since Article 17 of the Sixth Directive makes no provision in respect of transactions arising from an economic activity outside the scope of the Directive, it is for the Member States to determine the method by which the deduction is prohibited. See Opinion of Advocate General Stix-Hackl in *Cibo Participations*, cited in footnote 14, point 31.

24 – See, to that effect, Case C?72/05 *Wollny* [2006] ECR I?8297, paragraph 28. See also Case 51/76 *Verbond van Nederlandse Ondernemingen* [1977] ECR 113, paragraphs 16 and 17.

25 – See, in particular, Case C?62/93 *BP Soupergaz* [1995] ECR I?1883, paragraph 18 and the case-law cited. Cf. also the 12th recital in the preamble to the Sixth Directive.

26 – See Case C?382/02 *Cimber Air* [2004] ECR I?8379, paragraphs 23 and 24, and Case C?280/04 *Jyske Finans* [2005] ECR I?10683, paragraph 39.