# OPINION OF ADVOCATE GENERAL LENZ
delivered on 26 January 1995 *

## A — Introduction

1. The Queen's Bench Division of the High Court of Justice for England and Wales has asked the Court for a preliminary ruling on the interpretation of some provisions of the First Council Directive 67/227/EEC of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes [1] ('the First Directive') and the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment [2] ('the Sixth Directive').

2. The case before the High Court concerns an application by the British company BLP Group plc ('BLP') to deduct from the VAT payable on its taxable transactions certain amounts of VAT on fees for services invoiced to BLP in connection with the sale of shares in a company. The competent tax authorities had refused the application on the grounds that the services had been used for an exempt transaction, which precluded the deduction of input tax. The questions referred to the Court therefore relate to the conditions for and terms of the right to deduct input tax.

3. That right is one of the essential features of the common system of value added tax set out in Article 2 of the First Directive. The second paragraph of that article states:

'On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable *after deduction of the amount of value added tax borne directly by the various cost components.*' [3]

4. That provision is fleshed out by Article 17 et seq. of the Sixth Directive. Article 17 states:

* Original language: German.

1 — OJ, English Special Edition 1967, p. 14.

2 — OJ 1977 L 145, p. 1.

3 — My emphasis.

'(1) The right to deduct shall arise at the time when the deductible tax becomes chargeable.

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

(a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

...

(5) As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible, only such proportion of the value added tax shall be deductible as is attributable to the former transactions.

This proportion shall be determined, in accordance with Article 19, for all the transactions carried out by the taxable person.

However, Member States may:

...

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

...'

5. Article 19 provides *inter alia*:

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

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

— as denominator, the total amount, exclusive of value added tax, of turnover per

year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible. The Member States may also include in the denominator the amount of subsidies, other than those specified in Article 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. ...'

6. It appears, moreover, from the order for reference that BLP and the competent tax authorities (Commissioners of Customs and Excise, 'the Commissioners') have agreed a special method for determining the deductible portion of input tax on goods or services which have not been wholly used in making *taxable* supplies of goods or services and have not been wholly used in making *exempt* supplies of goods or services (or in carrying on any activity other than the making of taxable supplies of goods or services). Under the special method, the input tax is apportioned on the basis of the ratio of the value of taxable transactions to total transactions. The value of incidental financial transactions is left out of account in the calculation, however, and the input tax on those transactions is attributed to them directly.

7. As to the details of the main proceedings, the following is apparent from the order for reference.

8. BLP is a management/holding company. It exercises control over a number of trading companies which produce goods for use in the furniture and DIY industries, and provides management services for them.

9. In 1989 BLP bought the share capital [4] of a German company by the name of Berg Mantelprofilwerk GmbH ('Berg').

4 — In the German text the terms *Anteile* or *Gesellschaftsanteile* will be used for these shares, in line with the terminology of the Sixth Directive (see Article 13 B(d)(5) (on the meaning of which, see paragraph 24 below)). Those are collective terms for all shares in companies or partnerships, other than *Aktiengesellschaften*. They thus cover *inter alia* shares in German private limited companies (GmbH). The German law on such companies (Reichsgesetzblatt 1898, p. 846, as later amended) describes such shares as *Gesellschaftsanteile*.

10. In May 1991 the directors of BLP decided in view of the company's poor financial position that the shares in Berg ought to be sold. In June 1991 BLP sold 95% of those shares. The income from the sale was used to discharge BLP's indebtedness to its bankers.

11. In its VAT return for the period ending 30 September 1991, BLP claimed to deduct from the VAT payable on its outputs the amount of the VAT included in three invoices for services from its bank, its solicitors and its accountants. According to the three invoices, the services in question were supplied in connection with the sale of the shares in Berg.

12. BLP and the Commissioners agreed that the sale of the shares in Berg was an exempt supply by BLP for VAT purposes and that input tax paid on services which are wholly attributable to an exempt supply cannot be deducted.

13. The total amount which BLP sought to deduct as input tax in respect of the services received by it was £ 45 975. [5] The Commissioners allowed BLP to deduct £ 6 120 as relating to services rendered before the decision to sell the shares, which were thus part of BLP's general operating costs. The Commissioners refused to allow BLP to deduct the remaining £ 39 845 on the grounds that it related to services provided in connection with the sale of the shares and that the sale of shares was an exempt supply for VAT purposes, in respect of which no input tax could be deducted.

14. BLP appealed against the Commissioners' decision to the London Value Added Tax Tribunal ('the Tribunal'), arguing firstly that there had been an infringement of Articles 17 and 19 of the Sixth Directive, and secondly that the special method had been misapplied. The Tribunal rejected the arguments based on Articles 17 and 19 of the Sixth Directive, and decided with respect to the special method that the sale of shares in question constituted an incidental financial transaction. The Tribunal did not make a final determination of the consequences of that classification.

15. BLP appealed to the High Court against that decision, arguing that the Tribunal had interpreted Articles 17 and 19 of the Sixth

5 — All figures given are taken from the order for reference. Contrary to the calculation in the order, however, the difference between 45 975 and 6 120 is not 39 845 but 39 855. Be that as it may, the inaccuracy is of no relevance in answering the national court's questions.

Directive incorrectly. It conceded that the points of Community law raised in the appeal would alone determine the outcome of the appeal.

16. According to BLP, in applying Articles 17 and 19 of the Sixth Directive and in particular in interpreting the phrase 'for the purposes of his taxable transactions' in Article 17(2), attention must not be focused on the immediate transaction in which BLP (by selling the Berg shares) made a taxable supply. Instead, in the interests of fiscal neutrality, the focus must be the wider purpose of that supply, namely the discharge of BLP's bank debts. The sale of the shares represents an incidental financial transaction, which was part of BLP's overall strategy in the conduct of its core business and the making of its taxable supplies of goods or services.

17. The Commissioners, on the other hand, contended that where services are supplied to a taxable person and are used, as in the present case, for an exempt supply, input tax is not deductible. The purpose of the exempt supply is irrelevant, above all because only the amount of VAT borne directly by the various cost components of a taxable transaction within the meaning of Article 2 of the First Directive can be deducted. If, as in the present case, a taxable person makes an exempt supply in order to raise money for discharging debts, the input tax on cost components of the exempt supply does not constitute VAT borne directly by the cost components of the taxable person's taxable transactions.

18. Before the hearing of the appeal, BLP had applied for a reference to be made to the Court of Justice for a preliminary ruling under Article 177 of the Treaty. The High Court refused the application. BLP appealed against that decision to the Court of Appeal, which upheld the appeal and remitted the matter to another judge of the High Court, on the ground that the High Court had not fully observed the guidelines for the application of Article 177 of the EC Treaty laid down by the Court of Appeal in *Bulmer* v *Bollinger*. [6] The High Court thereupon referred the following questions to the Court:

'(1) Having regard to Article 2 of the First Directive and Article 17 of the Sixth Directive, where a taxable person ("A") supplies services to another taxable person ("B"), and those services are used by B for an exempt transaction (sale of shares) which was treated as an "incidental financial transaction" and whose purpose and result was to raise money

6 — *H. P. Bulmer Ltd* v *J. Bollinger SA* [1974] 2 All ER 1226.

to discharge all of B's indebtedness, are those services supplied by A:

(a) services used for the purpose of an exempt transaction such that input tax thereon is not deductible;

(b) services used for the purpose of taxable transactions (namely B's core business of making taxable supplies) such that input tax thereon is deductible in whole;

(c) services used for both exempt and taxable transactions such that the input tax thereon is deductible in accordance with Article 17(5) of the Sixth Directive?

(2) If the answer to question 1 is that (c) applies and if a Member State has, in the exercise of its discretion under Article 17(5) of the Sixth Directive, adopted a special method falling within Article 17(5)(c) for determining the amount of the input tax which can be deducted, does Article 19 of the Sixth Directive have any application to the determination of the amount of the deductible input tax?

(3) If the answer to question 2 is that Article 19 does apply to the determination of the amount of the deductible input tax, does Article 19(2) allow full deduction of the input tax by excluding the share sale from the calculation of the deductible proportion under Article 19(1) as being an "incidental financial transaction"?'

19. Written and oral observations on all or some of the questions were made by BLP, the United Kingdom, the Hellenic Republic and the Commission.

20. In its observations the Commission prefaced its actual discussion of the questions referred for a preliminary ruling with extensive remarks on the problem of whether the sale of the shares falls within the scope of the Sixth Directive at all. If that is not the case, in the Commission's view, the question of deductibility does not arise. If, on the other hand, the transaction comes under the Sixth Directive, in that the sale of the shares constitutes a supply of services for consideration in favour of BLP's subsidiaries, the deductibility of the input tax must be assessed in accordance with Article 17 of that directive. Which of those two possibilities is correct

depends, in view of the *Polysar* judgment, [7] on whether BLP carried out the sale for its own purposes, namely in its capacity as a 'holding' company, or in its capacity as a 'management' company, in connection with and as part of the totality of management and other services supplied by it to its subsidiaries for consideration. That question must be examined in the light of the actual facts and the applicable national law.

21. At the hearing, however, the Commission stated that it had raised the point only for the sake of completeness. The discussion before the Court of Justice had to remain within the bounds marked out by the national court's questions. The Commission too therefore started from the premise accepted by all the parties, namely that the sale of shares in question constitutes an exempt transaction within the meaning of Article 13 of the Sixth Directive.

22. Further details of the arguments put forward by the parties to the proceedings will be dealt with, so far as appropriate, in the following section of this Opinion.

## B — Opinion

*The subject-matter of the first question*

23. According to the wording and structure of the order for reference, both the so-called core business of BLP and the sale of the shares fall within the scope of the Sixth Directive. That assumption is no longer challenged by the Commission, as can be seen from its observations at the hearing.

24. It is also apparent from the order for reference that BLP's 'core business', that is to say, the entire activity — with the exception of the sale of the shares — carried on by that firm as a taxable person during the period in question, related exclusively to *taxable* transactions, whereas the sale of the shares itself constitutes an *exempt* transaction (see Article 13 B(d)(5) of the Sixth Directive).

25. On that assumption, the High Court wishes to know whether the input tax on services which are used by the taxable person 'for an exempt transaction', and which by being so attributed [8] are excluded from

7 — Judgment in Case C-60/90 *Polysar Investments Netherlands* [1991] ECR I-3111.

8 — See also paragraphs 36 and 37 below.

deduction in accordance with the principle laid down in Article 17(2)(a) of the Sixth Directive, can nevertheless be deducted in view of the particular situation in this case. According to the argument put forward by BLP before the High Court, which that court refers for examination by this Court, there is a right to deduct input tax here, because there is a link between the exempt transaction (the sale of the shares) and the taxable transactions (the core business of BLP): the former, as the first question states,

— was treated as an 'incidental financial transaction'

— whose purpose and result was to raise money to discharge all of the taxable person's indebtedness.

26. In the context of the first question, it must therefore be examined how those factors, which are regarded by BLP as connecting links between the exempt transaction and the taxable transactions, affect the principle and (if appropriate) the extent of the right to deduct.

*The answer to the first question*

27. I. According to BLP's main argument in support of its theory, set out in detail in its written observations, the phrase 'for the purposes of his taxable transactions' in Article 17(2) of the Sixth Directive must be given a wide interpretation. Regard should be had not to the (exempt) transaction which has been directly served by the service, but to the taxable person's principal activity (here the taxable transactions), if, as in this case, the discharge of indebtedness brought about by the exempt transaction is for the benefit of that activity.

28. (a) In support of that view, BLP argues primarily that the Community provision on VAT does not require the cost component on which input tax has been paid to be directly incorporated in the finished product. BLP thus relies on the *system* laid down by the Community rules on VAT with reference to the deduction of input tax. The above argument, including the details put forward in its support, must therefore be considered in the context of that system.

29. According to Article 2(1) of the First Directive, the common system of value added tax is based on the principle of the application to goods and services of a general

tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged. In order for the 'number of transactions which take place in the production and distribution process before the stage at which tax is charged' not to influence the amount of VAT ultimately due to the revenue authorities, Article 2(2) of the First Directive introduces the mechanism of deduction of input tax.

30. A consideration of those provisions together shows that the Community legislature, proceeding from an ideal image of 'chains of transactions' — to adopt the neat phrase used at the hearing by the representative of the United Kingdom —, intended to attach to each transaction only so much VAT liability as corresponds to the added value accruing in that transaction, so that there is to be deducted from the total amount the tax which has been occasioned by the preceding 'link in the chain'. [9]

31. On the question whether the goods or services supplied to taxable persons, on which input tax has been charged, can be *attributed* to a transaction by the taxable person in such a way that deduction of input tax is justified, the Community legislature decided on a criterion corresponding to the system: the amount which is to be deducted as input tax must have been 'borne directly by the various cost components'.

32. Article 17 et seq. of the Sixth Directive lays down specific rules on the deduction of input tax, in so far as relevant here, in two respects. Firstly, those articles take account of the circumstance that the Community legislature has in Article 13 et seq. exempted certain transactions from VAT. Input tax in respect of exempt transactions is not deductible in the common system of value added tax, because in such a case the taxable person acts as the final consumer, since he is unable to pass the VAT onto third parties. [10] Secondly, Article 17 et seq. takes account of the fact that some goods and services are by their nature to be attributed to several transactions of the taxable person, and that attribution may relate to the group of taxable transactions and the group of exempt transactions at the same time.

33. Those details logically do not change the fact that input tax can be deducted only to the extent that the goods or services on which it has been paid are 'cost components' of a taxable transaction. On the contrary, the identification of goods and services as such cost components becomes all the more important with the introduction of the category of exempt transactions, since those

9 — See, for example, the judgment in Case 50/87 *Commission* v *France* [1988] ECR 4797, paragraph 16.

10 — See the judgment in Case 8/81 *Becker* v *Finanzamt Münster Innenstadt* [1982] ECR 53, paragraph 44.

transactions do not give the right to deduct input tax, any more than economic operations do which are outside the value added tax system and thus even under the First Directive confer no right to deduct input tax.

34. It follows that, subject to divergent rules such as those in Article 17 et seq. of the Sixth Directive, the different types of transactions by the taxable person must be distinguished as clearly as possible. In particular, as follows from the system which has been demonstrated, in applying Article 17(2)(a) goods or services which have been identified as cost components of a specific exempt supply of goods or services cannot be attributed to other supplies of goods or services which are subject to VAT. The term 'purposes' in Article 17(2) must be interpreted in that light. That term therefore does not permit the clear distinction between taxable and exempt transactions to be blurred on the basis of considerations which are outside the system.

35. That conclusion is confirmed firstly by Article 17(5) of the Sixth Directive. That provision, without employing the word 'purposes', speaks merely of goods or services 'used ... for transactions'. In the context of that provision, however, the same criteria — naturally — as in Article 17(2) apply for the attribution of goods and services on which input tax has been paid. Secondly, the above conclusion is confirmed by Article 17(3). Article 17(3)(c) in particular provides for a precisely defined exception to the rule that transactions which (like the disposal of the shares in this case) are exempted from VAT under Article 13B(d)(5) confer no right to deduct input tax. That exception applies only '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'.

36. With respect to the present case, the High Court found, as mentioned above, that the services in question on which input tax had been paid were 'used for [an] exempt transaction' by the taxable person, [11] since those services, according to the relevant invoices, had been 'supplied in connection with the disposal of the shares in Berg'. [12] It is thus established that those services form a cost component precisely of the exempt supply (effected by the sale of the shares).

37. That is not affected by the argument put forward by BLP at the hearing that the costs of the services on which input tax has been paid (and hence that input tax itself) are ultimately incorporated into the price of the goods and services which it sells by means of

11 — See the wording of the first question and paragraph 25 above.

12 — See paragraph 8 of the schedule to the order for reference and paragraph 11 above.

its taxable transactions. Even if it were possible to construct such an effect in commercial or book-keeping terms, that would merely be a cascade effect, which can always occur if taxable and exempt transactions are carried out at the same time within a unitary undertaking. That circumstance does not make the services in question into cost components of the taxable transactions and cannot therefore alter the attribution stated above.

38. On the basis of that attribution, the right to deduct input tax is excluded in the present case, it being of no relevance whether the sale of the shares was for the benefit of the taxable activity of the taxable person on the basis of the discharge of indebtedness intended and effected.

39. That conclusion is confirmed if one — so to speak, as a check on what has been said above — classifies the abovementioned operation (that is, by means of a transaction funds are raised for the benefit of the taxable activity of the person in question) in the VAT system. Under Article 2(1) of the Sixth Directive, supplies of goods and services are subject to VAT only if they are effected 'for consideration'. That presupposes that there is a consideration (see Article 11A(1)(a) of the Sixth Directive) which can be expressed in money. [13] In the reality of business life it is in nearly all cases a monetary payment. Virtually every transaction which falls within the scope of the Sixth Directive can therefore be understood as a raising of funds for the benefit of the taxable person's activity and more precisely the taxable transactions which he may carry out. That characteristic, which attaches to every such transaction, is clearly not liable as such to span the division between taxable and exempt transactions and call into question the attribution on the basis of the criterion developed above.

40. All those considerations apply independently of whether the exempt transaction belongs to the essential object of the taxable person's undertaking or not. Contrary to what BLP appears to think, I thus see no distinction between the present case and the case of a taxable person whose essential trading activity comprehends both exempt and taxable transactions and who makes extensive use of exempt transactions in order to raise funds for the part of his activity which relates to the taxable transactions. [14]

41. Before I conclude this section on the system of the provisions on VAT, I must also

13 — Judgment in Case 154/80 *Staatssecretaris van Financiën* v *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445, paragraph 13; judgment in Case 230/87 *Naturally Yours Cosmetics* v *Commissioners of Customs and Excise* [1988] ECR 6365, paragraph 16.

14 — On the meaning of 'incidental financial transactions' in this connection, see paragraphs 52 to 54 and 62 to 64 below.

briefly address an argument of BLP, put forward in the form of an example.

42. That example is of a bicycle manufacturer who engages the services of auditors and legal advisers. BLP submits that the work of the auditor or lawyer is not incorporated in the finished product and does not contribute to its manufacture. The input tax on those services is nevertheless deductible. That shows that it is not necessary for the cost component in question to be directly incorporated in the finished product.

43. I am unable to agree with that argument. It is indeed correct that in the example the services on which input tax has been paid have not physically been reflected in the product produced by the taxable person. The consideration paid for those services belongs, however, as part of the overheads, to the cost components of that product and must clearly therefore be attributed to the taxable person's taxable transactions, and only to such transactions.

44. It therefore follows from the system of the common rules on VAT that in the present case the input tax in question cannot be deducted.

45. (b) In support of its argument [15] BLP further relies on the principle of fiscal neutrality, which it deduces from the recitals in the preamble to the First Directive [16] and the case-law, in particular the *Rompelman* [17] and *Sofitam* judgments. [18] In BLP's view, it is incompatible with that principle to give different fiscal treatment to the various forms of raising money. BLP refers in particular to the possibility that instead of selling the interest in the company it could have taken up a (long-term, secured) bank loan. The costs of advice incurred on taking up that loan would have been deductible in full. If in a case such as the present one the right to deduct were refused, that would, contrary to the said principle, lead to economic decisions being influenced by tax factors.

46. That argument does not hold water.

47. The objectives of the common system of VAT do not by any means require all forms of raising money to be treated alike. If the harmonization introduced with that system is intended to prevent distortion of conditions of competition, as is expressed in the recitals to the First Directive, that can only

15 — See paragraph 27 above.

16 — See the first to third and eighth recitals. They state essentially that in view of the defects of the value added tax legislation 'at present' in force, harmonized rules are to be introduced which will not distort conditions of competition.

17 — Judgment in Case 268/83 *Rompelman* v *Minister van Financiën* [1985] ECR 655. BLP relied on that judgment in particular before the national court: see paragraph 17 of the schedule to the order for reference.

18 — Judgment in Case C-333/91 *Sofitam* v *Ministre chargé du Budget* [1993] ECR I-3513. BLP relied on this judgment in its written observations.

mean that operations of the same type are to be treated in the same way. The taking up of a loan and the selling of an interest in a company are not, however, operations of the same type for the purposes of the VAT system, [19] because that system focuses on transactions and makes a clear distinction between taxable and exempt transactions. If a taxable person sells an interest in a company, he is effecting an (independent) transaction within the meaning of the common VAT rules which, being an exempt transaction, excludes deduction of the incident input tax. If, by contrast, he takes up a loan, he does not himself thereby effect a transaction within the meaning of those rules. Instead he is the recipient of a service, which is the subject of a *transaction by a third party.* Under those circumstances the input tax charged on the advisory services supplied in connection with taking up the loan may be deducted, if it is attributable to taxable transactions.

48. That approach is consistent with the *Rompelman* and *Sofitam* judgments relied on by BLP. The *Rompelman* judgment concerned the question whether the acquisition of a real property right which is the necessary precondition for its exploitation (the exploitation being subject to VAT) is already part of the economic activity within the meaning of Article 4(1) of the Sixth Directive if (at the time of assessment) that exploitation is intended, but has not yet commenced. The Court's answer was that in principle it was. In the *Sofitam* case the Court had to decide whether dividends of an undertaking were to be included in the denominator of the calculation under Article 19(1) of the Sixth Directive or excluded from it. The Court chose the latter alternative, on the ground that dividends do not fall within the scope of VAT and their inclusion in the calculation under Article 19 would have distorted it. In view of the facts and the questions of law at issue in those two cases, neither of them is a relevant precedent here.

49. As to the general principle of fiscal neutrality recognized in those judgments, that principle is mentioned in connection with the observation that

'the deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities'

and that

'the common system of VAT consequently ensures that all economic activities, whatever their purpose or result, provided that they

19 — Nor are they either, moreover, for an undertaking's operational purposes, since the income from the sale of shares is part of the undertaking's own resources, whereas the loan is part of its borrowed resources.

are themselves subject to VAT, are taxed in a wholly neutral way.' [20]

50. It follows from that context that the principle of fiscal neutrality cannot be considered independently of the 'common system of VAT' and that in its application account must be taken of the extent to which the taxable person's economic activities are 'subject to VAT'.

51. The solution advocated here thus does not infringe the principle of fiscal neutrality as enshrined in the recitals in the preamble to the First Directive and in the case-law. On the contrary, this solution avoids different treatment being given to like transactions depending on whether the taxable person, in addition to exempt transactions, also effects taxable transactions. Instead, independently of such chance factors, all transactions which have the same characteristics are treated in the same way.

52. II. I must also, as a precaution, address the question whether the classification of the sale of the shares as an 'incidental financial transaction' leads to a right to deduct the input tax in question here.

53. In my opinion, it does not.

54. Article 17 does not provide for any special rule for such transactions. They are mentioned only in Article 19(2). Under that provision they are not excluded from the calculation of the proportion provided for in Article 19(1) for the case where goods and services are used both for transactions in respect of which input tax is deductible and for transactions in respect of which it is not deductible (Article 17(5), first subparagraph). This is not such a case, however, since the advisory services on which the input tax at issue here was charged were used entirely for an exempt transaction, so that under Article 17(2) that input tax is not deductible. I will deal with the interpretation of Article 19(2) shortly, in the context of my discussion of the third question, since that question presupposes that Article 17(5) and Article 19 apply to the present case.

55. III. For all those reasons, the national court's first question is to be answered in the sense set out in alternative (a), since in a case such as the present one the services on which input tax is charged are to be regarded as being used for the purposes of an exempt transaction, so that the input tax cannot be deducted.

20 — *Rompelman*, paragraph 19, and *Sofitam*, paragraph 10.

56. Should the Court take that view, the second and third questions will become devoid of purpose, since those questions were asked only in the event that the answer to the first question was that alternative (c) applied. That would mean, in contrast to the solution I have suggested, that the services made use of by BLP were regarded as having been used for both exempt and taxable transactions, with the effect that the input tax on them could be deducted 'in accordance with Article 17(5) of the Sixth Directive'.

57. I shall therefore consider the second and third questions below merely in the alternative.

*The second question*

58. By its second question the national court seeks to know whether Article 19 of the Sixth Directive has any application to the determination of the deductible input tax if a Member State has, on the basis of Article 17(5)(c), introduced a special method for determining that amount.

59. The answer follows clearly, in my opinion, from the wording of Article 17(5). While the second subparagraph of that provision provides for the application of Article 19 as the rule for calculation of the deductible amount, the third subparagraph, which starts with the word 'however', permits the Member States to provide for exceptions of greater or lesser scope to that rule.

60. To the extent that a particular type of case falls within such an exception, it is automatically withdrawn from Article 19. Thus indent (c) of the third subparagraph of Article 17, in question here, enables the Member States to authorize or prescribe the *direct attribution* of all or some goods or services and thereby restrict the application of the proportion rule in Article 19(1).

61. The second question would have to be answered to that effect. However, as a precaution, I point out that the special method applicable to BLP, in so far as is relevant here, coincides with Article 19(1) and (2), so that the answer is of purely theoretical value.

*The third question*

62. In the event that Article 19 applies to the determination of the amount of deductible input tax, the High Court asks whether Article 19(2) allows deduction in full of the input tax by excluding the sale of shares when cal-

culating the deductible proportion of input tax under Article 19(1) as being an 'incidental financial transaction'.

63. If, in accordance with the premise — which, as I have said, is incorrect — on which the question is based, the present case were regarded as a case of mixed use, in that the costs of advice in question were (as overheads) used both for taxable transactions and for an exempt incidental financial transaction, the input tax would be deductible under Article 19(2).

64. That provision must be seen in the light of the fact that the incidental transactions referred to there may constitute a large part of the total transactions, without however making any significant contribution to the overheads. In those circumstances it would be inappropriate to include the incidental transactions in the calculation of the proportion under Article 19(1). Instead those transactions are 'excluded' in accordance with Article 19(2). If, then, apart from the incidental transaction in question, all the taxable person's transactions are subject to VAT, the result is a proportion of 1: 1 under Article 19(1). The input tax is then deductible in full. The third question would have to be answered to that effect.

## C — Conclusion

65. For the above reasons, I propose the following answer to the High Court's questions:

If a taxable person supplies another taxable person with services which the latter uses for an exempt transaction, in the sense that they constitute a cost component with respect to that transaction, the input tax on those services has been used for the purposes of an exempt transaction, within the meaning of Article 17 of the Sixth Directive, and, subject to any derogations from the common system of value added tax, cannot be deducted. That applies even if the exempt transaction was treated as an 'incidental financial transaction' and its purpose and result were to raise money for the discharge of the entire indebtedness of the other taxable person.