OPINION OF ADVOCATE GENERAL

CRUZ VILLALON

delivered on 28 February 2013 (1)

Case C?388/11

Le Crédit Lyonnais

v

Ministre du budget, des comptes publics et de la réforme de l'État

(Request for a preliminary ruling from the Conseil d'État (France))

(Taxation – VAT – Sixth Directive 77/388 – Articles 17 and 19 – Deduction of input tax paid – Goods and services used both for transactions in respect of which VAT is deductible and those in respect of which it is not deductible – Calculation of the deductible proportion – Account taken by a company of the turnover of its branches established in other Member States or third States – 'Worldwide proportion' – Principle of VAT neutrality – Territoriality of the tax)

1. This case offers the Court the opportunity to examine a series of questions of interpretation regarding the right of deduction inherent in the common system of value added tax ('VAT') which, although of great importance in terms of principles, given their practical consequences, have however thus far not been examined.

2. Put in very simple terms, the main question submitted to the Court for its assessment is whether a company established in one Member State which has branches established in other Member States or third countries is required, when discharging its tax obligations with regard to the Member State in which it is established and in so far as it carries out transactions both in respect of which VAT is deductible and those in respect of which it is not deductible, to calculate its deductible proportion, within the meaning of Articles 17(5) and 19 of the Sixth Directive 77/388, by taking into account its total turnover, that is to say by including both the turnover of the principal establishment and that of its various branches, the so-called 'worldwide proportion'.

3. Although the facts at issue in the dispute in the main proceedings are long-established, since they date back to the years 1988 and 1989 and fall under the provisions of the Sixth Directive 77/388/EEC (2) in force at that time, the questions referred for a preliminary ruling which they have thus belatedly raised are still of interest today, since the relevant provisions of that directive appear in virtually identical form in the provisions of Council Directive 2006/112/EC, (3) which repeals the Sixth Directive. (4) That interest is particularly significant since the applicant's main claim in the dispute in the main proceedings is based on the judgment given by the Court in *FCE Bank* (5) and calls on the Court, taking into account the principle of neutrality inherent in the

common system of VAT, to adopt a principled stance on this matter.

I – **Legal framework**

A – *European Union (EU) law: the Sixth Directive*

4. Article 17 of the Sixth Directive 77/388/EEC (6) 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) [VAT] due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) [VAT] due or paid in respect of imported goods;

(c) [VAT] due under Articles 5(7)(a) and 6(3).

3. Member States shall also grant to every taxable person the right to a deduction or refund of the [VAT] referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

(a) transactions relating to the economic activities as referred to in Article 4(2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

(b) transactions which are exempt under Article 14(1)(i) and under Articles 15 and 16(1)(B), (C) and (D), and paragraph 2;

(c) any of the transactions exempted under Article 13B(a) and (d), paragraphs 1 to 5, when the customer is established outside the Community or when these transactions are directly linked with goods intended to be exported to a country outside the Community.

…

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 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 [VAT] which is not deductible by the taxable person is insignificant, it shall be treated as nil.'

5. Article 19(1) and (2) of the Sixth Directive 77/388 (7) provides:

'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 value added tax 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 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 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.'

B – *French law*

6. At the time of the facts of the dispute in the main proceedings, Articles 17(5) and 19 of the Sixth Directive 77/388 were, according to the order for reference, transposed by Articles 212, 213 and 219 of Annex II to the Code général des impôts (General Tax Code). (8)

7. Article 212 of Annex II to the CGI provided:

'Taxable persons who do not carry out exclusively transactions in respect of which [VAT] is deductible are authorised to deduct a fraction of the [VAT] charged on goods constituting fixed assets equal to the amount of that tax multiplied by the ratio between the annual amount of receipts attributable to transactions in respect of which [VAT] is deductible and the annual amount of receipts attributable to all transactions carried out …'.

8. Article 213 of Annex II to the CGI provided:

'Where a taxable person engages in sectors of business which are not subject to identical provisions as regards [VAT], those sectors shall be the subject of separate accounts for

application of the right to deduct.

…

The amount of the tax deductible in respect of assets common to the various sectors of business shall be determined by application of the ratio provided for in Article 212.'

9. Article 219 of Annex II to the CGI read as follows:

'Taxable persons who do not exclusively carry out transactions giving rise to deduction shall be authorised to deduct the [VAT] charged on those same goods and services within the limits set out below:

(a) where those goods and services contribute solely to transactions giving rise to a right of deduction, the tax charged on them shall be deductible;

(b) where they contribute solely to transactions not giving rise to a right of deduction, the tax charged on them shall not be deductible;

(c) where their use leads concurrently to the carrying out of transactions of which some give rise to a right of deduction and others do not, a fraction of the tax charged on them shall be deductible. That fraction shall be determined under the conditions laid down in Articles 212 to 214.'

10. In addition, Article 271(4) of the CGI provided:

'4. The right to deduct shall arise, subject to the same conditions as if [VAT] were payable, in respect of:

…

(b) banking and financial services enjoying exemption under Article 261C(1)(a) to (e), where they are rendered to persons domiciled or established outside the European Economic Community or relate to exports of goods intended for countries other than Member States of the Community.'

II – **The facts which gave rise to the dispute in the main proceedings**

11. Following an examination of accounts for the period 1 January 1988 to 31 December 1989, by two adjustment notices of 27 December 1991 and 7 December 1992, the company Le Crédit Lyonnais, (9) which has its principal establishment in France, formed the subject-matter of an additional assessment to arrears of VAT and to payroll tax, on the ground that it wrongly took account of the interest on loans granted to its branches established in other Member States or third countries by reference to the numerator and the denominator of the deductible proportion laid down in Article 212 of Annex II to the CGI.

12. By two objections of 20 July 1994, LCL requested the cancellation of those assessments to arrears of VAT and to payroll tax for the years 1988 and 1989, contending that the amount of such interest could be taken into account in calculating the deductible proportion.

13. By a recovery notice issued on 17 November 1994, LCL was asked to pay arrears of VAT in the amounts, including interest, of EUR 1 151 573.81 in respect of 1988 and EUR 1 349 357.81 in respect of 1989. By an assessment notice of 30 December 1994, LCL was asked to pay arrears of payroll tax in the amounts, including interest, of EUR 1 209 890.89 in respect of 1988 and EUR 1 246 611.44 in respect of 1989.

14. By a further objection of 31 December 1996, LCL sought a refund, first, of the VAT which it considers that it overpaid for the years 1988 and 1989, namely EUR 46 944 246.96, and, second, of the payroll tax which it considers that it overpaid for the years 1988 and 1989 (EUR 23 067 082.45). LCL submitted that it had incorrectly failed to take into account, when calculating its deductible proportion of VAT, the interest paid to its branches in other countries by their customers. LCL also requested that the payroll tax in respect of which it was seeking a refund be offset against the corporation tax calculated as part of the examination of the accounts.

15. Following the dismissal of those objections by the tax authorities, by application of 28 August 1998, LCL referred the matter to the tribunal administratif de Paris (Administrative Court, Paris) seeking, first, relief from the arrears of VAT charged to it in respect of the years 1988 and 1989 and, second, a refund of the VAT and payroll tax which it considered that it had overpaid for the years 1988 and 1989.

16. By judgment of 5 October 2004, the Tribunal administratif de Paris dismissed the various applications.

17. By judgment of 8 December 2006, the cour administrative d'appel de Paris (Administrative Court of Appeal, Paris) upheld that judgment. It took the view, first, that LCL's branches established in other Member States were themselves liable to VAT and took account of their own income with a view to determining their own deductible proportion, such that that income could not form the basis of a new right of deduction for the benefit of the principal establishment. It was of the opinion, second, that the transactions carried out by LCL's branches established in third countries did not enter into the equation vis-à-vis the exercise of the right of deduction, since those branches could be either tax-exempt or subject to different rules.

18. On 21 February 2007, LCL thus appealed on a point of law to the Conseil d'État (Council of State) requesting that the judgment of 8 December 2006 be set aside.

III – **The questions referred for a preliminary ruling and the procedure before the Court**

19. In those circumstances, by decision of 11 July 2011, the Conseil d'État (3rd, 8th, 9th and 10th subdivisions combined) stayed the proceedings and asked the Court to give a preliminary ruling on the following questions:

'(1) Having regard to the rules on the territorial scope of [VAT], can Article 17(2) and (5) and Article 19 of the Sixth Directive … be interpreted as meaning that, in calculating the deductible proportion for which they provide, the principal establishment of a company established in a Member State must take account of the income of each of its branches established in another Member State and, correspondingly, those branches must take account of the totality of income falling within the scope of [VAT] of the company?

(2) Must the same solution be adopted for branches established outside the EU, particularly in the light of the right to deduct provided for by Article 17(3)(a) and (c), in relation to the banking and financial operations referred to in Article 13B(d)(1) to (5), which are carried out for the benefit of customers established outside the [EU]?

(3) Might the answer to the first and second questions above vary from one Member State to another, depending on the options made available by the last subparagraph of Article 17(5), particularly with regard to the establishment of different sectors of business?

(4) If the answer to the first or the second question above is in the affirmative, is it, first,

appropriate to limit the application of a deductible proportion of that kind to calculation of rights to deduct [VAT] that has been charged on expenses incurred by the principal establishment for the benefit of foreign branches and, second, must income achieved abroad be taken into account in accordance with the rules applicable in the State of the branch or in the State of the principal establishment?

20. LCL, the Governments of the French Republic, the Republic of Cyprus and the United Kingdom of Great Britain and Northern Ireland, and the European Commission, have submitted written observations.

21. LCL, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the Commission also submitted oral argument at the hearing held on 27 September 2012.

IV – **Analysis**

A – *Preliminary remarks*

22. By the questions referred for a preliminary ruling, the referring court is, in essence, asking the Court to answer the question whether (first and second questions), and if so to what extent (third and fourth questions), the Sixth Directive 77/388 requires the Member States, having regard in particular to the judgment given by the Court in *FCE Bank*, to apply what is commonly referred to as the 'worldwide proportion', that is to say to calculate the deductible proportion of VAT, provided for in Articles 17(5) and 19 of that directive, of the principal establishment of a company established in one Member State by taking into account, in the context of its tax obligations in that Member State, the turnover of that company's branches established in other Member States or in third countries, and vice versa reciprocally.

23. It must be observed, first, that the referring court poses its fourth question in the alternative, that is to say only to the extent that and in so far as an answer is given in the affirmative to either the first or second question. If the first and second questions are answered in the negative, there will therefore be no need to answer the fourth question. It will also not be necessary to reply to the third question in the light of the reply which I propose be given to the first question.

24. Second, it must be pointed out that the dispute in the main proceedings concerns an application, made by a company with its principal establishment in the Member State of the referring court ? here, France ? requesting that account be taken of the turnover of that company's branches established in other Member States (first question) or in third countries (second question) for the purposes of the calculation of its deductible proportion in the context of its tax obligations in the first Member State.

25. However, although the first question relates specifically to the admissibility of that application in those circumstances, and therefore from the point of view of the company's principal establishment, it also ultimately concerns the admissibility of the same application in symmetrical circumstances, namely from the point of view of the branches established in other Member States. The referring court is in fact also asking the Court about the possibility, on the part of the branches established in other Member States, to take into account equally and symmetrically, in their own deductible proportion and in the context of their tax obligations in their own Member State of establishment, the totality of the company's income as such, that is to say the income of the principal establishment and that of each of the other branches.

26. However, since the resolution of the dispute in the main proceedings does not require an examination of the procedures for determining the deductible proportion of LCL's branches established and liable to tax in other Member States, it will therefore be for the Court, as the

Commission proposed in its written observations, to reformulate the first question and remove that aspect. (10)

27. Thirdly, and finally, it seems appropriate to embrace the distinction proposed by the referring court by replying separately and in turn to the first and second questions, which, whilst raising the same question of principle regarding the admissibility of the 'worldwide proportion', draw a distinction between the situation of companies according to whether they have branches established in Member States or in third States, having regard in particular to the specific provisions laid down in Article 17(3)(c) of the Sixth Directive 77/388, (11) which govern the right to deduct VAT on goods and services used for the purposes of transactions exempted under Article 13B(a) and (d), paragraphs 1 to 5, (12) carried out with customers established in third countries.

28. In the context of the present case, LCL essentially claims that the principle of neutrality inherent in the common system of VAT established by the Sixth Directive 77/388 requires the adoption of the 'worldwide proportion', in particular as the logical consequence of *FCE Bank*.

29. By contrast, the Member State governments which submitted written observations and presented oral argument and the Commission are in agreement, in essence, first, that LCL is conferring on *FCE Bank* a scope which that judgment does not have. In any event, they are of the view that the common system of VAT established by the Sixth Directive 77/388, and in particular its territorial linkage as well as considerations of a practical nature, preclude the adoption of the 'worldwide proportion'. The Sixth Directive 77/388 rules out the possibility of Member States allowing taxable persons falling within the territorial scope of their tax legislation and carrying on their activities in more than one Member State via branches to take account of the turnover of those branches for the purposes of the calculation of their deductible proportion.

B – *Account taken, in the calculation of the deductible proportion of the principal establishment of a company established in a Member State, of the turnover of branches established in other Member States (first question)*

30. Since the judgment in *FCE Bank* is central to the present case, before considering the admissibility of the 'worldwide proportion' argument, with which this case is primarily concerned, (13) it is essential to establish the precise scope of that ruling with a view to determining to what extent it may influence the answer to be given to the questions referred to the Court by the national court.

1. The judgment in *FCE Bank* and its scope

31. It must be observed first of all that the solution adopted by the Court in its judgment in *FCE Bank* has at no point been called into question, either in the context of the dispute in the main proceedings or before the Court, either by LCL or by the Member States which submitted observations or by the Commission. (14) Quite on the contrary, the judgment in *FCE Bank* represents the starting point for LCL's claims, and it should therefore be taken as established that LCL and the branches in question in the dispute in the main proceedings do indeed fall within the situation envisaged in that judgment, that is to say that they are indeed 'branches' and not 'subsidiaries'. It must, however, be made clear in this regard that it is for the referring court to ensure that the situation at issue in the dispute in the main proceedings does indeed come under the situation covered by *FCE Bank*, since the answers to the questions which it poses are based on the assumption that LCL and its various branches constitute a single legal entity for the purposes of the application of the VAT rules.

32. In essence, LCL submits primarily and exclusively that the application of the case-law in *FCE Bank* entails, in principle, a loss of the right to deduct the input VAT paid on goods and

services by the principal establishment of a company each time those goods and services are used for the purposes of taxable output transactions carried out by that company's branches established in other Member States. Since the principal establishment cannot invoice for those goods and services supplied to the branches, applying the case-law in *FCE Bank*, those branches would be unable to deduct the VAT charged on them, paid as input tax by the principal establishment, from the VAT for which they are liable on the taxable output transactions which they carry out. Only the VAT charged on the expenditure incurred by the branches themselves in their Member State of establishment would thus be deductible.

33. LCL infers from this that, unless it is to lose the right of deduction, which would be contrary to the principle of the neutrality of VAT, a company which has a principal establishment that carries out both taxable transactions and transactions in respect of which VAT is not deductible, within the meaning of Article 17(5) of the Sixth Directive 77/388, should necessarily be able to take into account, in the calculation of its deductible proportion of the VAT charged on the expenditure attributable to its taxable transactions, all the transactions to which that expenditure contributed, both those carried out by the principal establishment in the Member State in which it is established and those carried out by the branches in their own Member State of establishment.

34. Put very briefly, the judgment given by the Court in *FCE Bank* teaches us that a company which has its principal establishment in one Member State (FCE Bank) and a fixed establishment (a branch) established in another Member State (FCE IT) form, with regard to the Member State of establishment of the branch (Italy) and in so far as the principal establishment has supplied goods or services to the branch, a single taxable person (15) in their reciprocal 'relations', (16) such that any supplies made by the principal establishment of the company to the branch cannot be regarded as supplies of services effected for consideration within the meaning of Article 2 of the Sixth Directive 77/388, with the necessary consequence that those supplies were not liable to VAT, in the present case, in the Member State of the branch.

35. Indeed, in accordance with the case-law of the Court, (17) a supply of service is liable to VAT only if there exists between the service provider and the recipient a legal relationship in which there is a reciprocal performance. In addition, such a legal relationship cannot exist between the principal establishment of a company and a branch of the same company if the latter does not carry out an independent economic activity, that is to say if it cannot be regarded as being independent in that it bears the economic risk arising from its business. (18) That was the case with FCE IT, a branch of FCE Bank without any endowment capital. (19)

36. In that regard, it is not disputed, either by the Member States which submitted observations or by the Commission, that the application of the case-law in *FCE Bank* may theoretically (20) lead to a situation in which a company established in one Member State and which has branches established in other Member States may lose its right to deduct VAT to some extent where it centralises in one Member State, in the present case the Member State of its principal establishment, the acquisition of goods and services used for transactions carried out in other Member States, with the output transactions carried out not giving rise to a right to deduct the input VAT paid.

37. However, in its judgment in *FCE Bank*, the Court simply ruled that the transactions carried out by the principal establishment of a company with its various branches had to be regarded as internal transactions, and the scope of that judgment ends with that classification.

38. Indeed, at no point in that judgment did the Court rule on the procedures for the deduction of VAT. Although it is true that it 'may have' the effect that the input VAT charged on that expenditure in the Member State of the principal establishment 'may' not be deducted in proportion to the use of that expenditure in output transactions in the Member States of the branches, that

represents merely the exclusion of one of the conceivable ways of implementing the right of deduction.

39. However, the view cannot be taken that the implicit but necessary consequence of that judgment is to require Member States, as some sort of corollary or by way of compensation, applying the principle of neutrality inherent in the common system of VAT established by the Sixth Directive 77/388, to allow a company enjoying exemption from VAT in respect of some of its activities under Article 13B(d) of that directive ? activities which do not therefore in principle give rise to a right to deduct VAT ? to calculate its deductible proportion pursuant to Articles 17(5) and 19 of that directive by taking into account the turnover of all its branches.

40. In conclusion, although it is true that the judgment in *FCE Bank* precludes one option for deducting the VAT charged on expenditure made by the principal establishment of a company established in one Member State where that expenditure is used for transactions carried out by its branches in other Member States, it does not however provide any answer, either implicit or explicit, to the main question raised by the present case, namely whether such a company must take account of both the turnover of the principal establishment and that of its branches in order to calculate its deductible proportion within the meaning of Articles 17(5) and 19 of the Sixth Directive 77/388. The answer to that question will therefore have to be sought elsewhere.

41. However, before examining the provisions contained in Articles 17(5) and 19 of the Sixth Directive 77/388, on which LCL bases its claims and which govern the right to deduct the VAT charged on goods and services used for both transactions in respect of which VAT is deductible and those in respect of which VAT is not deductible, it is important to begin by recalling the scope of the right of deduction, as provided for in Article 17 of the Sixth Directive 77/388 and interpreted by the Court.

2. The right of deduction, the principle of neutrality and the territorial linkage of the common system of VAT

42. As the Court has repeatedly pointed out, the deduction system established by Articles 17 to 20 of the Sixth Directive 77/388 is a fundamental element (21) of the common system of VAT, in so far as it seeks to ensure the neutrality of the tax in relation to all economic activities, whatever their purposes or results, provided that they are themselves subject to VAT. (22) As a tax essentially intended to apply to consumption, and in the place of that consumption, (23) proportional to the price of the goods and services, (24) VAT applies, without exception, (25) to each transaction by way of production or distribution after deduction of the VAT directly borne by the various cost components of those goods and services. (26)

43. The right of deduction provided for in Article 17 of the Sixth Directive 77/388 is thus intended to relieve the taxable person of the burden of the VAT payable or paid in the course of all his economic activities, provided that they are not exempt. The Sixth Directive therefore allows the taxable person to deduct from the VAT which he charges on the taxable transactions that he carries out and in respect of which he is liable the input VAT charged on the goods or services which he has acquired for the purposes of those transactions, provided that that input expenditure is directly and immediately linked to the output transactions (27) or may be related to the general costs of the taxable person and thus represent cost components of the output transactions. (28)

44. It is only to the extent that an item or a service is used for the purposes of his taxable transactions that a taxable person may deduct from the VAT which he is liable to pay that VAT due or to be paid in respect of that item or that service. (29) The deduction of input VAT, which is required in order to avoid double taxation, (30) is thus linked to collection of output VAT. (31)

45. Furthermore, the use to which the goods or services are put, or are intended to be put, determines the extent of the initial deduction to which the taxable person is entitled under Article 17 of the Sixth Directive 77/388 and the extent of any adjustments in the course of the following periods, which must be made under the conditions laid down in Article 20 of that directive. (32)

46. In view of the importance of the right of deduction conferred on taxable persons, and save in cases of fraud or abuse, (33) any limitation must, on account of its impact on the level of the tax burden, be applied in a similar manner in all the Member States and, therefore, requires a provision of European Union law which expressly authorises it. (34)

47. By contrast, each time that goods or services acquired by a taxable person are used for the purposes of transactions that are exempt or do not fall within the scope of VAT (35) – an important point as far as a correct understanding of the scope of the principle of neutrality is concerned – output tax cannot be collected and, therefore, input tax paid cannot be deducted or refunded. (36)

48. Under Article 17(2)(a) of the Sixth Directive 77/388, where a taxable person supplies goods or services to another taxable person who uses them for a transaction which is exempt under, for example, Article 13A of that directive, the latter person is not, as a rule, entitled to deduct the input VAT paid as, in such a case, the goods and services concerned are not used for taxable transactions. (37) That explains the phenomenon, sometimes referred to as ‘hidden VAT’, by which an additional cost is added to the price of the goods or services used in successive exempt transactions. (38)

49. It is only by way of exception that the Sixth Directive 77/388 provides, inter alia, in Article 17(3)(b) and (c), (39) for a right to deduct VAT in relation to goods and services used for exempt transactions; (40) the wording used by that directive in that regard must be interpreted strictly. (41)

50. The principle of fiscal neutrality, which ? as an integral component of the VAT scheme ? is a fundamental principle underlying the common system of VAT established by the relevant Community legislation, stems from the requirements laid down in Article 17(2) of the Sixth Directive 77/388, and therefore from the right of deduction in particular. (42)

51. Sometimes regarded as a general principle of European Union law underlying the common system of VAT, the principle of neutrality is also an expression of the general principle of equal treatment, (43) which requires that, with regard to VAT, taxable persons are subject to the same conditions of competition, save where differentiation is objectively justified. (44)

52. However, as the Court has pointed out, unlike other general principles of European Union law, the principle of neutrality does not have constitutional status and requires legislation to be drafted and enacted, which requires a measure of secondary Community law. (45) It is not therefore a rule of primary law, but rather a principle of interpretation (46) which must, inter alia, guide the Member States in the adoption of their legislation to transpose the Sixth Directive 77/388.

53. It is important to point out in that regard that the common system of VAT established by the Sixth Directive 77/388 – one of the main objectives of which, as is clear from the second recital in the preamble to that directive, is to guarantee own resources for the EU via the collection of a tax charged by applying a common rate of tax on a basis of assessment determined in a uniform manner according to common rules – remains, notwithstanding that harmonisation, shaped to a great extent by its territorial linkage and, therefore, by State control of its functioning. Since the harmonisation achieved by that directive was only partial, a different statutory VAT scheme exists in each Member State. In short, although subject to a common system, VAT remains a tax which

falls under the tax sovereignty of the Member States, a sovereignty expressed in the various provisions of the Sixth Directive 77/388 which point to the territorial linkage of that common system.

54. In particular, as the Court has had the opportunity to point out, Article 9 of the Sixth Directive 77/388, which determines in a uniform manner the place where services are deemed to be supplied for tax purposes, seeks to establish ? as is clear from the seventh recital in the preamble to that directive ? a rational allocation of the spheres of application of national VAT legislation, and is thus intended to avoid, first, conflicts of jurisdiction which may result in double taxation, and, second, non-taxation of income. (47)

55. The principle set out above, in accordance with which ‘collecting VAT, whatever its amount, is the responsibility of the Member State in which final consumption of the goods takes place’, (48) makes it possible ‘strictly to allocate revenues from VAT on intra-Community transactions and to delimit clearly the authority to tax of the Member States concerned’. (49)

56. In furtherance of the above reasoning, and before specifically turning to the answer to be given to the questions put by the referring court, it is necessary to present in brief the methods of calculating the right of deduction afforded to taxable persons who themselves supply goods or services which are not wholly subject to VAT.

3. The deductible proportion (Articles 17(5) and 19 of the Sixth Directive 77/388)

57. In situations in which the taxable person carries out, in principle without distinction, both taxable transactions and transactions in respect of which VAT is not deductible, pursuant to the first and second subparagraphs of Article 17(5) of the Sixth Directive 77/388, only such proportion of all the input VAT paid is deductible as is attributable to the taxable transactions, with that proportion being determined for all the taxable person’s transactions in accordance with Article 19 of that directive.

58. Those provisions are intended to enable a taxable person who acquires goods or services in order to carry on both taxable and exempt activities to deduct, from all the transactions effected, the proportion of the VAT paid on the acquisition of those goods or services which is deemed to correspond to their use in his taxable activities (50) and is thus consistent with the logic behind the right of deduction itself.

59. Nevertheless, the third subparagraph of Article 17(5) of the Sixth Directive 77/388 allows Member States, inter alia, to provide in a variety of ways, and departing from the provisions of the preceding subparagraphs, for the option or obligation on the part of taxable persons to make an individualised, and in this regard separate, calculation for each ‘sector of his business’ (points (a) and (b)) or indeed to determine the deduction on the basis of the ‘actual use’ of all or part of the goods and services used (point (c)), but also to require or authorise application of the main proportion, with that second option involving the possibility of other proportions (point (d)) in particular.

60. Taken as a whole, the aim of the provisions of the third subparagraph of Article 17(5) of the Sixth Directive 77/388 which form the subject-matter of the third question referred by the national court is in particular to permit Member States to achieve greater accuracy than is possible using the proportion method (51) by taking into account the specific characteristics of the taxable person’s activities, whilst respecting the effectiveness of the first subparagraph of Article 17(5) of that directive and the principles which underlie the common system of VAT, in particular those of fiscal neutrality and proportionality. (52)

61. As the United Kingdom Government pointed out, it may be held by virtue of the very existence of those alternatives that the deductible proportion scheme cannot always give rise to a perfect match between the proportion of VAT which may be recovered on input expenditure and the actual use of that expenditure on output transactions.

4. The question whether the Sixth Directive 77/388 requires the application of the ‘worldwide proportion’

62. As is clear from the foregoing reasoning and as LCL, the French Government and the Commission have pointed out, Article 17(2) and (5) and Article 19 of the Sixth Directive 77/388 do not provide an explicit answer to the question whether the principal establishment of a company established in one Member State must take into account, in the calculation of its deductible proportion, the turnover of its branches established in other Member States.

63. In very general terms, both the advocates and the opponents of the ‘worldwide proportion’ have developed many arguments seeking to demonstrate either that that turnover must be taken into account by virtue of and pursuant to the principle of neutrality underlying the common system of VAT established by the Sixth Directive 77/388, or that it may not be taken into account in view of the territorial linkage of that scheme and in the light of the practical difficulties which its implementation would raise, both for taxable persons and for the supervisory tax authorities.

64. In addition, as is clear from the foregoing analysis, the specific procedures for the exercise of the right of deduction in relation to the transactions carried out by a company such as LCL, established in one Member State, and its branches, established in other Member States, as well as the scope of that right, depend to a great extent on a certain number of choices freely made by the Member States with regard to which they have the capacity of a taxable person, and in particular (53) between the methods of determining the right of deduction provided for in Article 17(5) of the Sixth Directive 77/388. That provision affords Member States a certain degree of discretion (54) to organise the right of deduction in the manner best suited to the specific characteristics of taxable persons’ activities, with a view to guaranteeing the neutrality of VAT in the most precise way possible.

65. In the absence of any express provision of EU law in that regard, it is therefore first and foremost for the competent national authorities and courts to determine, within the limits established by Article 17 of the Sixth Directive 77/388 and respecting the principles underlying the common system of VAT which that directive establishes, the specific procedures for the exercise of the right of deduction which must be afforded to taxable persons who, as LCL submits, acquire goods or services in one Member State which are used for output transactions carried out by branches established in other Member States.

66. LCL further pointed out in that regard, in essence, in its answer to the third question referred by the national court, that it was unable to establish separate sectors of its business given the national law in force applicable to the right of deduction at the time of the facts in the main proceedings, such that that right did not lay down any distinction depending on how companies were structured. (55)

67. It is true, as is clear from the case-law of the Court analysed above, that the right of deduction must correspond, in principle and in so far as possible, to the input VAT paid on the acquisition of goods and services used for non-exempt transactions. Nevertheless, that requirement does not necessarily entail the obligation on the part of the Member States to provide that, in the calculation of the deductible proportion of a company liable to tax, specified in the first and second subparagraphs of Article 17(5) and Article 19 of the Sixth Directive 77/388, account is

to be taken systematically of the total turnover of that company, that is to say both the turnover of the principal establishment and that of all its branches established in other Member States, at the risk ? as pointed out by all the Member State governments which submitted observations and the Commission ? of distorting the very meaning of the deductible proportion.

68. It must be pointed out in that regard, as stated by the United Kingdom Government and the Commission in their written observations, that the purpose of the argument advanced by LCL is to ask the Court to define, in general terms, the theoretical principles which must govern the determination of the deductible proportion in the case of a company which has its principal establishment in one Member State which centralises expenditure used, inter alia, for transactions carried out by its branches in other Member States, without providing any precise figures (56) relating either to the overall amount of that common expenditure or the proportion of the taxable transactions effected by the branches using that expenditure, or the slightest indication of the direct and immediate link required by the case-law of the Court between the input expenditure made by the principal establishment and the output transactions carried out by the branches in respect of which VAT is deductible.

69. In addition, the loss of the right to deduct VAT which LCL criticises is uncertain in nature, since ? in addition to the choices made by the various Member States in question mentioned above ? it depends on the volume of taxable transactions compared with the exempt transactions carried out respectively by the company's principal establishment and its branches and on the volume of the common expenditure of the principal establishment for the benefit of its branches.

70. Contrary to LCL's claims, it cannot be held that the failure to take account of the turnover of the branches would entail a breach of equal treatment, itself contrary to the principle of neutrality, between companies depending on whether they have branches only in their Member State of establishment or whether they have branches in other Member States, or even between companies which have branches and those which have control over subsidiaries. (57)

71. A company which has its principal establishment and branches in a single Member State is not, with regard to the objective system established by the Sixth Directive 77/388, in the same situation as a company which has branches in other Member States. Indeed, the former is in principle liable to tax in a single Member State and therefore falls within the territorial scope of the VAT legislation of that Member State alone, whereas the latter is liable to tax in the Member States and places in which it has a branch (58) and therefore, taking into account the place where its activities are deemed to be carried on for tax purposes, falls within the territorial scope of the VAT legislation of each of those Member States.

72. Furthermore, in relation to VAT and having regard to the case?law in *FCE Bank*, a company which has branches is similarly not, in principle, in the same situation as a parent company with regard to its subsidiaries. (59) As the Court has made clear, persons who, while legally independent, are closely bound to one another by financial, economic and organisational links may be treated as a single taxable person, in accordance with Article 4(4) of the Sixth Directive 77/388, only where they are established in the territory of one and the same Member State. (60)

73. Finally, the Court has also had occasion to point out that taxable persons are free to choose the organisational structures and the form of transactions which they consider to be most appropriate for their economic activities and for the purposes of limiting their tax burdens, (61) which encompasses the organisation and allocation of group expenditure.

74. Accordingly, it should be held, in response to the first question referred by the national court, that Article 17(2) and (5) and Article 19 of the Sixth Directive 77/388 must be interpreted as

meaning that they do not require Member States to provide that account is to be taken, in the calculation of the deductible proportion of a company with its principal establishment in their territory, of the turnover of that company's branches established in other Member States.

C – *Account taken, in the calculation of the deductible proportion of the principal establishment of a company established in a Member State, of the turnover of branches established in third States (second question)*

75. By its second question, the referring court also asks the Court whether, having regard to Article 17(3)(a) and (c) of the Sixth Directive 77/388, (62) a company established in one Member State must take into account, in the calculation of its deductible proportion, the turnover of its branches established in third States, and therefore, in essence, whether the answer given to the first question regarding branches established in the other Member States likewise applies to branches established in third States.

76. Article 17(3)(a) of the Sixth Directive 77/388 provides that Member States are also to grant to every taxable person the right to a deduction or refund of the VAT charged on the goods and services used for the purposes of its transactions 'carried out in another country' which would be eligible for deduction of tax if they had occurred in the territory of the country.

77. The question whether supplies of services have been carried out 'in another country' must be resolved pursuant to the rules laid down in Article 9 of the Sixth Directive 77/388. (63) In the present case, the fifth indent of Article 9(2)(e) of the Sixth Directive 77/388 (64) states that the place where banking and financial transactions are performed for customers established in another Member State or a third State is, inter alia, the place where the customer has established his business or has a fixed establishment.

78. For its part, Article 17(3)(c) of the Sixth Directive 77/388 provides that Member States are also to grant to every taxable person the right to a deduction or refund of the VAT charged on the goods and services used for the purposes of its transactions exempted under Article 13B(a) and (d), paragraphs 1 to 5, (65) inter alia where the customer is established outside the Community.

79. Those exports intended for third States are thus defined in the same terms as the supplies 'carried out in another country' pursuant to Articles 17(3)(a) and 9(2)(e) of the Sixth Directive 77/388.

80. It may be inferred from those provisions that exports of exempt banking and financial services falling under the list of transactions contained in Article 13B(a) and (d), paragraphs 1 to 5, of the Sixth Directive 77/388 benefit from a right to a deduction or refund only where they are intended for customers established in third States.

81. However, in the present case, it is clear from the documents before the Court that LCL is not demanding a right of deduction in respect of the transactions carried out by its principal establishment intended for customers established in third States, that is to say exports of financial and banking services made by its principal establishment, but is rather requesting that account be taken, in the calculation of that principal establishment's deductible proportion, of the turnover achieved by its branches established in third States. Since the situation at issue in the dispute in the main proceedings does not fall within the scope of those provisions, they cannot have any effect on the answer to be given to the second question referred by the national court.

82. In those circumstances and in so far as, by its second question, the referring court asks the Court to state whether the answer given to the first question regarding branches established in the other Member States likewise applies to branches established in third States, it should be held

that, just as a Member State cannot be required to provide that account must be taken, in the calculation of the deductible proportion of a company liable to tax in that Member State, of the turnover of its branches established in other Member States, on the same grounds that Member State cannot be required to provide that account must be taken of the turnover of that company's branches established in third States.

83. In view of the proposal that the first and second questions referred by the national court be answered in the negative, there is no need to answer its third and fourth questions.

V – **Conclusion**

84. In the light of the foregoing analysis, I propose that the Court answer the questions referred by the Conseil d'État for a preliminary ruling as follows:

Article 17(2), (3) and (5) and Article 19 of Sixth Council Directive 77/388 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 requiring Member States to provide that account is to be taken, in the calculation of the deductible proportion of a company with its principal establishment in their territory, of the turnover of that company's branches established in other Member States or in third States.

1 – Original language: French.

2 – Council Directive 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).

3 – Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

4 – See Article 412 of Directive 2006/112.

5 – Case C?210/04 *FCE Bank* [2006] ECR I?2803.

6 – See, now, the provisions contained in Articles 167 to 173 of Directive 2006/112.

7 – See, now, the provisions contained in Articles 174 and 175 of Directive 2006/112.

8 – 'The CGI'.

9 – 'LCL'.

10 – See, inter alia, *FCE Bank*, cited above, paragraphs 21 and 22, and the case-law cited.

11 – See, now, the provisions contained in Article 169(c) of Directive 2006/112.

12 – See, now, the provisions contained in Articles 135 and 136 of Directive 2006/112.

13 – The *rapporteur public* in the main proceedings before the Conseil d'État, who concluded that the 'principle of neutrality' of VAT appeared to support the 'worldwide proportion' argument, stressed the importance of a question which 'goes to the foundations of the common system of VAT' and therefore recommended that the supreme administrative French court refer the present questions to the Court for a preliminary ruling. See Legras, C., '*Le prorata de TVA peut-il être mondialisé*', Opinion before the Conseil d'État, 11 July 2011, No 301849, Société Crédit Lyonnais, RFJ, 2011, No 10, Études et doctrines, p. 917. See also Guichard, M. and Stemmer, W., '*Prestations intra-entreprises et TVA*

', Droit fiscal, 2007, No 11, p. 273; Amand, C., and Lenoir, V., '*Prorata de déduction de la TVA par les intermédiaires financiers: le chiffre d'affaires des opérations de crédit est-il constitué par les intérêts bruts ou la marge brute?*', Banque & Droit, 2005, No 101, p. 10; Bouchard, J.-C., and Courjon, O., '*Le prorata et le principe de neutralité*', Droit fiscal, 2006, No 48, p. 2058; Stemmer, W., '*TVA. Prorata mondial: entre le marteau et l'enclume!*', Droit fiscal, 2011, No 30, Update No 241; Sniadower, C., '*Faut-il craindre la mondialisation? A propos de la décision Sté Crédit Lyonnais sur le calcul du prorata de déduction de la TVA*', Droit fiscal, 2011, No 44, Comm. No 573; Grundt, V. and Hamacher, R., '*Le prorata de déduction de TVA par les organismes financiers en Allemagne*', Droit fiscal, 2007, No 15, p. 404.

14 – As the *rapporteur public* before the Conseil d'État points out in his Opinion, the Conseil d'État had itself followed the solution adopted by the Court in its judgment in *FCE Bank*. See judgments of 9 January 1981 *Société Timex Corporation*, No 10145, Droit fiscal, 1981, No 23, Comm. No 1237, and of 29 June 2001 *Banque Sudameris* (No 176105, RJF 10/01, No 1217, Opinion Goulard, G., p. 811, Droit fiscal, 2001, No 46, Comm. No 1056); see, in relation to this case?law, inter alia, Guichard, M. and Stemmer, W., op. cit.; Sniadower, C., op. cit.

15 – Paragraph 37 of the judgment. It is also made clear in paragraph 41 of the judgment that the branch must not be a legal entity distinct from the company's principal establishment.

16 – Paragraph 41 of the judgment.

17 – Paragraph 34 of the judgment.

18 – Paragraph 35 of the judgment.

19 – Paragraph 37 of the judgment. See also, on this point, the Opinion of Advocate General Léger, point 38 et seq.

20 – The United Kingdom Government explains in this regard, and provides specific examples to support its explanation, that the loss of the right to deduct VAT is not certain in view of the various factors involved in the calculation of the proportion.

21 – See Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19.

22 – See, inter alia, Case 50/87 *Commission* v *France* [1988] ECR 4797, paragraph 15; Case C?376/02 '*Goed Wonen*' [2005] ECR I?3445, paragraph 26; and Case C?284/11 *EMS-Bulgaria Transport* [2012] ECR, paragraphs 43 and 44.

23 – In accordance with the objective laid down in Article 4 of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition: Series I Chapter 1967, p. 14 and 15); see also in this regard recital 7 in the preamble to Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1 to 19).

24 – In accordance with Article 2 of First Council Directive 67/227/EEC; see, inter alia, Case C?475/03 *Banca popolare di Cremona* [2006] ECR I?9373, paragraph 21.

25 – On the transitional scheme for exemption of intra-Community supplies of goods provided for in the first paragraph of Article 28c(A)(a) of the Sixth Directive 77/388, see, inter alia, Case C?62/93 *BP Soupergaz* [1995] ECR I?1883, paragraph 16; Joined Cases C?439/04 and C?440/04 *Kittel and Recolta Recycling* [2006] ECR I?6161, paragraph 49; and Case C?587/10 *VSTR* [2012] ECR, paragraphs 27 and 28.

26 – See, inter alia, *BP Soupergaz*, cited above, paragraph 16; Joined Cases C?354/03, C?355/03 and C?484/03 *Optigen and Others* [2006] ECR I?483, paragraph 54; and Case C?285/11 *Bonik* [2012] ECR, paragraph 28.

27 – See, inter alia, Case C?4/94 *BLP Group* [1995] ECR I?983, paragraph 19; Case C?98/98 *Midland Bank* [2000] ECR I?4177, paragraph 20; Case C?32/03 *Fini H* [2005] ECR I?1599, paragraph 26; and Case C?435/05 *Investrand* [2007] ECR I?1315, paragraph 23.

28 – See, inter alia, Case C?408/98 *Abbey National* [2001] ECR I?1361, paragraphs 35 and 38 to 40; Case C?16/00 *Cibo Participations* [2001] ECR I?6663; and Case C?496/11 *Portugal Telecom* [2012] ECR, paragraph 37.

29 – See, inter alia, Case C?291/92 *Armbrecht* [1995] ECR I?2775, paragraph 27, and Case C?63/04 *Centralan Property* [2005] ECR I?11087, paragraph 54.

30 – See Case C?184/04 *Uudenkaupungin kaupunki* [2006] ECR I?3039, paragraph 24.

31 – See *Uudenkaupungin kaupunki*, cited above, paragraph 24; Case C?72/05 *Wollny* [2006] ECR I?8927, paragraph 20; and Case C?277/09 *RBS Deutschland Holdings* [2010] ECR I?13805, paragraph 35.

32 – See, inter alia, Case C?97/90 *Lennartz* [1991] ECR I?3795, paragraph 15; Case C?396/98 *Schloßstraße* [2000] ECR I?4279, paragraph 37; and *Centralan Property*, cited above, paragraph 54.

33 – See, inter alia, Case C?255/02 *Halifax and Others* [2006] ECR I?1609; *Fini H*, cited above, paragraph 31; and *RBS Deutschland Holdings*, cited above, paragraph 48 et seq.

34 – See *Commission* v *France*, cited above, paragraph 15; *BP Soupergaz*, cited above, paragraph 18; and Case C?409/99 *Metropol and Stadler* [2002] ECR I?81, paragraph 42.

35 – See, to that effect, Case C?333/91 *Sofitam* [1993] ECR I?3513, paragraphs 13 and 14; *Cibo Participations*, cited above, paragraph 44; and Case C?77/01 *EDM* [2004] ECR I?4295, paragraph 44.

36 – See, for example, *Uudenkaupungin kaupunki*, cited above, paragraph 24; *Wollny*, cited above, paragraph 20; Case C?515/07 *Vereniging Noordelijke Land- en Tuinbouw Organisatie* [2009] ECR I?00839, paragraph 28; Case C?29/08 *SKF* [2009] ECR I?10413, paragraph 59; and Case C?118/11 *Eon Aset Menidjmunt* [2012] ECR, paragraph 44.

37 – See, inter alia, Case 8/81 *Becker* [1982] ECR 53, paragraph 44; Case C?302/93 *Debouche* [1996] ECR I?4495, paragraph 16; and Case C?240/05 *Eurodental* [2006] ECR I?11479, paragraph 26.

38 – See, in this regard, the description of the phenomenon provided by the Commission in its *Consultation Paper on modernising Value Added Tax obligations for financial services and insurances*, submitted in the context of the call for papers regarding the revision of Community

legislation on the treatment of financial services with regard to VAT launched in March 2006 (http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/modernising_VAT_

39 – On the impact of Article 17(3)(c) of the Sixth Directive 77/388 on the dispute in the main proceedings, see the reasoning below regarding LCL's branches established in third countries.

40 – See *BLP Group*, cited above, paragraph 23.

41 – See *Eurodental*, cited above, paragraph 33.

42 – Case C?174/08 *NCC Construction Danmark* [2009] ECR I?10567, paragraphs 39 to 45.

43 – See, inter alia, Case C?106/05 *L.u.P.* [2006] ECR I?5123, paragraph 48, and Case C?309/06 *Marks & Spencer* [2008] ECR I?2283, paragraph 49.

44 – With regard to illegal goods such as narcotic drugs in respect of which competition is precluded, see Case 269/86 *Mol* [1988] ECR 3627, paragraphs 17 and 18, and Case 289/86 *Vereniging Happy Family Rustenburgerstraat* [1988] ECR 3655, paragraphs 19 and 20; with regard to goods prohibited for export to certain destinations, see Case C?111/92 *Lange* [1993] ECR I-4677, paragraphs 16 and 17.

45 – See *NCC Construction Danmark*, cited above, paragraph 42.

46 – See Case C?44/11 *Deutsche Bank* [2012] ECR, paragraph 45, and point 60 of the Opinion of Advocate General Sharpston.

47 – See, inter alia, Case 168/84 *Berkholz* [1985] ECR 2251, paragraph 14; Case 283/84 *Trans Tirreno Express* [1986] ECR 231, paragraph 14; Case C?260/95 *DFDS* [1997] ECR I?1005, paragraph 18; Case C?116/96 *Reisebüro Binder* [1997] ECR I?6103, paragraph 12; Case C?155/01 *Cookies World* [2003] ECR I?8785, paragraph 46; Case C?111/05 *Aktiebolaget NN* [2007] ECR I?2697, paragraph 43; and Case C?218/10 *ADV Allround* [2012] ECR, paragraph 27.

48 – See, inter alia, Case C?146/05 *Collée* [2007] ECR I?7861, paragraph 37.

49 – Case C?245/04 *EMAG Handel Eder* [2006] ECR I?3227, paragraph 40. See also point 67 of my Opinion in Case C?285/09 *Criminal proceedings against R* [2010] ECR I?12605, and the references cited.

50 – Case C?98/07 *Nordania Finans and BG Factoring* [2008] ECR I?1281, paragraph 20.

51 – See, to that effect, Case C?488/07 *Royal Bank of Scotland* [2008] ECR I?10409, paragraph 24.

52 – Case C?511/10 *BLC Baumarkt* [2012] ECR, paragraphs 15 and 16.

53 – In this regard, it must be pointed out here that Article 13C of the Sixth Directive 77/388 permits Member States to allow taxpayers a right of option for taxation in cases of the transactions covered inter alia by Article 13B(d), it being specified that the exercise of the option potentially conferred by a Member State is a matter for the taxpayer alone; see, inter alia, *Becker*, cited above, paragraph 38; *Commission* v *France*, cited above, paragraph 18; and *Uudenkaupungin kaupunki*, cited above, paragraphs 44 to 47.

54 – See, to that effect, Stemmer, W., ‘*TVA. Prorata mondial: entre le marteau et l’enclume !*’, Droit fiscal, 2011, No 30, Update No 241.

55 – For French case-law and legal literature on separate sectors of business, see, inter alia, Tournès, Ph., ‘*Plaidoyer en faveur de la règle des secteurs d’activité distincts*’, RJF, 2000, No 2, p. 99.

56 – As is clear from the judgment of the Cour administrative d’appel de Paris of 8 December 2006.

57 – See also, to that effect, the Opinion of the rapporteur public before the referring court, p. 924.

58 – See, to that effect, Case C?244/08 *Commission* v *Italy* [2009] ECR.

59 – See, to that effect, inter alia, Case C?60/90 *Polysar Investments Netherlands* [1991] ECR I?3111, paragraphs 9 to 17; Case C?142/99 *Floridienne and Berginvest* [2000] ECR I?9567, paragraph 19; Case C?240/99 *Skandia* [2001] ECR I?1951, paragraphs 43 and 44; Case C?102/00 *Welthgrove* [2001] ECR I?5679, paragraph 16; and *RBS Deutschland Holdings*, cited above, paragraph 50.

60 – See *Polysar Investments Netherlands*, cited above, paragraph 15; see also Case C?162/07 *Ampliscientifica and Amplifin* [2008] ECR I?4019, paragraphs 17 to 23.

61 – *Halifax and Others*, cited above, paragraph 73; Case C?108/99 *Cantor Fitzgerald International* [2001] ECR I?7257, paragraph 33; and *RBS Deutschland Holdings*, cited above, paragraphs 53 and 54.

62 – On the provisions of Article 169(a) and (c) of Directive 2006/112, see Case C?582/08 *Commission* v *United Kingdom* [2010] ECR I?7195, paragraphs 25 and 31.

63 – Case C?377/08 *EGN* [2009] ECR I?5685, paragraphs 23 to 34.

64 – See, now, the provisions contained in Article 56(1)(e) of Directive 2006/112.

65 – See, now, the provisions contained in Article 135 of Directive 2006/112.