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OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 6 April 2017 (1)

Case C?132/16

Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ — Sofia

v

‘Iberdrola Inmobiliaria Real Estate Investments’ EOOD

(Request for a preliminary ruling from the Varhoven administrativen sad (Supreme Administrative Court of the Republic of Bulgaria))

(Reference for a preliminary ruling — VAT legislation — Deduction of input tax — Services supplied free of charge for the benefit of the municipal infrastructure — Link with the economic activity of the taxable person — Economic allocation versus causal link — Entry of costs in the accounts as general costs)

I. Introduction

1.

How close or broad, from the point of view of VAT law, must be the link between the costs, on which VAT is charged, borne by an operator in order to generate revenue and his taxable transactions for deduction of input tax to be possible? Is it sufficient that the costs were beneficial or necessary for the undertaking? Is the mere cause of the costs by notified revenue enough or must the costs be directly and immediately allocated to the undertaking’s revenue liable to VAT?

2.

Is it sufficient, for example, if an undertaking arranges the renovation of the municipal waste-water infrastructure in order to obtain building permits for its buildings, which are to be leased on a taxable basis in future? Or do the renovation costs have to be allocated directly and immediately to particular transactions of the undertaking? In the latter case, deduction of input tax by the undertaking for the renovation costs depends on the assessment of the supply to the municipality, as the undertaking supplies the renovation directly and immediately to the municipality in its function as the authority responsible for waste-water disposal.

3.

The Court is called on to consider these fundamental questions in these preliminary ruling proceedings. In answering them, regard must also be had to the Court’s recent judgment in Sveda. (2) That judgment has created some uncertainty in the Member States over the extent of the deduction of input tax. In the present case the Court now has an opportunity to clarify the statements made in that judgment.

II. Legislative framework

A. EU law

4.

The framework for the case in EU law is provided by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (3) (‘the VAT Directive’). Article 26(1)(b) of the VAT Directive provides:

‘1.

Each of the following transactions shall be treated as a supply of services for consideration:

(a)

…

(b)

the supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business.’

5.

Article 168 of the VAT Directive concerns deduction of input tax:

‘In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a)

the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person; …’

6.

The second paragraph of Article 176 of the VAT Directive contains a transitional provision:

‘Pending the entry into force of the provisions referred to in the first paragraph, Member States may retain all the exclusions provided for under their national laws [at 1 January 1979 or], in the case of the Member States which acceded to the Community after that date, on the date of their accession.’

B. National law

7.

Article 69 of the Zakon za danak varhu dobavenata stoynost (Bulgarian Law on value added tax, ZDDS) provides:

‘1. Where the goods and services are used for the purposes of taxable supplies effected by the registered taxable person, that person may deduct the following:

(1)

the tax on the goods and services which the supplier, where that supplier is also a registered taxable person in accordance with the present legislation, has supplied to him or is obliged to supply to him.’

8.

Under Article 70 of the ZDDS:

‘1. Even where the requirements of Article 69 or Article 74 are satisfied, the right of deduction does not apply if: …

2.

the goods or services are intended to be supplied free of charge or for activities other than the economic activity of the taxable person; …’

III. The main proceedings

9.

‘Iberdrola Inmobiliaria Real Estate Investments’ EOOD (‘Iberdrola’) is the owner of parcels of land on which a holiday village is to be constructed. The village is to be leased on a taxable basis. In order to connect it to the existing municipal waste-water pump station, the pump station had to be extensively renovated. Without repair it was not possible to collect waste water from the planned buildings owned by Iberdrola. Iberdrola and the municipality thereupon concluded a contract in which Iberdrola undertook to carry out the repair of the municipal waste-water infrastructure at its own expense. The renovation was then carried out by a building contractor at the request of Iberdrola.

10.

After the municipal waste-water pump station had been repaired, the buildings in the holiday village were constructed and could be connected to it. Iberdrola deducted input tax in respect of the costs incurred. However, this was refused by the national authority pursuant to Article 70(1)(2) of the ZDDS. Iberdrola challenged that decision before the Administrative Court.

11.

The Administrative Court held that, by repairing the pump station, Iberdrola had supplied the municipality with a service free of charge. However, this had served the purposes of the economic activity of Iberdrola (leasing the holiday village), as the holiday village could not be used for its intended purpose until the municipal pump station had been repaired.

12.

The Administrative Court considered that for deduction of input tax from the purchase invoice from the building contractor the expenditure shown therein must be part of the general costs of Iberdrola and constitute an element of the price of the supplies made by it. An expert accounting report obtained by the Administrative Court concluded that the expenditure was taken into account

as expenditure incurred in respect of the implementation of the holiday village project. It was accordingly established that that expenditure was included in the expenditure for the construction of the building projects situated on land parcels belonging to the company and was associated with the economic activity of Iberdrola.

13.

The Administrative Court therefore annulled the adjusted tax notice and the amended adjusted tax notice. The proceedings before the Varhoven administrativen sad (Supreme Administrative Court of the Republic of Bulgaria) relate to a point of law concerning that annulment. That court decided to stay the proceedings and to make a request for a preliminary ruling.

IV. Procedure before the Court

14.

The Varhoven administrativen sad (Supreme Administrative Court of the Republic of Bulgaria), which is hearing the dispute, has referred the following questions to the Court:

‘(1)

Do Article 26(1)(b), Article 168(a), and Article 176 of Directive 2006/112 preclude a provision of national law such as Article 70(1)(2) of the ZDDS, which restricts the right to deduct input VAT in respect of the supply of services relating to construction or improvement of a property owned by a third party, which are used both by the recipient of the supply and by the third party, for the sole reason that the third party enjoys the result of those services free of charge, without taking into account the fact that the services are to be used in the context of the economic activity of the taxable recipient?

(2)

Do Article 26(1)(b), Article 168(a), and Article 176 of Directive 2006/112 preclude a tax practice consisting of refusing to recognise the right to deduct the input VAT in respect of the supply of services, where the expenditure corresponding to those services is counted among the taxable person’s general costs, on the ground that it was incurred in order to construct or improve a property owned by another person, without taking into account the fact that that property is also to be used by the recipient of the supply of building services in the context of its economic activity?’

15.

In the proceedings before the Court, Iberdrola, the Republic of Bulgaria and the European Commission submitted written observations on these questions. In addition to them, the Bulgarian tax authority also took part in the hearing held on 24 November 2016.

V. Legal assessment

A. Applicability of the ‘standstill’ clause contained in Article 176 of the VAT Directive

16.

It must first be clarified whether, on the basis of the possibility available under the second paragraph of Article 176 of the VAT Directive to retain existing national exceptions to the right to deduct input tax, an infringement of the VAT Directive by Article 70 of the ZDDS is ruled out per se. That provision was introduced at the time of accession. (4)

17.

The ‘standstill’ clause, provided for in the second paragraph of Article 176 of the VAT Directive, is not intended to allow a new Member State to amend its domestic legislation on its accession to the European Union in a way which diverts that legislation from the objectives of that directive. An amendment to that effect would be contrary to the very spirit of that clause. (5) In the main proceedings, it is therefore for the referring court, which alone has jurisdiction to interpret its national law, to assess whether, with the introduction of Article 70 of the ZDDS, an existing restriction was maintained or the legal situation was modified. (6) As there is no evidence of the former on the basis of the facts of the case as described, it will be assumed hereinafter that the second paragraph of Article 176 of the VAT Directive is not relevant here.

B. The questions referred for a preliminary ruling

18.

Both questions asked by the referring court relate essentially to the same issue, namely whether the VAT Directive requires a right to deduct input tax even where, although the input (here: the renovation) has a link with the taxable outputs (here: leasing), it is supplied directly but free of charge to a third party (here: a municipality). This problem arises in particular where the municipality uses the supply for its own purposes in the form of municipal waste-water disposal.

19.

By its first question, the court is seeking to ascertain whether the VAT Directive precludes national legislation to that effect. By the second question, it asks whether the VAT Directive precludes a tax practice where additionally the manner of ‘entry in the accounts’ plays a role. The two questions are so closely connected substantively, however, that they can be answered together.

20.

Accordingly, consideration will be given first to the irrelevance of the specific ‘entry in the accounts’ (see under 1) in order then to examine the conditions for deduction of input tax (see under 2). In this regard, first, the precedence of a direct allocation of an input to an output over a broad causal link will be shown (see under 2(a) and 2(b)). That precedence is already established in the Court’s case-law (see under 2(c)). On closer examination, this is not precluded by the judgment in Sveda (7) (see under 2(d)). Lastly, I will turn to the crucial interaction between the taxation of services supplied free of charge (Article 26 of the VAT Directive) and the deduction of input tax (Article 168 of the VAT Directive) (see under 2(e)).

1. Irrelevance of the manner of entry in the accounts

21.

It should be stated, first of all, that, systemically — contrary to the view taken by Iberdrola at the hearing and the Commission in its written pleadings — VAT law cannot depend on the manner of a specific entry in the accounts by the taxable person.

22.

EU VAT legislation, unlike typical legislation governing tax on earnings, does not tax changes in assets (that is to say, appreciations), but has regard solely to activities. This is clear from the wording of Articles 2 (‘transactions’), 9 (‘economic activity’), 13 (‘activities … in which they engage’) and 168 of the VAT Directive (‘goods … are used’). Accordingly, throughout the VAT legislation there is no duty to make a statement of assets (balance sheet). In addition, VAT liability is not calculated from a comparison of multiple assets at different times (balance sheet comparison), but from expenditure incurred by a third party for a supply of goods or services.

23.

If, however, the accrual method is irrelevant in VAT law, then the manner in which transactions are entered in the accounts also cannot allow any inference to be drawn as to the existence of an entitlement in VAT law (here: the right to deduct input tax). In addition, a link to the individual entry in the accounts would place the VAT assessment de facto at the discretion of the taxable person. That can hardly be right. Consequently, the provisions of Article 167 et seq. of the VAT Directive do not establish any link with the accounting treatment by the taxable person. In particular, the formal requirements for deduction of input tax laid down in Article 178 of the VAT Directive do not refer to accounting law. The question to be decided must therefore be answered without reference to the manner of entry in the accounts by the taxable person under the relevant national accounting law.

24.

Furthermore, the Court’s interpretation of Article 26 of the VAT Directive shows that there must be costs for purposes of the undertaking which (in particular from an accounting point of view) represent general costs of the taxable person, but nevertheless do not give entitlement to deduct input tax. They are costs for ‘non-economic’ purposes, but not for purposes other than those of the undertaking’s business (8) (see in detail below, point 48 et seq.).

2. Conditions for the deduction of input tax

25.

Contrary to the claim made by Iberdrola and the Commission, a merely causal link between inputs and economic outputs is not sufficient for the deduction of input tax under Article 168 of the VAT Directive. That is the case at least where the input transaction can be allocated directly to an exempt or non-taxable output transaction. In that case, an economic allocation takes precedence over an economic cause. The opposite view taken by Iberdrola and the Commission is based on an impermissible mixing of the law governing tax on earnings and VAT law.

(a) Wording of Article 168 of the VAT Directive

26.

It is clear from the wording of Article 168 of the VAT Directive that such an allocation takes precedence over a mere cause. It provides that the taxable person is entitled to deduct input tax ‘in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person’. The VAT Directive does not refer to the cause of the acquisition of the inputs by the undertaking. Rather, a particular use by the undertaking is necessary.

27.

This distinguishes VAT law from, inter alia, the Member States' law governing tax on earnings. Deduction of costs from the basis of tax assessment (deduction of operating expenses) can perfectly well be based on the causation principle in the law governing tax on earnings, which taxes income received or appreciations with a view to achieving uniform taxation according to the respective financial capacity. Here the causality of expenditure — that is to say, the simple cause — may be sufficient for the generation of income.

28.

VAT law, on the other hand, seeks the correct taxation of the consumer. Consequently, contrary to the Commission's understanding, the notion of 'use' is narrower than the notion of cause. The Commission's understanding would in many cases result in untaxed final consumption. This is contrary to the idea of VAT as a general tax on consumption which as a rule covers all goods and services.

29.

The risk of untaxed final consumption can be seen if, for example, additional building permits for further residential properties in the municipality were made conditional on the renovation of municipal playgrounds. In this case, the recipient and 'user' of the renovation services would be the municipality within the framework of its public activity. A right to deduct input tax for the investor based on a purely causal analysis would reduce VAT revenue and the recipient (in this example the municipality) would benefit from untaxed final consumption, which runs counter the system. This would not be the case if the municipality commissioned the renovation itself.

(b) Spirit and purpose of the deduction of input tax

30.

Furthermore, deduction of input tax in VAT law performs a different function from deduction of operating expenses in the law governing tax on earnings. In all-phase taxation, multi-stage taxation (cumulation of taxes) is avoided by deduction of input tax. Through deduction of input tax it is ensured that only final consumers bear VAT (9) and that it is not imposed on the taxable person (the undertaking) (principle of neutrality). In this regard, taxable persons act at all stages merely as tax collectors for the State. (10)

31.

If the taxable person is to fulfil his role as a tax collector, in principle (11) taxable transactions must be generated. This is evident, inter alia, from Article 168 of the VAT Directive ('for the purposes of the taxed transactions of a taxable person'). It is thus crucial whether the input goes into a taxable or an exempt/non-taxable consumer supply. The deduction of input taxes is therefore linked to the collection of output taxes. (12) However, this link cannot be established on the basis of a vague causal link, but only by reference to the allocation of the input to particular outputs. This necessary link is nevertheless absent where input transactions are used directly for exempt or non-taxable transactions.

(c) The Court's case-law on the link between the input and the undertaking's output

32.

According to settled case-law, (13) an input is therefore used for the purposes of taxed transactions only if there is a direct and immediate link between the use and the economic activity of the taxable person.

33.

According to the Court's recent case-law, the criterion relating to the use of the goods or services for the purposes of transactions within the scope of the undertaking's economic activity is even intended to vary according to whether a service or capital goods are being acquired. (14)

34.

As regards a transaction, which, like the renovation of a third-party building, consists of the acquisition of a service, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct is, in principle, necessary before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement. (15)

35.

However, the Court makes an exception. A taxable person has a right to deduct even in the absence of a direct and immediate link between a particular input transaction and an output transaction or transactions where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole. (16)

36.

The background to this case-law is the fact that in such cases the taxable person acts as the 'consumer' of the supplies, the costs for which he bears. In the absence of other criteria, relief from VAT must therefore be calculated on the basis of his economic activity as a whole. If, however, there is a direct link with a particular output, then using that output is the more precise method for determining the entitlement to deduct input tax. The more precise method takes precedence over a general consideration of total turnover.

37.

Where there exists a direct and immediate link with an output transaction, which, in the absence of economic activity, does not fall within the scope of VAT, there is thus no entitlement to deduct input tax. The Court has ruled to this effect on a number of occasions. (17) This also applies where the operator obtains a supply in order to reinforce indirectly his economic activity as a whole giving entitlement to deduct input tax. The ultimate aim pursued by the taxable person is irrelevant. (18) Accordingly, the economic motivation of the taxable person cannot, in itself, be sufficient.

38.

The Court has also made clear in this regard that the mere fact that a service is a necessary condition for the economic activity of the taxable person does not preclude the service being supplied for the private purposes of third party. An 'indirect link' cannot, in itself, result in a service supplied free of charge being treated as a service supplied for consideration, (19) which would then give entitlement to deduct input tax.

39.

The Court’s case-law thus confirms that in principle a mere causal link between the taxable output transactions and the input transaction cannot be sufficient, in itself, to grant the deduction of input tax.

40.

Consequently, contrary to the view taken by the Commission, it cannot be material in the present case whether the renovation of the municipal infrastructure was a condition for the implementation of the construction project. The underlying purpose (that is to say, the motive) of that renovation of third-party infrastructure facilities is also irrelevant.

41.

Instead, the crucial factor is who — the taxable person or a third party — actually uses the input and whether this gives rise to untaxed final consumption. In this case, only the municipality directly uses the construction services for waste-water disposal. (20) It maintains and operates the now renovated infrastructure. (21)

42.

Any other approach would run counter to the principle of neutrality. VAT would not be charged on the renovation of municipal infrastructure in which an investor with plans to build is involved; renovation by the municipality using tax revenue, on the other hand, would be subject to VAT. The crucial factor cannot therefore be the investor’s motivation, but only the classification of the output to the municipality for VAT purposes (see below, point 48 et seq.).

(d) Distinction with the Court’s ruling in Sveda

43.

On closer examination, this conclusion is also not precluded by the judgment in Sveda (22) from 2015. In that case too, an infrastructure facility was constructed in the form of a footpath which was to be made available to third parties free of charge. The Court accepted the existence of an immediate link with the taxable person’s future economic activity. (23)

44.

However, as the Bulgarian Government asserts and contrary to the position taken by Iberdrola at the hearing, the two cases are not comparable. First, in Sveda it is uncertain whether the taxable person actually makes the footpath available to third parties free of charge if a State subsidy was paid for it. The Court did not examine this question in detail.

45.

Second, the footpath was used by the taxable person itself to conduct its own economic sales activity. The involvement of an independent third party, the municipality, which, with the services received, pursues its own purposes of water supply, makes this case different from Sveda. Acquiescence in relation to use of the footpath for one’s own business (comparable to Sveda) is not an independent supply to a third party, but merely part of the taxable sales. (24)

46.

However, renovation of third-party infrastructure free of charge is not a dependent ancillary supply in relation to the planned taxable leasing services. A supply may be regarded as a dependent ancillary supply to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied. (25) It cannot be said that the renovation of third-party facilities for the municipality or waste-water disposal by the municipality would merely complement the leasing services provided by Iberdrola for its lessees.

47.

In the present case, unlike in Sveda, Iberdrola does not use the renovated infrastructure in the context of its leasing transactions. These are independent of waste-water disposal by the municipality. The existence of an adequate municipal infrastructure is simply the condition for the construction of the holiday village, which is then used for leasing transactions. It cannot therefore be said, unlike in Sveda, that there is no direct and immediate link between a particular input transaction (receipt of renovation services) and a particular output transaction (provision of renovation services to the municipality).

(e) Interaction with Article 26 of the VAT Directive

48.

The fact therefore remains that the renovation service is to be allocated directly to the supply to the municipality. The only material factor is whether that supply was made for consideration and is liable to tax under Article 2(1)(c) of the VAT Directive or was made free of charge but is nevertheless taxable (and liable to tax) under Article 26(1)(b) of the VAT Directive. Only then would it be possible for Iberdrola to deduct input tax. On the other hand, deduction of input tax for costs incurred for activities not liable to VAT is ruled out. (26)

49.

The question whether a service supplied free of charge actually exists must be decided by the national court, which clearly assumes this to be the case. However, there is some doubt in this regard on the basis of the facts of the case as described. If only the renovation of municipal facilities contractually permitted by the municipality allows an investor to implement a construction project, then by granting permission the municipality would appear to provide the investor with an advantage which is at least equivalent to the amount of the renovation costs borne.

50.

It may be assumed that an undertaking rarely gives an external third party something unless it expects a corresponding advantage from that third party. In this instance this would be the possibility of being granted a building permit. Considered from this point of view, there would be a supply for consideration, which does give entitlement to deduct input tax, but also gives rise to tax liability in the same amount in respect of the renovation carried out for consideration.

51.

If, however, there is actually a service carried out free of charge, it must be determined whether it is subject to tax under Article 26 of the VAT Directive. The Court’s case-law on the allocation option (27) does offer possibilities for full deduction of input tax despite partial use of goods for private purposes. However, first, it is doubtful whether that case-law also covers services. (28)

Second, it is also uncertain whether use for ‘private purposes’ (29) is actually possible in the case of legal persons. In any event, no such use exists in this instance.

52.

Because in this case the renovation carried out free of charge was not for purposes other than those of the undertaking’s business, Article 26(1)(b) of the VAT Directive too does not result in tax liability. Consequently, the renovation costs are not linked directly with taxed transactions, but directly with non-taxed transactions (renovation carried out free of charge for the municipality). A deduction of input tax is therefore also precluded.

VI. Conclusion

53.

I therefore propose that the two questions referred by the Varhoven administrativen sad (Supreme Administrative Court of the Republic of Bulgaria) be answered together as follows:

Article 26(1)(b), Article 168(a) and Article 176 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax are to be interpreted to the effect that they do not permit the deduction of input tax for services which are supplied free of charge directly to a third party for its own purposes, even if they are motivated by business reasons. This holds irrespective of the manner of entry in the accounts under national law chosen by the taxable person. Consequently, the abovementioned provisions do not preclude a national rule such as Article 70(1)(2) of the ZDDS or national administrative practice to that effect.

(1) Original language: German.

(2) Judgment of 22 October 2015, Sveda (C?126/14, EU:C:2015:712).

(3) OJ 2006 L 347, p. 1.

(4) See judgment of 18 July 2013, AES-3C Maritza East 1 (C?124/12, EU:C:2013:488, paragraph 5).

(5) See judgment of 18 July 2013, AES-3C Maritza East 1 (C?124/12, EU:C:2013:488, paragraph 43).

(6) See, to that effect, judgment of 18 July 2013, AES-3C Maritza East 1 (C?124/12, EU:C:2013:488, paragraph 47).

(7) Judgment of 22 October 2015 (C?126/14, EU:C:2015:712).

(8) See in this regard the Court’s case-law in the judgments of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, paragraphs 44 and 70); of 12 February 2009, Vereniging Noordelijke Land- en Tuinbouw Organisatie (C?515/07, EU:C:2009:88, paragraph 28); and of 30 March 2006, Uudenkaupungin kaupunki (C?184/04, EU:C:2006:214, paragraph 24).

(9) Judgments of 24 October 1996, Elida Gibbs (C?317/94, EU:C:1996:400, paragraph 19), and of 7 November 2013, Tulic? and Plavo?in (C?249/12 and C?250/12, EU:C:2013:722, paragraph 34), and order of 9 December 2011, Connoisseur Belgium (C?69/11, not published, EU:C:2011:825, paragraph 21).

(10) Judgments of 20 October 1993, Balocchi (C?10/92, EU:C:1993:846, paragraph 25), and of

21 February 2008, Netto Supermarkt (C?271/06, EU:C:2008:105, paragraph 21).

(11) Exceptions are contained in Article 169 of the VAT Directive for generally cross-border transactions in order to avoid competitive disadvantages for exporting undertakings.

(12) As is expressly stated in judgment of 30 March 2006, Uudenkaupungin kaupunki (C?184/04, EU:C:2006:214, paragraph 24).

(13) See in particular judgments of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, paragraph 44 et seq.); of 12 February 2009, Vereniging Noordelijke Land- en Tuinbouw Organisatie (C?515/07, EU:C:2009:88, paragraph 28); of 30 March 2006, Uudenkaupungin kaupunki (C?184/04, EU:C:2006:214, paragraph 24); of 22 October 2015, Sveda (C?126/14, EU:C:2015:712, paragraph 27); and of 29 October 2009, AB SKF (C?29/08, EU:C:2009:665, paragraph 57).

(14) Judgment of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, paragraph 45).

(15) Judgments of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, paragraph 46), and of 29 October 2009, AB SKF (C?29/08, EU:C:2009:665, paragraph 57 and the case-law cited).

(16) Judgments of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, paragraph 47); of 6 September 2012, Portugal Telecom (C?496/11, EU:C:2012:557, paragraph 37); of 8 February 2007, Investrand (C?435/05, EU:C:2007:87, paragraph 24); and of 29 October 2009, AB SKF (C?29/08, EU:C:2009:665, paragraph 58 and the case-law cited).

(17) Judgments of 13 March 2008, Securenta (C?437/06, EU:C:2008:166, paragraph 30), and of 29 October 2009, AB SKF (C?29/08, EU:C:2009:665, paragraph 59 and the case-law cited).

(18) Judgments of 6 April 1995, BLP Group (C?4/94, EU:C:1995:107, paragraph 19); of 8 June 2000, Midland Bank (C?98/98, EU:C:2000:300, paragraph 20); of 6 September 2012, Portugal Telecom (C?496/11, EU:C:2012:557, paragraph 38); and of 22 February 2001, Abbey National (C?408/98, EU:C:2001:110, paragraph 25).

(19) As is expressly stated in judgment of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, paragraph 51); see, to that effect, judgment of 16 October 1997, Fillibeck (C?258/95, EU:C:1997:491, paragraph 27).

(20) This makes the case very different from the example given by the Commission at the hearing of a taxi operator who adds fittings to a (third-party) taxi which has been made available to him. In that case the taxi operator uses the fittings. Therefore, he alone is also entitled to deduct input tax in respect of the fittings. In principle he is also able to remove the fittings again when he returns the taxi, if he is not compensated for the value of the fittings. None of that is the case here, however.

(21) In Germany there is thus settled case-law according to which the construction of infrastructure facilities for the benefit of the public (or the State) does not give rise to any entitlement to deduct input tax for the investor, even if this is the only way that the investor is able to implement his taxable construction project. See in this regard Bundesfinanzhof (Federal Finance Court), judgments of 13 January 2011 — V R 12/08, BStBl. II 2012, 61; of 20 December 2005 — V R 14/04, BStBl. II 2012, 424; and of 9 November 2006 — V R 9/04, BStBl. II 2007, 285.

(22) Judgment of 22 October 2015 (C?126/14, EU:C:2015:712).

(23) Judgment of 22 October 2015, Sveda (C?126/14, EU:C:2015:712, paragraph 35).

(24) For this reason, there is indisputably a right to deduct input tax from the renovation of the company customer car park, even though this is used by customers ostensibly free of charge.

(25) See judgments of 27 September 2012, Field Fisher Waterhouse (C?392/11, EU:C:2012:597, paragraph 17 and the case-law cited), and of 16 April 2015, Wojskowa Agencja Mieszkaniowa w Warszawie (C?42/14, EU:C:2015:229, paragraph 31).

(26) Judgments of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, paragraphs 44 and 70); of 12 February 2009, Vereniging Noordelijke Land- en Tuinbouw Organisatie (C?515/07, EU:C:2009:88, paragraph 28); and of 30 March 2006, Uudenkaupungin kaupunki (C?184/04, EU:C:2006:214, paragraph 24).

(27) Judgment of 11 July 1991, Lennartz (C?97/90, EU:C:1991:315, paragraph 17), confirmed in judgment of 4 October 1995, Armbrecht (C?291/92, EU:C:1995:304, paragraph 20).

(28) Doubts arise because services cannot be ‘allocated’ to an undertaking and, unlike goods, are also generally consumed immediately, with the result that there is no justification for subsequent taxation over an extended period of time (credit through input tax deduction).

(29) This is how the Court refers to purposes other than those of business. See judgments of 16 February 2012, Eon Aset Menidjmunt (C?118/11, EU:C:2012:97, end of paragraph 74); of 23. April 2009, Puffer (C?460/07, EU:C:2009:254, paragraph 39); and of 11 July 1991, Lennartz (C?97/90, EU:C:1991:315, paragraph 26).