OPINION OF ADVOCATE GENERAL MENGOZZI

delivered on 22 December 2008 [1]

I — Introduction

1. By this reference for a preliminary ruling, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) asks the Court, in essence, whether the entitlement to deduct input value added tax (VAT) applies not only to the acquisition of capital goods but may extend to the acquisition of other goods and services used both for output business transactions and for other purposes, that is to say, for non-economic activities undertaken by the taxpayer and regarded by the referring court as purposes other than those of the business. If so, the national court enquires as to the detailed rules for the application of that entitlement.

II — Community legal framework

2. Article 2(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, [2] as amended by Council Directive 95/7/EC of 10 April 1995 [3] ('the Sixth Directive'), makes subject to VAT 'the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such', that is to say, where he carries out transactions in the course of his taxable activity. [4]

3. Article 6(2), first subparagraph, (a) of the Sixth Directive treats as supplies of services for consideration 'the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business, where the value added tax on such goods is wholly or partly deductible'.

1 — Original language: French.

2 — OJ 1977 L 145, p. 1.
3 — OJ 1995 L 102, p. 18.
4 — Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and Others* [2006] ECR I-483, paragraph 42 and the case-law cited.

4. Article 6(2), first subparagraph, (b) of the directive treats as supplies of services for consideration 'supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business'.

5. Article 17(2)(a) of the Sixth Directive provides that, in so far as the goods and services are used for the purposes of his taxable transactions, the taxable person is to be entitled to deduct from the tax which he is liable to pay VAT due or paid within the country in respect of goods or services supplied or to be supplied to him by another taxable person.

6. Under Article 17(5) of the Sixth Directive, as regards goods and services to be used by a taxable person both for transactions covered by Article 17(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 VAT is to be deductible as is attributable to the former transactions.

7. Article 17(6) of the Sixth Directive provides:

'Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of value added tax.

Value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.'

8. Article 20(2) of the Sixth Directive provides that, in the case of capital goods, adjustment is to be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment is to be made only in respect of one fifth of the tax imposed on the goods. The

adjustment is to be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured. The provision also states that, by way of derogation from the first subparagraph, Member States may base the adjustment on a period of five full years starting from the time at which the goods are first used. It adds inter alia that, in the case of immovable property acquired as capital goods the adjustment period may be extended up to 20 years.

III — The facts in the main proceedings and the questions referred for a preliminary ruling

9. The Vereniging Noordelijke Land- en Tuinbouw Organisatie ('the VNLTO'), the appellant in the main proceedings, promotes the interests of the agricultural sector in Groningen, Friesland, Drenthe and Flevoland. Its members — undertakings operating within that sector — pay contributions to it. Apart from promoting the general interests of its members, the VNLTO provides a certain number of individual services for both its members and third parties, for which it issues invoices for separate payment.

10. It is not disputed that the VNLTO must be treated as liable to VAT in respect of the provision of individual services in return for a fee and that the contributions used to promote the general interests of its members do not constitute a fee for VAT purposes.

11. In 2000, the VNLTO acquired goods and services which it used both for its economic activities, subject to VAT under Article 2 of the Sixth Directive, and for its activities in connection with the promotion of the general interests of its members, which are unconnected with the former activities. The VNLTO applied for a deduction of the amounts of input VAT paid on those goods and services, including those relating to its activities to promote the general interests of its members.

12. The tax inspector refused to allow the deduction applied for and sent an adjustment notice to the VNLTO. By that notice, amounts of input VAT in relation to the activities connected with the promotion of the general interests of the members were allocated, in proportion to the VNLTO's income generated by those activities. The VNLTO's complaint against that adjustment notice was rejected as was, subsequently, the appeal against the decision rejecting the complaint. In its judgment, the Gerechtshof Leeuwarden (Regional Court of Appeal, Leeuwarden) (Netherlands) ruled that the protection of the members' general interests did not constitute a direct,

durable and necessary extension of the VNLTO's economic activities and that therefore the VNLTO could not deduct the VAT it had been charged in so far as the goods and services in question were used for the promotion of the general interests of its members.

13. Hearing the case on appeal, the Hoge Raad der Nederlanden referred to *Charles and Charles-Tijmens*, [5] according to which Articles 6(2) and 17(2) and (6) of the Sixth Directive preclude national legislation which does not make it possible for a taxable person to allocate wholly to his business capital goods used in part for business purposes and in part for other purposes and which does not authorise, where appropriate, immediate deduction in full of the VAT due on the acquisition of those goods. The national court stated that it is not reasonably open to doubt that *Charles and Charles-Tijmens* must also apply in the case of a legal person which, as in the present case, exercises, at the same time as its economic activities, activities which are not subject to VAT. In that case and in so far as the goods acquired are capital goods, the national court stated that the VNLTO is entitled to deduct in full the VAT charged in respect of general costs, but the documents in the case-file in the main proceedings do not indicate what portion of the VAT deducted relates to capital goods. On the other hand, the Hoge Raad der Nederlanden considered that there is some doubt as to whether the ruling in *Charles and Charles-Tijmens* should be extended to goods other than capital goods and to services. The national court also raised the question whether the taxpayer is entitled to allocate non-capital goods and services to his business assets so as to make an immediate deduction in full of the VAT paid on the acquisition of those goods and services, even if they are partly used in connection with activities unrelated to the supplies taxed pursuant to Article 2 of the Sixth Directive.

14. In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are Articles 6(2) and 17(1), (2) and (6) of the Sixth... Directive to be interpreted as permitting a taxable person to allocate wholly to his business not only capital goods but all goods and services used both for business purposes and for purposes other than business purposes and to deduct immediately and in full the

5 — Case C-434/03 [2005] ECR I-7037.

VAT due on the acquisition of those goods and services?

(2) If the answer to Question 1 is affirmative, does the application of Article 6(2) of the Sixth Directive to services and goods other than capital goods mean that VAT is collected once during the tax period over which the deduction in respect of those services and goods is enjoyed, or must collection also occur in ensuing periods and, if so, how is the taxable amount to be determined in respect of goods and services which the taxable person does not write off?'

IV — Procedure before the Court

15. In accordance with Article 23 of the Statute of the Court of Justice, written observations have been submitted by the Netherlands, German, Portuguese and United Kingdom Governments, and by the Commission. Those parties also presented oral argument at the hearing held on 16 October 2008, with the exception of the Federal Republic of Germany and the Portuguese Republic, which were not represented.

V — Analysis

16. By its first question, the national court asks whether, under Articles 6(2) and 17 of the Sixth Directive, a taxpayer may allocate to his business not only capital goods but also all goods and services used both for business purposes and for purposes other than business purposes, thus permitting him to deduct immediately and in full the VAT paid on the acquisition of those goods and services.

17. By its second question, which is raised only if the reply to the previous question is in the affirmative, the national court wishes to know, in essence, in so far as non-capital goods and services qualify for the mechanism provided by the first subparagraph of Article 6(2) of the Sixth Directive, first, over what period the output tax must be charged, that is to say, it explains, once or in instalments over several taxation periods, and, second, how the taxable amount is to be determined in respect of goods and services which are not written off.

18. It is clear from the order for reference that these questions are based on the legal premiss that a taxable person who acquires capital goods is entitled to rely on the provisions of the first subparagraph of Article 6(2) of the

Sixth Directive, where those goods are used for the taxpayer's non-economic activities. They are also based on the idea that the expression 'purposes other than those of [the] business', within the meaning of that article, include non-economic activities undertaken by the taxable person.

19. The following arguments will show, principally, that the premiss in question, which relates to the interpretation of the Sixth Directive, is incorrect, as some of the governments which have lodged observations before the Court have also pointed out, and, accordingly, that the questions raised do not merit a reply because they are not relevant to the outcome of the main proceedings. I shall examine, in the alternative, the specific points raised by the two questions referred for a preliminary ruling in case the Court does not concur with my main proposal.

A — *General considerations and relevance of the legal premiss on which the questions referred for a preliminary ruling are based*

20. VAT is a general tax on consumption borne entirely by the final consumer. Up to the final consumer stage, the taxpayers who participate in the production and marketing process transfer to the tax authorities the amounts of VAT which they have charged their customers (output VAT collected) after deducting the amounts of VAT which they have paid to their suppliers (input VAT deductible). [6] Where a taxpayer acquires goods and services to carry out transactions subject to output tax, he is entitled to deduct the VAT payable on the acquisition of those goods and services. [7]

21. VAT is characterised by its neutrality at all stages of production and marketing. By virtue of the principle of neutrality, a person must bear the burden of VAT only when it relates to goods or services which are used by him for his private consumption and not for his taxable business activities. [8] Accordingly, where an asset is not used for the taxable person's economic activities but is used by him for private consumption, no right to

6 — See, generally, Article 2 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 1967, p. 14), the content of which is reproduced in Article 1(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), which repealed Directive 62/227 and the Sixth Directive. See also Joined Cases C-283/06 and C-312/06 *KÖGÁZ and Others* [2007] ECR I-8463, paragraph 29.

7 — See Article 17(2)(a) of the Sixth Directive. The charging of output VAT without allowing the deduction of input VAT would have led to the introduction of a cumulative multistage tax system, the abolition of which was one of the specific objectives of the common system of VAT, as is stated in the eighth recital in the preamble to Directive 62/227. See also Case C-184/04 *Uudenkaupungin kaupunki* [2006] ECR I-3039, paragraph 24.

8 — See inter alia Case C-25/03 *HE* [2005] ECR I-3123, paragraph 43.

deduct can arise. [9] A fortiori, input VAT cannot be deducted where it relates to a taxpayer's activities which are of a non-economic nature and therefore fall outside the scope of the Sixth Directive. [10]

22. Problems may arise in so-called 'mixed' use situations, that is to say, where a taxpayer, having acquired goods or services in the course of his economic activity, uses them partly for his taxed operations and partly for other purposes.

23. The Sixth Directive envisages two categories of mixed use. [11]

24. In the first of those categories is the first subparagraph of Article 6(2) of the directive — to which the order for reference expressly refers — which treats as a supply of services for consideration, under point (a), the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the VAT on such goods is wholly or partly deductible, and under point (b), supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business. [12]

25. As the Court has already had the opportunity to state, the purpose of the first subparagraph of Article 6(2) of the Sixth Directive is to ensure equal treatment as between a taxable person and a final consumer. [13] By treating transactions carried out free of charge as transactions effected for consideration, Article 6(2), first subparagraph, (a) seeks to prevent a taxable person, who has been able to deduct VAT on the purchase of goods used for his business, from escaping payment of VAT when he applies those goods from his business for his own private use (or for purposes other than business purposes) and from thereby enjoying advantages to which he is not entitled by comparison with an ordinary final consumer who buys goods and pays VAT on them. [14] That also applies to Article 6(2), first subparagraph, (b) of the Sixth Directive, the aim of

9 — See Case C-97/90 *Lennartz* [1991] ECR I-3795, paragraphs 8 and 9; *HE*, paragraph 43; and *Uudenkaupungin kaupunki*, paragraph 24.

10 — See Case C-437/06 *Securenta* [2008] ECR I-1597, paragraph 30. See also to that effect Case C-72/05 *Wollny* [2006] ECR I-8297, paragraph 20.

11 — See point 11 of the Opinion delivered by Advocate General Jacobs in *Charles and Charles-Tijmens*.

12 — It should be noted that the second subparagraph of Article 6(2) of the Sixth Directive allows the Member States to derogate from the provisions of the first subparagraph provided that such derogation does not lead to distortion of competition. In the light of the documents in the case-file, the second subparagraph of Article 6(2) does not seem to be the subject-matter of the order for reference.

13 — See inter alia Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 35; Case C-412/03 *Hotel Scandic Gåsabäck* [2005] ECR I-743, paragraph 23; and Case C-371/07 *Danfoss and AstraZeneca* [2008] ECR I-9549, paragraph 46.

14 — See to that effect *Enkler*, paragraph 33; *Hotel Scandic Gåsabäck*, paragraph 23; and *Danfoss and AstraZeneca*, paragraph 47.

which is to prevent a taxable person (or members of his staff) from obtaining, free of tax, services provided by the taxable person for which a private individual would have to have paid VAT. [15]

26. The similar treatment on which Article 6(2) of the Sixth Directive is based means in practice that a taxpayer who uses goods partly for the purposes of taxable business transactions and partly for private use and who, upon acquiring the goods, recovered all or part of the input VAT, is deemed to use the goods entirely for the purposes of his taxable transactions within the meaning of Article 17(2) of the directive. Consequently, such a taxpayer is in principle entitled to deduct immediately and in full the input VAT paid on purchasing the goods. [16]

27. As, in the present situation, there is no transaction with a third party or consideration paid by him which would constitute the taxable amount for VAT — since the taxpayer provides a service to itself — Article 11(A)(1)(c) of the Sixth Directive provides that the taxable amount is constituted by 'the full cost to the taxable person of providing the services'.

28. The application of the first subparagraph of Article 6(2) of the Sixth Directive gives the taxpayer a number of advantages, inter alia that of spreading the taxation over the whole period of private use of the business goods acquired, whereas the deduction of the input VAT paid on acquisition of those goods is immediate and in full. The taxpayer therefore receives a cash-flow benefit. [17] Although the

15 — See *Hotel Scandic Gåsabäck*, paragraph 23, and *Danfoss and AstraZeneca*, paragraph 48.

16 — See to that effect *Lennartz*, paragraph 26, and *Charles and Charles-Tijmens*, paragraph 24.

17 — See, in that regard, *Wollny*, paragraph 38, and point 74 of the Opinion in *Charles and Charles-Tijmens*. An example illustrates how the provision applies. It is supposed that a taxable person has acquired a new vehicle, with a probable life of 10 years, intended for business and private purposes. Its net cost is EUR 10 000 and the VAT is fixed at a rate of 17.5%. It is also supposed that, during the first year, 40% of the use of that vehicle is for business purposes and, accordingly, 60% is for private purposes. The mechanism of Article 6(2) of the Sixth Directive permits the immediate deduction of all the input VAT paid, EUR 1 750. The output tax on the private use of the vehicle will be calculated by dividing the purchase price by 10 (corresponding to the writing-off of the vehicle) and by multiplying the result by the annual proportion of private use, which is 10 000/10 = 1 000 x 17.5% x 60%, which gives output tax for the first year of EUR 105. If the use for private purposes decreases for years 2 to 10 to 30%, the output tax will be EUR 52.5 for each of those years. The VAT payable on the private use during the life of the vehicle will therefore be 105 + 52.5 x 9 = EUR 577.5. If that amount is subtracted from the input deduction, there is a net VAT deduction of EUR 1 172.5. If the input tax payable on the vehicle at the time of purchase were apportioned, the taxable person could deduct only the portion relating to use for business purposes, that is 40% of the VAT payable, namely EUR 700. If the use for business purposes increases to 70% (in the same proportion as the private use decreased in the preceding example) during years 2 to 10, the overall use for business purposes during the life of the vehicle rises to an average of 67% during that life (which corresponds to a net VAT deduction of EUR 1 172.5) but the input deduction will have been lower than that use. However, the VAT may be adjusted to reflect the actual use of the goods. It is then seen that application of the method provided for in Article 6(2) of the Sixth Directive gives a cash-flow advantage to the taxpayer who may deduct the input VAT paid immediately and in full, whereas the output taxation will be spread over the life of the vehicle.

national court has not explained the issues in the main proceedings, it is possible, as the United Kingdom Government suggested at the hearing, that such a tax advantage lies behind the VNLTO's attempt to rely on the application of the first subparagraph of Article 6(2) of the Sixth Directive before the national courts.

29. Article 17(5) of the Sixth Directive belongs to the second category of the provisions relating to mixed use. Under the first subparagraph of that provision, as regards goods and services to be used by a taxable person both for transactions in respect of which VAT is deductible (that is to say, which are used for taxable transactions), and for transactions in respect of which VAT is not deductible (namely, exempt transactions), only such proportion of the VAT is to be deductible as is attributable to the former transactions. [18]

30. As the Court recently held in *Securenta*, which was mentioned a number of times during the hearing, Article 17(5) of the Sixth Directive thus relates to input VAT on expenditure connected exclusively with economic activities, and distinguishes between economic activities which are taxed and give rise to the right to deduct and those which are exempt and do not give rise to such a right. On the other hand, the Sixth Directive provides no mechanism for apportioning amounts of input VAT paid relating both to economic transactions and non-economic transactions carried out by a taxable person. Although it is thus for the Member States to determine that apportionment, the Court has nevertheless pointed out that, having regard to the aims and broad logic of the Sixth Directive, they must exercise their discretion in such a way as to ensure that deduction is made only for that part of the VAT proportional to the amount relating to transactions giving rise to the right to deduct, that is to say, the Member States must ensure that the calculation of the proportion of economic activities to non-economic activities objectively reflects the part of the input expenditure actually to be attributed, respectively, to those two types of activity. [19]

31. In the present case, it should be pointed out that it is apparent from the information provided by the national court that the VNLTO carries out both economic activities which fall within the scope of the Sixth Directive and non-economic activities, namely the protection of the general interests of its members, which fall outside the scope of that directive. According to the explanations given by the national court, the VNLTO acquired capital goods but it was not possible to determine what portion of the VAT

18 — Under the second subparagraph of Article 17(5) of the Sixth Directive, the proportion is determined, in accordance with Article 19 of the directive, for all the transactions carried out by the taxable person.

19 — Paragraphs 33, 35 and 37 of the aforementioned judgment.

deducted by the VNLTO related to the acquisition of those capital goods, unless the case was referred back to the court of first instance. It is also clear from the order for reference that the acquisition of those goods was entered in the accounts as general costs of the VNLTO and was therefore not allocated exclusively to the output economic activities carried out by the VNLTO. The national court considers that the VNLTO may nevertheless rely on the provisions of Article 6(2), first subparagraph, (a) of the Sixth Directive and accordingly deduct all the input VAT paid on acquisition of capital goods, since, according to the national court, the carrying-out by the association of non-economic activities is linked to the concept of 'purposes other than those of his business' mentioned in that provision. The national court bases that interpretation on the case-law of the Court and, more specifically, on *Charles and Charles-Tijmens.*

32. In their written observations, the Netherlands and Portuguese Governments strongly disputed the premiss on which the questions referred for a preliminary ruling are based. The Netherlands Government repeated that objection at the hearing, an objection which also received the support of the representative of the United Kingdom Government. Without actually denying that a legal person liable for VAT may rely on the provisions of Article 6(2), first subparagraph, (a) of the Sixth Directive, as may natural persons who are subject to the tax, [20] those governments nevertheless maintain that the deduction of input VAT is excluded in so far as the capital goods are used to carry out non-economic activities, in the present case those relating to the general protection of its members' interests. The Netherlands and Portuguese Governments add that goods acquired by a legal person liable for VAT which are, from the time of their acquisition, used to pursue the object under that body's statutes cannot be considered to be used for private purposes or purposes other than those of the business.

33. In that regard, it should be pointed out that it is apparent from *Securenta* — which concerned a company which simultaneously carried out economic activities, on which it paid VAT, and non-economic activities, which fell outside the scope of VAT, and which sought to deduct input VAT paid in relation to expenditure unconnected with specific

20 — It will be noted that Article 4(1) of the Sixth Directive gives a broad definition of the term 'taxable person' and that the first subparagraph of Article 6(2) also provides for the use of goods or services for the purposes of the taxable person's staff, factors which both support the idea that the latter article also applies to legal taxable persons, contrary to what the Netherlands Government maintained in its written observations, which were judiciously corrected at the hearing following questions from the Court. Finally, the principle of fiscal neutrality would preclude inter alia economic operators carrying out the same transactions from being treated differently as far as the levying of VAT is concerned; see to that effect, in another context, Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 20.

output activities — that 'to the extent that input VAT relating to expenditure incurred by a taxpayer is connected with activities which, in view of their non-economic nature, do not fall within the scope of the Sixth Directive, it cannot give rise to a right to deduct'. [21]

34. Therefore, deduction of the input VAT paid is allowed only to the extent that the expenditure incurred is attributable to the taxpayer's output economic activity. [22]

35. However, in the present case, the national court appears to interpret Article 6(2), first subparagraph, (a) of the Sixth Directive as providing the opportunity to derogate from the general rule which has just been noted. It thus seems to treat the use, by a taxpayer, of capital goods partly for carrying out non-economic activities as the use, by that taxpayer, of capital goods allocated to the business 'for purposes other than those of his business', within the meaning of Article 6(2), first subparagraph, (a) of the Sixth Directive.

36. In my view, this line of reasoning can be followed only in part.

37. It is true that Article 6(2) of the Sixth Directive, by treating as supplies for consideration, and therefore as falling within the scope of the directive, transactions which, in principle, ought not to be subject to VAT, is a derogating provision in the general scheme of the Sixth Directive. Accordingly, when asked what interpretation should be given to the expression 'use of goods' in Article 6(2), first subparagraph, (a) of the Sixth Directive, the Court stated that 'the private use of goods is taxable only exceptionally' and concluded that the words 'use of goods' must be interpreted strictly, including only the use of the goods themselves. [23]

38. Consequently, the purpose of Article 6(2) of the Sixth Directive is not to establish a general rule under which transactions which fall outside the scope of VAT are assumed to fall within that provision. As the United Kingdom Government rightly pointed out at the hearing, to interpret Article 6(2) of the Sixth Directive as establishing a general rule of that kind would have the effect of rendering Article 2(1) of the directive meaningless.

21 — Paragraph 30.
22 — *Ibidem*, paragraph 31.
23 — Case C-193/91 *Mohsche* [1993] ECR I-2615, paragraphs 13 and 14, and *Enkler*, paragraph 34.

39. At this stage, it is appropriate to consider the situations covered by Article 6(2) of the Sixth Directive.

40. In essence, three cumulative conditions govern the application of that provision.

41. First, the goods must have been acquired by a taxable person acting as such, and be allocated by him to his business. This condition means that a taxable person performing a transaction in a private capacity does not act as a taxable person within the meaning of the Sixth Directive. [24] It also means that, although capital goods are used for both private and business purposes, the allocation of all those goods to a taxpayer's private assets excludes deduction of the VAT paid on acquisition of the goods. [25]

42. Although, on reading the order for reference, it still appears doubtful whether the capital goods to which it refers were allocated to the business assets, that is to say, allocated to the taxpayer's economic activities, the national court, which alone has jurisdiction to assess the facts of the case, nevertheless appears to consider that that condition is satisfied in the main proceedings, which must accordingly be taken as established for the purposes of this analysis. [26]

43. Secondly, Article 6(2), first subparagraph, (a) of the Sixth Directive requires the VAT on the goods in question to be wholly or partly deductible. That condition, also interpreted in the light of Article 17(2)(a) of the Sixth Directive, means inter alia that a taxable person, although acting as such, who acquires goods for the purposes of an activity exempt from VAT, under the provisions of the Sixth Directive, will not qualify for application of Article 6(2) of the Sixth Directive, even if he also uses those goods partly for private purposes.

44. Thirdly, the capital goods in question must be for the private use of the taxable person or of his staff or 'more generally for purposes other than those of his business'.

24 — See Case C-291/92 *Armbrecht* [1995] ECR I-2775, paragraphs 17 and 18, and Case C-415/98 *Bakcsi* [2001] ECR I-1831, paragraph 24.

25 — *Backsi*, paragraph 27.

26 — Indeed, if the capital goods were regarded as only partially allocated to the assets of the business, the questions referred for a preliminary ruling would not be raised since, according to the case-law, the operator would act as a taxable person only to the extent to which the goods were used for business purposes (see inter alia *HE*, paragraphs 46 and 47). Input VAT on the purchase of capital goods could therefore be deducted only to the extent to which they were used for business purposes.

45. On reading Article 6(2) of the Sixth Directive, the expression 'purposes other than those of his business', introduced by the adverbial phrase 'more generally', appears to contain an extension of the first two situations in which that provision applies, namely where, so far as concerns the first subparagraph (a) of that provision, the capital goods are 'for the private use of the taxable person or of his staff'.

46. In that regard, it seems first of all reasonable to think that, in the light of the aims and general scheme of the Sixth Directive, the term 'business' in the first subparagraph of Article 6(2) of the Sixth Directive has a substantive content, that is to say that it relates to the taxpayer's economic activity. Therefore I think it need only be pointed out that the application of Article 6(2), first subparagraph, (a) of the Sixth Directive is excluded where a taxpayer uses capital goods simultaneously for taxable transactions and exempt transactions in connection with his economic activity. Although it is a mixed use of the same goods, that situation will nevertheless fall within the scope of Article 17(5) of the Sixth Directive, which provides that input VAT is deductible only in proportion to the amount relating to the taxable transactions. The concept of purposes other than those of his business can therefore include, at most, only purposes other than the taxpayer's economic activity.

47. The question then arises whether that finding must lead to the conclusion that Article 6(2) of the Sixth Directive extends to the use of business goods for the purposes of all the taxpayer's non-economic activities, apart from cases of use for his private purposes.

48. In the light in particular of the case-law, I consider that this question should be answered in the negative.

49. First, in its case-law the Court does not seem to interpret in any way the use of goods 'for purposes other than for [the] business' as a situation concerning use other than for private purposes. Thus, the Court has held that 'it follows from the *structure* of the Sixth Directive that Article 6(2)(a) [of the directive] is designed to prevent the non-taxation of business goods used for private purposes'. [27]

50. Secondly, in *Securenta*, the Court observed that the provisions of the Sixth Directive do not include rules relating to the methods or criteria which the Member States are required to apply when adopting provisions permitting the apportionment of input

27 — See Case 50/88 *Kühne* [1989] ECR 1925, paragraph 8; *Mohsche*, paragraph 8; Case C-258/95 *Fillibeck* [1997] ECR I-5577, paragraph 25; Case C-155/01 *Cookies World* [2003] ECR I-8785, paragraph 56; and *Wollny*, paragraph 31 (emphasis added). See also point 42 of the Opinion of Advocate General Sharpston delivered on 23 October 2008 in *Danfoss and AstraZeneca*. See too, as regards Article 6(2), first subparagraph, (b) of the Sixth Directive, *Fillibeck*, paragraph 25.

VAT according to whether the relevant expenditure relates to economic activities or to non-economic activities. [28] It held, however, that, in exercising their discretion, the Member States, which are required inter alia to comply with the principle of fiscal neutrality on which the common system of VAT is based, must ensure that deduction is made only for that part of the VAT proportional to the amount relating to transactions giving rise to the right to deduct. [29] It is unlikely that the Court, if it considered that Article 6(2), first subparagraph, (a) of the Sixth Directive allowed the use of capital goods, allocated to the business, for non-economic purposes to be treated as a supply for consideration authorising the taxable person to deduct in full the input VAT paid on acquisition of those goods, would have stated that the Member States have competence to adopt rules relating to the apportionment of the input VAT in relation to expenditure connected with both economic and non-economic activities and would have *required* those Member States to ensure that the deduction of VAT was in proportion to the amounts relating only to deductible transactions.

51. If the Court interpreted Article 6(2) of the Sixth Directive as a general derogation from the provisions of Article 17 of the Sixth Directive, the findings which it made in *Securenta* would at least have been more qualified, if not supplemented by certain considerations relating to Article 6(2) of the Sixth Directive. According to the case-law, there was nothing to prevent the Court from interpreting that provision, even though it was not expressly mentioned in the questions referred for a preliminary ruling in *Securenta*. [30]

52. The foregoing considerations lead me, thirdly, to share the view expressed by Advocate General Sharpston in *Danfoss and AstraZeneca*, that Article 6(2) of the Sixth Directive covers purposes which are wholly extraneous to those of the taxable business, [31] that is to say, that they do not serve the interests of the business either directly or indirectly.

53. However, the use of goods for a taxpayer's non-economic activities, at the same time as their use for his taxable economic activities, may, in many situations, serve, directly or indirectly, the interests of the business, unlike, as a rule, the private use of those goods. To permit the extension of Article 6(2) of the Sixth Directive to uses for a taxpayer's non-

28 — *Securenta*, paragraph 33.

29 — *Ibidem*, paragraphs 36 and 37.

30 — According to the case-law, it is for the Court to provide the national court with all those elements for the interpretation of Community law which may be of assistance in adjudicating on the case pending before it, whether or not that court has specifically referred to them in its questions: see, in the sphere of application of the Sixth Directive, Case C-452/03 *RAL (Channel Islands) and Others* [2005] ECR I-3947, paragraph 25.

31 — Point 38 of the Opinion in *Danfoss and AstraZeneca*.

economic activities would also mean that it would be necessary to distinguish in each specific case the uses which were actually unconnected with the purposes of the business from those which served its needs. The common system of VAT would become more complex, which, in my view, does not correspond generally to the spirit of the Sixth Directive. [32]

54. I therefore consider that use 'for purposes other than those of [the] business' as provided in Article 6(2) of the Sixth Directive cannot include any use for the purposes of the taxpayer's non-economic activities. [33]

55. That assessment does not prejudice the effectiveness of the expression 'purposes other than those of [the] business' since this may extend to any use for private purposes by persons other than the taxpayer or members of his staff. As the Portuguese Government pointed out in its written observations, that would be the case, for example, of capital goods which the VNLTO used simultaneously for its taxable activities and for the private purposes of its members or of one of their managers. However, as I have just stated, that does not appear to be the situation in respect of which the VNLTO seeks to rely on the application of the first subparagraph of Article 6(2) of the Sixth Directive.

56. I therefore consider that the interpretation of the first subparagraph of Article 6(2) and Article 17 of the Sixth Directive on the basis of which the national court bases the premiss for the questions referred is incorrect. Consequently, those questions seem to me to be irrelevant for the purposes of deciding the dispute in the main proceedings.

57. I therefore propose, principally, that the reply to be given to the order for reference is that the first subparagraph of Article 6(2) of the Sixth Directive is not applicable to the use of capital goods allocated to the business for the taxable person's non-economic activities.

58. It is only if the Court were not to agree with this assessment that it would be necessary to reply to the specific points raised by the first question referred and then, if appropriate, to those raised in the second question. It is therefore only in the alternative that I shall now examine these matters.

32 — See, by analogy, Case C-390/96 *Lease Plan* [1998] ECR I-2553, paragraph 28, in a context in which the Court rejected a criterion on which to base the existence of a fixed establishment which could not be regarded as 'a clear, simple and practical criterion, in accordance with the spirit of the Sixth Directive'.

33 — See also to that effect point 59 of the Opinion in *Charles and Charles-Tijmens*.

B — *The specific points raised by the first question*

59. As already stated, the national court is asking whether a taxable person may, under Articles 6(2) and 17 of the Sixth Directive, allocate to his business non-capital goods and services used both for business purposes and for purposes other than business purposes, thus authorising him to deduct immediately and in full the VAT paid on acquisition of those goods and services.

60. It should be pointed out first of all that, according to the case-law, where capital goods are used both for business and for private purposes the taxpayer has the choice, for the purposes of VAT, of (i) allocating those goods wholly to the assets of his business, (ii) retaining them wholly within his private assets, thereby excluding them entirely from the system of VAT, or (iii) integrating them into his business only to the extent to which they are actually used for business purposes. [34]

61. As I have already had occasion to mention, should the taxable person choose to treat capital goods used for both business and private purposes as business goods, the input VAT due on the acquisition or construction of those goods is, as a rule, immediately deductible in full. [35]

62. However, since use for the private purposes of the taxable person or of his staff or for purposes other than those of his business is treated as a taxable transaction under Article 6(2), first subparagraph, (a) of the Sixth Directive, a taxable person who has chosen to allocate a whole capital asset to his business and uses part of that asset for his private purposes is required to pay VAT on the amount of expenditure incurred to effect such use, and has the corresponding right to deduct the input VAT paid on all acquisition or construction costs relating to that capital asset. [36]

63. That being so, the issue is whether the fact that that case-law of the Court has developed in the context of the mixed use of capital goods is purely fortuitous or, on the contrary, there is a particular reason for it stemming from the provisions of Article 6(2), first subparagraph, (a) of the Sixth Directive.

34 — See inter alia *HE*, paragraph 46; *Charles and Charles-Tijmens*, paragraph 23; and *Wollny*, paragraph 21.

35 — *Charles and Charles-Tijmens*, paragraph 24, and *Wollny*, paragraph 22.

36 — See to that effect *Wollny*, paragraphs 23 and 24 and the case-law cited therein.

64. First of all, on a straightforward reading, that provision is not restricted to the use of capital goods but refers, more broadly, to 'use of goods'.

65. Secondly, it should be pointed out that, in the case-law relating to the interpretation of Article 6(2) of the Sixth Directive, the Court has never defined the expression 'capital goods' to which it has regularly referred.

66. In *Verbond van Nederlandse Ondernemingen*, [37] which concerned the interpretation of Article 17 of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax, [38] the Court held, in the light of *the ordinary meaning of the expression* and its function in the context of Directive 67/228, that 'capital goods' covers goods used for the purposes of some business activity and distinguishable by their durable nature and their value, such that the acquisition costs are not normally treated as current expenditure but are written off over several years. [39]

67. The essential elements of that definition, namely the durable nature of those goods and the attendant writing-off of their acquisition costs, were reproduced by the Court in connection with the interpretation of Article 20 of the Sixth Directive relating inter alia to the period over which the adjustment in respect of capital goods is made, [40] despite the fact that that provision confers competence on the Member States to define the concept of capital goods. [41]

68. Even though there is no overlap between the material scope of the first subparagraph of Article 6(2) of the Sixth Directive and that of Article 20 of the directive, [42] nevertheless, as the Court has held, those provisions have a common aim, [43] which I consider may mean that the essential elements of the definition of 'capital goods', within the meaning of Article 20 of the directive, namely the durable nature of their use and the attendant writing-off of their acquisition costs — elements which, moreover, are also covered by the ordinary meaning of that expression — are also relevant so far as concerns the use which the Court's case-law has made of that concept when interpreting Article 6(2) of the Sixth Directive.

37 — Case 51/76 [1977] ECR 113.
38 — OJ, English Special Edition 1967, p. 16.
39 — See paragraph 12 of the aforementioned judgment.
40 — Case C-63/04 *Centralan Property* [2005] ECR I-11087, paragraph 55.
41 — See Article 20(4) of the Sixth Directive. See, in that regard, Case C-98/07 *Nordania Finans and BG Factoring* [2008] ECR I-1281, paragraph 32.
42 — See, in that regard, *Uludenkaupungin kaupunki*, paragraphs 30 to 34.
43 — *Wollny*, paragraphs 35 to 37.

69. However, as the case-law cited in point 62 of this Opinion implicitly but necessarily shows, under Article 6(2), first subparagraph, (a) of the Sixth Directive, the VAT paid on the private use of the goods acquired will be charged as and when consumption of the goods on which input VAT has been deducted occurs. The fact that the use by the taxable person of a business asset for private purposes is treated as a supply of services for consideration, that is to say, a transaction which takes place over a period of time, leads to the logical conclusion that the recovery of the VAT on the costs necessary for the services to be provided (a fiction) must be effected in instalments. [44] In the event of any change in the portion of the goods allocated by the taxable person to his private use, the adjustment to the VAT for which he is liable on the amount of expenditure incurred to effect such use will, in any event, be self-executing [45] since it will vary precisely according to actual use of the goods for private purposes [46] throughout the life of the goods, or even over a shorter period, in accordance with that provided for in Article 20(2) and (3) of the Sixth Directive, as the Court appears to recognise. [47]

70. Accordingly, as the Netherlands, Portuguese and United Kingdom Governments and the Commission have pointed out, in essence, in reference inter alia to point 88 of the Opinion in *Charles and Charles-Tijmens*, the mechanism introduced by Article 6(2), first subparagraph, (a) of the Sixth Directive thus makes sense only if the consumption of the goods is spread over time, that is to say, that it relates to capital goods and not to other goods consumption of which is, as a rule, immediate.

71. For non-capital goods, I consider that the solution is to be found in the provisions of Article 17(5) of the Sixth Directive, that is to say, the taxable person must apportion the goods in question for business purposes or other purposes and deduct the amount of VAT which reflects the actual use of those goods for the purposes of the business at the time the VAT is due.

72. In my view, that will also apply to goods which, losing their distinctive nature, are incorporated into the capital goods after these have been acquired and which tend to retain their value. [48] Article 6(2), first subparagraph, (a) of the Sixth Directive refers only to the use of the goods acquired themselves when they are deductible and not to the

44 — See to that effect point 70 of the Opinion of Advocate General Léger in *Wollny*.

45 — See to that effect point 61 of the Opinion of Advocate General Jacobs in *Charles and Charles-Tijmens*.

46 — See, in that regard, *Enkler*, paragraphs 36 and 37.

47 — *Wollny*, paragraphs 37 and 53.

48 — See, by analogy, Joined Cases C-322/99 and C-323/99 *Fischer and Brandenstein* [2001] ECR I-4049, paragraph 67, concerning the interpretation of Article 5(6) of the Sixth Directive, which treats as supplies made for consideration the application by a taxable person of goods forming part of his business assets for his private use or their application for purposes other than those of his business, where the VAT on the goods in question or the component parts thereof was wholly or partly deductible.

expenditure incurred for their use and maintenance. [49]

73. As for items which are incorporated into the capital goods after these are acquired but which increase their value, apart from the fact that Article 6(2), first subparagraph, (a) of the Sixth Directive refers only to capital goods once they have been acquired, I also think it is preferable, for reasons relating to the simplicity of the common scheme of VAT, for the input VAT paid on the acquisition of such items to be apportioned according to the rule laid down in Article 17(5) of the Sixth Directive. As the United Kingdom Government explained in detail in its written observations, in view of the differences concerning the date of acquisition of the goods and their expected life, the application of Article 6(2), first subparagraph, (a) of the Sixth Directive would mean that the taxable person would be required to calculate, each year, the output VAT on each item incorporated into the body of capital goods, a task which seems particularly complex. [50]

74. As regards services, the national court considers that the extension of the scheme applicable to the mixed use of capital goods might possibly be extended to services which are subject to writing-off (that is to say, 'capital services') since, for commercial purposes, those services are no different from capital goods. The Commission shares that view for reasons connected with the observance of the principle of equal treatment, [51] and the assessment was also endorsed by the United Kingdom Government at the hearing. On the other hand, the Netherlands, German and Portuguese Governments reject the extension envisaged by the national court. Those governments refer inter alia to the wording of the first subparagraph of Article 6(2) of the Sixth Directive. However, the Netherlands and German Governments appear to acknowledge that services incorporated into capital goods after their acquisition may fall within the scope of Article 6(2), first subparagraph, (a) of the Sixth Directive.

75. I consider from the outset that this last assessment must be rejected inter alia for the same reasons as those set out in points 72 and 73 of this Opinion with regard to goods

49 — *Kühne*, paragraph 13.

50 — In accordance with the method described in footnote 17 to this Opinion. The United Kingdom Government thus gives the example of a yacht (capital goods) acquired in 2000, intended basically for hiring out but also for private use for 20% of the year; the taxable person renews the mast in 2001 (expected to last for 15 years, that is, until 2016), renews the wooden decks in 2002 (expected to last for 10 years, that is, until 2012), renews the anchor in 2003 (expected to last for 8 years, that is, until 2011), and so forth. In that case, each year the taxable person would have to divide the net cost of each of those items by its estimated lifespan and multiply the result by the relevant national VAT rate and by the proportion of private use during the year concerned.

51 — In its observations, the Commission compares the acquisition, as full owner, by an undertaking of vehicles also used for the private purposes of the taxable person, which might qualify for application of the provisions of Article 6(2), first subparagraph, (a) of the Sixth Directive, and the acquisition by the same undertaking of vehicles under a leasing agreement, which would also be used for the taxable person's private purposes.

incorporated following the acquisition of the capital goods. [52]

76. As regards the extension of the scheme for the mixed use of capital goods to capital services, it should first of all be noted that there is no provision in the Sixth Directive governing the use for a taxable person's private purposes of a capital service allocated to his business. Indeed, as has already been pointed out, Article 6(2), first subparagraph, (a) of the Sixth Directive refers only to goods. Also, Article 6(2), first subparagraph, (b) of the directive treats as supplies of services for consideration only supplies of services carried out free of charge *by the taxable person* for himself or members of his staff and not those *by third parties*. [53]

77. The exclusion of the use of services from the scope of Article 6(2), first subparagraph, (a) of the Sixth Directive and the simultaneous limitation of the scope of the first subparagraph (b) of that provision to supplies of services by the taxable person may be interpreted in two slightly different ways.

78. On the one hand, it might be suggested that the Community legislature considered that the use for private purposes of services supplied to the taxable person by third parties was to be dealt with by dividing between business use and private use the amounts of input VAT payable on the acquisition of capital services rather than by charging output VAT on the private use corresponding to the right to deduct immediately and in full the input VAT paid, in accordance with Article 6(2), first subparagraph, (a) of the Sixth Directive.

79. In that situation, since the private use of capital services would not be treated as a supply of services for consideration, it would therefore fall outside the scope of the Sixth Directive and, accordingly, of the rules in Article 17(5) of the directive, which, as the Court has pointed out, relates only to the apportionment of input VAT on expenditure

52 — See also *Mohsche*, paragraph 14. This does not therefore concern the services used for the acquisition or construction of capital goods, such as a building, which precede or accompany that acquisition: see, in that regard, Case C-269/00 *Seeling* [2003] ECR I-4101, paragraph 43, and *Wollny*, paragraph 24, which state 'where a taxable person chooses to treat an entire building as forming part of the assets of his business and uses part of that building for private purposes he is, on the one hand, entitled to deduct the input VAT paid on all *construction costs* relating to that building and, on the other, subject to the corresponding obligation to pay VAT on the amount of expenditure incurred to effect such use' (emphasis added). See also *Wollny*, paragraphs 27 and 50.

53 — See, in that regard, *Hotel Scandic Gåsabäck*, paragraph 23, and *Danfoss and AstraZeneca*, paragraph 48, which state '... Article 6(2)(b) of the Sixth Directive prevents a taxable person or members of his staff from obtaining, free of tax, services *provided by the taxable person* for which a private individual would have to have paid VAT' (emphasis added). See also point 22 of the Opinion of Advocate General Jacobs in *Mohsche*.

connected exclusively with economic activities. [54] However, the problem arises, in that situation, of the adjustment of the VAT initially deducted where changes affect, during the period over which the capital service is written off, that proportion of the capital service used for business purposes (and therefore, correlatively, that used for private purposes), since Article 20(2) and (3) of the Sixth Directive covers only the adjustment of the deduction in respect of capital goods.

80. Consequently, and on the other hand, it might thus be considered that, in the absence of Community provisions relating to the mixed use of capital services, the Community legislature intended to leave to the Member States the option of apportioning the input VAT paid between the professional use and the private use of a capital service, in which case only the proportion relating to business purposes would be deductible, or of treating private use as a service for consideration, so that output VAT is paid in instalments on the expenditure relating both to the business use and the private use of a capital service.

81. In that situation, it seems clear that, in the exercise of their competence, the Member States must nevertheless have regard to the aims and broad logic of the Sixth Directive, that is, they must in particular comply with the principle of fiscal neutrality on which the common system of VAT is based. [55]

82. Irrespective of the general question of whether a Member State may reasonably extend the scheme applicable to the mixed use of capital goods, as provided under Article 6(2), first subparagraph, (a) of the Sixth Directive, to the mixed use of capital services, without creating any distortions of competition and differences between the levels of the fiscal burden in the Member States, there is no indication at all in the documents before the Court that this was the option taken by the legislation in force in the Netherlands. In that regard, the national court only mentions the hypothesis that, *under Community law*, the Member States are required to extend the scheme applicable to the mixed use of capital goods, as provided in Article 6(2) of the Sixth Directive, to services, including capital services. However, as has already been pointed out, that hypothesis must, in my view, be ruled out.

83. In any event, contrary to what the Commission stated in its observations, I do not consider that a refusal to apply the first subparagraph of Article 6(2) of the Sixth Directive to the mixed use of capital services would impose on the taxable person a tax burden in respect of his business use which would infringe the principle of neutrality.

54 — See *Securenta*, paragraph 33.

55 — See, in that regard, *Securenta*, paragraphs 35 and 36.

Since it is only the portion used for private purposes which would be regarded as a transaction free of charge, the deduction of the input VAT paid in respect of the taxable person's business use would be fully available.

84. For all these reasons and in the event that the Court were to reply to the specific points raised by the first question referred by the national court, I propose that the reply to the question should be that Article 6(2) of the Sixth Directive is to be interpreted as meaning that it does not extend either to the mixed use of goods other than capital goods or to the mixed use of services.

C — *The specific points raised by the second question*

85. It is only if the Court were not to endorse either my principal proposal or the reply which I suggest be given, in the alternative, to the first question, that it would be necessary to examine the second question raised by the national court.

86. As I have already emphasised, by this latter question the national court wishes to know, in essence, *in so far as goods other than capital goods and services qualify for the mechanism provided by the first subparagraph of Article 6(2) of the Sixth Directive*, (a) over which period output tax must be charged, that is to say, should it be charged once or in instalments over several taxation periods, and (b) how the taxable amount is to be determined in respect of goods and services which are not written off.

87. As regards that part of the question relating to the chargeability of VAT, as the Netherlands and Portuguese Governments maintained in their written observations, since the supplies of services referred to in Article 6(2), first subparagraph, (a) of the Sixth Directive are regarded as supplies for consideration, the rules relating to chargeability of VAT are therefore the same. Accordingly, under the first sentence of Article 10(2) of the Sixth Directive, the chargeable event is to occur and the tax is to become chargeable when the services are performed. [56] Where a business asset is used partly for private purposes, VAT therefore becomes chargeable at the time of that use. For goods (and services) which are consumed immediately, it is reasonable to suppose that VAT will be paid once, that is to say in the taxable person's tax declaration for the taxation period concerned, the Member States retaining, pursuant to Article 22(4) of

56 — It should be noted that the third sentence of Article 10(2) of the directive also confers the power on the Member States to provide that, in certain cases, continuous supplies of services which take place over a period of time are to be regarded as being completed at least at intervals of one year. This power, to which the Netherlands Government also referred in its written observations in respect of the supplies of services covered by Article 6(2) of the Sixth Directive, was introduced into the Sixth Directive only at the time of the adoption of Council Directive 2000/65/EC of 17 October 2000 amending Directive 77/388 (OJ 2000 L 269, p. 44), the provisions of which were to be transposed by the Member States by 31 December 2001 at the latest. The third sentence of Article 10(2) of the Sixth Directive is therefore not applicable, *ratione temporis*, to the facts in the main proceedings which, as has already been pointed out, concern the VNLTO'S tax assessment only for the year 2000.

the Sixth Directive, the power to determine that period. As stated by the United Kingdom Government in its written observations, this approach not only has the advantage of simplicity but is also likely to ensure equal treatment with the final consumer, who cannot spread the impact of VAT over a period longer than that of the actual use of goods or services consumed immediately.

88. As regards capital services, I consider, concurring with what the United Kingdom Government maintained, that there is nothing to prevent a Member State from spreading the output taxation over the period for writing off the service in question or, as the Court has acknowledged in respect of capital goods, over a shorter period, corresponding, for example, to the period of adjustment of deductions provided for in Article 20 of the Sixth Directive. [57]

89. Finally, as regards that part of the question referred relating to the determination of the taxable amount for VAT in respect of goods and services which are not written off, it should be pointed out that, under Article 11 (A)(1)(c) of the Sixth Directive, this is constituted, for the transactions covered by Article 6(2) of the directive, by the amount of the expenses incurred by the taxable person for the supply of services. This concept corresponds to the expenses which relate to the goods themselves, [58] but also to those, incurred on acquisition of the goods, without which the private use could not have taken place. [59] However, the Court has held that the Sixth Directive did not contain the guidance necessary for defining uniformly and precisely the rules for establishing the amount of the expenses concerned, and that the Member States therefore have a certain margin of discretion as regards those rules provided that they do not fail to have regard to the aims and role of the provision at issue within the scheme of the Sixth Directive. [60]

90. In that regard, it is apparent, in essence, from the written observations of the Netherlands Government that the Netherlands legislation would link the determination of all the elements to be taken into consideration for calculating the taxable amount of the supplies of services covered by Article 6(2) of the directive to that applicable to 'normal' supplies of services for consideration. I consider that it is for the national court to verify that statement in the main proceedings and to examine, in the light of the principles reiterated in the previous point of this Opinion, whether such treatment, in so far as it relates to the determination of the taxable amount for VAT, complies inter alia with the principle of fiscal neutrality.

57 — See to that effect *Wollny*, paragraphs 42 and 48.

58 — *Enkler*, paragraph 36, and *Wollny*, paragraph 27.
59 — See to that effect *Wollny*, paragraph 27.
60 — *Ibidem*, paragraph 28.

VI — Conclusion

91. In the light of the foregoing considerations, I propose that the Court give the following reply to the reference for a preliminary ruling from the Hoge Raad der Nederlanden:

The first subparagraph of Article 6(2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, is to be interpreted as meaning that it is not applicable to the use of capital goods allocated to a business for the taxable person's non-economic activities which are not subject to value added tax.