Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

9 June 2016*

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 77/388/EEC — Third subparagraph of Article 17(5) — Field of application — Deduction of input tax — Goods and services used for both taxable and exempt transactions (mixed-use goods and services) — Determination of the assignation of goods and services purchased for the construction, use, conservation and maintenance of a building that serves to carry out, in part, transactions in respect of which VAT is deductible and, in part, transactions in respect of which VAT is not deductible — Amendment of the national legislation laying down the method of calculating the deductible proportion — Article 20 — Adjustment of deductions — Legal certainty — Legitimate expectations)

In Case C-332/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 5 June 2014, received at the Court on 9 July 2014, in the proceedings

Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR

v

Finanzamt Krefeld,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský (Rapporteur), M. Safjan, A. Prechal and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 9 July 2015,

after considering the observations submitted on behalf of:

— the German Government, by T. Henze and K. Petersen, acting as Agents,

— the United Kingdom Government, by J. Kraehling and L. Christie, acting as Agents, and R. Hill, Barrister,

— the European Commission, by M. Wasmeier, G. Braun and C. Soulay, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 25 November 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 17, 19 and 20 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 (OJ 1977 L 145, p. 1), as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18) ('the Sixth Directive').

2 The request has been made in proceedings between Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR ('Rey Grundstücksgemeinschaft') and Finanzamt Krefeld (Tax Office, Krefeld) concerning the method of calculating the deduction entitlement for value added tax ('VAT') due or paid in respect of goods and services used for the construction, maintenance, use and conservation of a mixed-use building that serves, in part, to carry out transactions in respect of which VAT is deductible and, in part, to carry out transactions in respect of which VAT is not deductible ('a mixed-use building').

Legal context

EU law

3 Article 17 of the Sixth Directive, headed 'Origin and scope of the right to deduct', provides:

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

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

(a) value added tax due or paid within the territory of the country 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:

(a) authorise the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) compel the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

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

(d) authorise or compel the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph, in respect of all goods and services used for all transactions referred to therein;

(e) provide that where the value added tax which is not deductible by the taxable person is insignificant it shall be treated as nil.

…'

4 Article 19 of the Sixth Directive, headed 'Calculation of the deductible proportion', provides in paragraph 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. ...

...'

5 Article 20 of the Sixth Directive, headed 'Adjustments of deductions', provides:

'1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:

(a) where that deduction was higher or lower than that to which the taxable person was entitled;

(b) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; ...

2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one-fifth of the tax imposed on the goods. The adjustment shall 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.

By way of derogation from the preceding 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.

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

...'

German law

6 The relevant provisions of German VAT legislation are contained in the Umsatzsteuergesetz 1999 (Law on Turnover Tax of 1999, BGBl. 1999 I, p. 1270; 'the UStG').

7 Paragraph 15 of the UStG provides:

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

1. tax statutorily payable for supplies of goods and services which have been made for his business by another trader.

...

(2) There shall be no deduction of input tax in respect of the supply, import or intra-Community acquisition of goods, or in respect of supplies of services, which the trader uses to carry out the following transactions:

1. exempt transactions;

...

(4) If the trader uses any goods or services supplied, imported or acquired in the Community only in part to carry out transactions in respect of which there is no right to deduct, the part of the input tax which is economically attributable to those transactions shall not be deductible. The trader may make an appropriate estimate of the non-deductible amounts.'

8 The Steueränderungsgesetz 2003 (Tax Amendment Law 2003) of 15 December 2003 (BGBl. 2003 I, p. 2645), which entered into force on 1 January 2004, added a third sentence to Paragraph 15(4) of the UStG, which reads as follows:

'Determination of the non-deductible part of the input tax in accordance with the ratio between the turnover in respect of which there is no right to deduct and the turnover which confers a right to deduct shall be permissible only if no other economic apportionment is possible.'

9 The grounds for that amendment, as set out in the request for a preliminary ruling, are as follows:

'That provision seeks an appropriate allocation of input tax in connection with supplies of goods and services. This new arrangement restricts the use of the turnover-based allocation key as the sole allocation criterion. That allocation key may be used only if no other economic allocation is possible.

This amendment is necessary because the Bundesfinanzhof (Federal Finance Court) ruled, by judgment of 17 August 2001 ..., that the allocation of amounts of input tax in accordance with the ratio between the amounts of output turnover is to be recognised as an appropriate estimate within the meaning of Paragraph 15(4) of the UStG.

However, application of the turnover-based allocation key as a general allocation criterion would result in incorrect allocations, particularly in the case of the construction of mixed-use buildings; ...

Application of this turnover-based allocation key as a general allocation criterion is not made mandatory by the Sixth Directive. Such a "proportional" arrangement ... is not obligatory for the Member States, as under the third subparagraph of Article 17(5) of the Sixth Directive they may lay down allocation criteria which depart from that arrangement.

In respect of the acquisition of buildings, an allocation of input tax in accordance with the ratio between productive values and market values is also still possible ...'

10 Paragraph 15a of the UStG, headed 'Adjustment of input tax', provides in subparagraphs 1 and 2:

'(1) Where some change occurs in the matters used to determine the amount of the original deductions within five years of the first use of goods, compensation shall be made, in respect of each calendar year corresponding to such change, by means of an adjustment of the deduction of the amounts of input tax apportionable to acquisition or production costs. In the case of immovable property, including the essential parts thereof, rights to which the provisions of civil law relating to immovable property apply and buildings on third-party land, a period of 10 years shall be substituted for the period of five years.

(2) Adjustment under subparagraph 1 is to be carried out, in respect of each calendar year corresponding to the change, on the basis of one fifth of the amounts of input tax apportionable to the capital goods in the cases covered by the first sentence of that subparagraph, and on the basis of one tenth thereof in the cases covered by the second sentence ...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 During the period from 1999 to 2004, Rey Grundstücksgemeinschaft, a property partnership governed by civil law, demolished an old building on a plot of land owned by it and constructed a building for residential and commercial use there. The building was completed in 2004 and contains six residential and commercial units and ten underground parking spaces. Some of those units and spaces were let as early as October 2002.

12 In the tax years for the period from 1999 to 2003, Rey Grundstücksgemeinschaft calculated its entitlement to deduct VAT paid for the demolition and construction works by applying an allocation key based on the ratio between the turnover generated by the activity, subject to VAT, of letting the commercial units and associated car parking spaces and the turnover arising from the other, VAT-exempt, letting transactions ('the turnover-based allocation key'). Using that key, the deductible portion of the VAT was 78.15%. Following two actions brought before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany) concerning the amount of VAT deductible for the 2001 and 2002 tax years, the Tax Office, Krefeld, accepted that allocation key.

13 In 2004, some parts of the building at issue in the main proceedings which had originally been envisaged to be used for carrying out taxed transactions were ultimately let exempt from VAT. In order to adjust the input tax deductions made, Rey Grundstücksgemeinschaft declared in its return for the 2004 tax year an amount by way of adjustment which it determined by applying the turnover-based allocation key. In that return, Rey Grundstücksgemeinschaft also declared some deductible amounts of VAT which had been paid on goods and services purchased for the use, conservation and maintenance of the building. The total amount of VAT that had to be refunded to Rey Grundstücksgemeinschaft was, according to its calculations, around EUR 3 500.

14 By tax amendment notice of 1 September 2006, the Tax Office, Krefeld, objected to that outcome on the ground that, following the entry into force, on 1 January 2004, of the third sentence of Paragraph 15(4) of the UStG, the turnover-based allocation key can be applied only if it is not possible to have recourse to another method for the economic allocation of mixed-use goods and services. Since the Tax Office, Krefeld, considered that it is possible and more precise to determine the economic allocation of goods and services used for the demolition or construction of a building by having recourse to an allocation key corresponding to the ratio between the floor area in square metres of the commercial premises and that of the premises for residential use ('the floor area-based allocation key'), Rey Grundstücksgemeinschaft should, in its view, have applied that key. Consequently, it set the VAT deduction percentage at 38.74%, which corresponds to the part of the total floor area of the building whose letting is taxable, and fixed the amount of VAT to be refunded to Rey Grundstücksgemeinschaft for 2004 at around EUR 950.

15 The Finanzgericht Düsseldorf (Finance Court, Düsseldorf) partially annulled that tax amendment notice on the ground that the floor area-based allocation key could be applied only in respect of VAT payable on costs incurred from 1 January 2004. Consequently, it fixed the amount of VAT to be refunded to Rey Grundstücksgemeinschaft for 2004 at just over EUR 1 700.

16 Both parties to the main proceedings appealed on a point of law against that decision to the Bundesfinanzhof (Federal Finance Court).

17 According to the referring court, the dispute arises, in the first place, from questions connected with the Court's interpretation of Article 17(5) of the Sixth Directive in the judgment of 8 November 2012 in *BLC Baumarkt* (C-511/10, EU:C:2012:689).

18 The referring court observes that, in that judgment, the Court of Justice held that it is possible to have recourse to a method for allocating mixed-use goods and services that is different from the method, based on turnover, provided for by the Sixth Directive only if that method enables the deduction entitlement to be determined more precisely. The method consisting in determining the part of the building for which VAT has been incurred and applying an allocation key only for the amounts of VAT which do not relate specifically to any of those parts or which relate to the common parts of a mixed-use building would produce more precise results. Consequently, the referring court wonders whether such a method should be preferred.

19 Also, the referring court observes, in essence, that in paragraph 19 of the judgment of 8 November 2012 in *BLC Baumarkt* (C-511/10, EU:C:2012:689) the Court of Justice stated that a Member State may have recourse to a method for allocating mixed-use goods and services other than the method provided for by the Sixth Directive only for a 'given transaction, such as the construction of a mixed-use building'. The divergent method adopted by the German tax authorities in order to allocate goods and services used for the construction or acquisition of a mixed-use building is also applied to the goods and services purchased for the use, conservation or maintenance of such buildings. Consequently, the referring court raises the question whether it is compatible with the Sixth Directive to apply one and the same method to both those categories of expenditure.

20 In the second place, the referring court establishes that, whilst the Court of Justice has already had occasion to acknowledge that a legislative amendment may give rise to the obligation to adjust certain VAT deductions, it has hitherto ruled only on legislative amendments affecting the very existence of the right to deduct. That being so, doubt remains as to whether Article 20 of the Sixth Directive precludes legislation of a Member State in so far as that legislation requires a VAT adjustment following the amendment by that State of the method for allocating VAT paid on mixed-use goods and services.

21 In the third place, the referring court is uncertain whether, in the circumstances of the main proceedings, the principles of the protection of legitimate expectations and of legal certainty preclude a VAT adjustment being made. It notes, first of all, that the German legislation does not include an express provision according to which the entry into force of the third sentence of Paragraph 15(4) of the UStG is liable to give rise to adjustments. Next, that legislation does not lay down transitional arrangements, although it follows from paragraph 70 of the judgment of 29 April 2004 in *Gemeente Leusden and Holin Groep* (C-487/01 and C-7/02, EU:C:2004:263) that the adoption of such arrangements is required when the persons to whom a new rule is addressed are liable to be surprised by its immediate application. Finally, the method for assigning mixed-use goods and services that was used by Rey Grundstücksgemeinschaft had been accepted, for the 2001 and 2002 tax years, by the tax authorities, following proceedings before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf).

22 In those circumstances, the Bundesfinanzhof (Federal Finance Court) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘1. The Court of Justice of the European Union has ruled that the third subparagraph of Article 17(5) of [the Sixth Directive] allows Member States, for the purposes of calculating the proportion of input VAT deductible for a given operation, such as the construction of a mixed-use building, to give precedence, as the key to allocation, to an allocation key other than that based on turnover appearing in Article 19(1) of the Sixth Directive, on condition that the method used guarantees a more precise determination of that deductible proportion (judgment of 8 November 2012 in *BLC Baumarkt*, C-511/10, EU:C:2012:689).

(a) At the time of acquisition or construction of a mixed-use building, for the purposes of calculating more precisely the deductible amounts of input tax, must inputs the basis of assessment of which is part of the acquisition or construction costs be attributed initially to the (taxable or exempt) turnover of the building and only the remaining input tax be attributed by reference to a floor area-based or turnover-based allocation key?

(b) Do the principles established by the Court of Justice in its judgment of 8 November 2012 in *BLC Baumarkt* (C-511/10, EU:C:2012:689) and the answer to the foregoing question apply also to amounts of input tax on inputs for the use, conservation or maintenance of a mixed-use building?

2. Is Article 20 of the Sixth Directive to be interpreted as meaning that the adjustment provided for in that provision as regards the initial input tax deduction applies also to circumstances in which a taxable person has attributed input tax arising from the construction of a mixed-use building in accordance with the [turnover-based allocation key] provided for in Article 19(1) of the Sixth Directive and permitted by national law, and during the adjustment period a Member State subsequently provides that a different allocation key is to take precedence?

3. If the answer to the previous question is in the affirmative: Do the principles of legal certainty and of the protection of legitimate expectations preclude the application of Article 20 of the Sixth Directive if, for cases of the type described above, the Member State has neither expressly required input tax to be adjusted nor adopted any transitional arrangements, and if the input tax attribution applied by the taxable person in accordance with the [turnover-based allocation key] had previously been recognised by the Bundesfinanzhof (Federal Finance Court) as being generally appropriate?’

Consideration of the questions referred

Question 1

23 By its first question, the referring court asks, in essence, whether Article 17(5) of the Sixth Directive must be interpreted as meaning that, where a building is used in order to carry out some output transactions in respect of which VAT is deductible and others in respect of which it is not, the Member States are required to prescribe that the input goods and services used for the construction or acquisition of that building must, in a first stage, be assigned exclusively to one or other of those types of transactions in order that, in a second stage, only the deduction entitlement due in respect of those of the goods and services which cannot be so assigned is determined by applying a turnover-based allocation key or, provided that this method guarantees a more precise determination of the deductible proportion, on the basis of floor area. The referring court asks, in addition, whether the answer which the Court will be called upon to give to this question also applies to the goods and services to which recourse is had for the use, conservation or maintenance of a mixed-use building.

24 First of all, it should be pointed out that this question refers to Article 17(5) of the Sixth Directive without being specifically directed at one of the options provided for in the third subparagraph of that provision. Accordingly, the question should be understood as relating to the interpretation to be given, generally, to Article 17(5) of the Sixth Directive.

25 In this connection, it should be noted that the extent of the right to deduct varies according to the intended use of the goods and services at issue. Whilst, for goods and services intended to be used exclusively for the carrying out of taxable transactions, Article 17(2) of the Sixth Directive provides that taxable persons are entitled to deduct all the tax that has been charged on their acquisition or supply, for goods and services intended for a mixed use, the first subparagraph of Article 17(5) of the directive states that the right to deduct is limited to such proportion of the VAT as is attributable to the transactions in respect of which VAT is deductible that are carried out by means of those goods or services.

26 In the light of that difference in the extent of the right to deduct according to the intended use of the goods and services on which VAT has been charged, the Member States are, in principle, required to lay down that taxable persons, in order to determine the amount that they are entitled to deduct, must, in a first stage, assign the input goods and services to the various output transactions which have been carried out and for the performance of which they were intended. In a second stage, the competent authorities of those States have the task of applying, in respect of those goods or services, the deduction arrangement corresponding to their assignation; the arrangement laid down in Article 17(5) of the Sixth Directive should, however, be applied so far as concerns goods and services which do not relate to a single type of transaction.

27 As regards, first of all, the initial stage, namely the stage when the goods or services are assigned to the transactions for which they are used, without prejudice to the application of certain specific provisions set out in the third subparagraph of Article 17(5) of the Sixth Directive, it is for the referring court to determine whether, if they are used for the construction of a mixed-use building, such assignation proves in practice to be excessively complex and, therefore, difficult to carry out.

28 National legislation may authorise taxable persons not to assign those goods and services, irrespective of the use to which they will be put, where they relate to the acquisition or construction of a mixed-use building and their assignation is, in practice, difficult to carry out.

29 In addition, the assignation of goods and services purchased for the use, conservation or maintenance of a mixed-use building to the various output transactions carried out by means of that building appears, generally, to be easy to carry out in practice, but it is for the referring court to verify this as regards the goods and services at issue in the main proceedings.

30 If that is the case, a Member State cannot be authorised to provide that taxable persons do not have to assign the goods and services purchased for the use, conservation or maintenance of a mixed-use building to the various output transactions carried out by means of that building.

31 As regards, next, the second stage, namely the stage when the amount of the deduction is calculated, it should be recalled, so far as concerns goods and services assigned both to transactions in respect of which VAT is deductible and to transactions in respect of which it is not, that, under the second subparagraph of Article 17(5) of the Sixth Directive, that amount is, in principle, calculated on the basis of a proportion determined, for all the transactions carried out by the taxable person, in accordance with Article 19 of the directive, by applying a turnover-based allocation key.

32 Nonetheless, the Court has accepted that, when the Member States make use of certain of the options provided for in the third subparagraph of Article 17(5) of the Sixth Directive, they may apply a calculation method different from the one referred to in the previous paragraph of the present judgment, subject to the condition, in particular, that the method used guarantees a more precise

determination of the deductible proportion of the input VAT than that arising from application of that first method (see, to this effect, judgment of 8 November 2012 in *BLC Baumarkt*, C-511/10, EU:C:2012:689, paragraph 24).

33 That condition does not, however, mean that the method chosen must necessarily be the most precise possible. As the Advocate General has observed in point 90 of his Opinion, the operative part of the judgment of 8 November 2012 in *BLC Baumarkt* (C-511/10, EU:C:2012:689) merely requires that the method chosen must guarantee a more precise result than the result which would arise from application of the turnover-based allocation key (see also, to this effect, judgment of 10 July 2014 in *Banco Mais*, C-183/13, EU:C:2014:2056, paragraph 29).

34 Accordingly, in the case of transactions, such as those at issue in the main proceedings, consisting in the letting of various parts of a building, in respect of some of which, but not others, VAT is deductible, it is for the referring court to establish whether recourse to a method of calculating the deduction entitlement in which a floor area-based allocation key is applied is liable to lead to a more precise result than that arising from application of the method based on turnover.

35 The power available to a Member State in certain circumstances to provide that taxable persons are not required to link each of the goods or services used for the acquisition or construction of a mixed-use building to a particular output transaction is not called into question by the choice of that Member State to have recourse to a deduction method different from that provided for by the Sixth Directive, since the requirement of precision noted in paragraph 32 of the present judgment relates to the method of calculating the deductible proportion of the amount of VAT and not to assignation of the goods and services used.

36 Having regard to all the foregoing considerations, the answer to the first question is that Article 17(5) of the Sixth Directive must be interpreted as meaning that, where a building is used in order to carry out certain output transactions in respect of which VAT is deductible and others in respect of which it is not, the Member States are not required to prescribe that the input goods and services used for the construction, acquisition, use, conservation or maintenance of that building must, in a first stage, be assigned to those various transactions when such assignation is difficult to carry out, in order that, in a second stage, only the deduction entitlement due in respect of those of the goods and services which are used both for certain transactions in respect of which VAT is deductible and for others in respect of which it is not is determined by applying a turnover-based allocation key or, provided that this method guarantees a more precise determination of the deductible proportion, on the basis of floor area.

Question 2

37 By its second question, the referring court asks, in essence, whether Article 20 of the Sixth Directive must be interpreted as precluding VAT deductions made in respect of goods or services falling within Article 17(5) of that directive from being adjusted following the alteration, during the adjustment period in question, of the VAT allocation key used to calculate those deductions.

38 Article 20(1)(b) of the Sixth Directive provides that initial deductions must be adjusted where, after the return giving rise to the deduction is made, some change occurs in the factors used to determine the amount to be deducted, 'in particular' where purchases are cancelled or price reductions are obtained. That use of the adverbial expression 'in particular' indicates that the situations thereby described do not amount to an exhaustive list.

39 It follows that, whilst Article 20(1)(b) of the Sixth Directive does not expressly provide for the situation where the method of calculating the deduction entitlement applicable to mixed-use goods and services is changed, it does not exclude it either.

40 Consequently, in order to determine whether that provision covers such a situation, it is necessary to examine its context and the objectives pursued by the legislation of which it forms part (see to this effect, inter alia, judgment of 27 November 2003 in *Zita Modes*, C-497/01, EU:C:2003:644, paragraph 34).

41 So far as concerns the context in which Article 20(1)(b) of the Sixth Directive is laid down, it is clear from Article 17(5) of the directive, read in conjunction with Article 19(1), that the amount of VAT charged on the mixed-use input goods or services supplied that is deductible is determined by applying an allocation key which may be that provided for by those provisions, based on turnover, or another allocation key chosen in accordance with the third subparagraph of Article 17(5) of the directive in so far as for the activity in question that allocation key enables more precise results to be achieved when calculating the deductible proportion (see, to this effect, judgment of 8 November 2012 in *BLC Baumarkt*, C-511/10, EU:C:2012:689, paragraph 24).

42 Thus, the allocation key and, therefore, the method of calculating the amount of the deduction applied constitute factors used to determine the amount to be deducted, within the meaning of Article 20(1)(b) of the Sixth Directive.

43 So far as concerns the objective pursued by the adjustment mechanism set up by the Sixth Directive, that mechanism is intended, in particular, to enhance the precision of VAT deductions (see, to this effect, judgments of 30 March 2006 in *Uudenkaupungin kaupunki*, C-184/04, EU:C:2006:214, paragraph 25, and of 18 October 2012 in *TETS Haskovo*, C-234/11, EU:C:2012:644, paragraph 31).

44 As is pointed out in paragraphs 32 and 33 of the present judgment, as regards mixed-use goods and services the method provided for by the Sixth Directive for determining the deduction entitlement may be departed from only in order to apply another method guaranteeing a more precise result.

45 Accordingly, the adjusting of deductions by applying another method cannot but contribute to enhancing the precision of those deductions and, therefore, helps to achieve the objective pursued by the adjustment mechanism.

46 Thus, it is clear from examination of the context of Article 20(1)(b) of the Sixth Directive and the objective pursued by the mechanism for the adjustment of deductions which the directive sets up that that provision must be interpreted as covering the situation where the method of calculating the deduction entitlement applicable to mixed-use goods and services is changed.

47 In the light of all the foregoing considerations, the answer to the second question is that Article 20 of the Sixth Directive must be interpreted as requiring VAT deductions made in respect of goods or services falling within Article 17(5) of that directive to be adjusted following the adoption, during the adjustment period in question, of a VAT allocation key used to calculate those deductions that departs from the method provided for by the directive for determining the deduction entitlement.

Question 3

48 By its third question, the referring court asks, in essence, whether the general principles of EU law of legal certainty and of the protection of legitimate expectations must be interpreted as precluding applicable national legislation which does not expressly prescribe an input tax adjustment, within the meaning of Article 20 of the Sixth Directive, following amendment of the VAT allocation key used to calculate certain deductions or lay down transitional arrangements although the input tax allocation applied by the taxable person in accordance with the allocation key applicable before that amendment had been recognised as generally reasonable by the supreme court.

49 First of all, it should be recalled that the principles of the protection of legitimate expectations and of legal certainty form part of the EU legal order. They must accordingly be observed not only by the EU institutions, but also by the Member States when they exercise the powers conferred on them by EU directives (judgment of 29 April 2004 in *Gemeente Leusden and Holin Groep*, C-487/01 and C-7/02, EU:C:2004:263, paragraph 57).

50 In addition, whilst the referring court appears to have certain doubts regarding the way in which Article 20 of the Sixth Directive may be reconciled with the principles of legal certainty and of the protection of legitimate expectations, it has not formally called the validity of that provision into question.

51 That said, in construing a provision of secondary EU law, such as Article 20 of the Sixth Directive, preference should as far as possible be given to the interpretation which renders the provision consistent with the general principles of EU law and, more specifically, with the principles of legal certainty and of the protection of legitimate expectations (see, to this effect, judgment of 29 April 2010 in *M and Others*, C-340/08, EU:C:2010:232, paragraph 64).

52 So far as concerns the lack of an express reference, in national legislation such as that at issue in the main proceedings, to the obligation to make an adjustment where the method of calculating the deduction entitlement is amended, it should be recalled that, as has been stated in paragraph 47 of the present judgment, such an obligation results from Article 20 of the Sixth Directive.

53 It is clear from settled case-law that, when the Member States apply the provisions of their domestic law transposing a directive, they are required to interpret them, as far as possible, in accordance with that directive (see, to this effect, judgment of 27 June 2000 in *Océano Grupo Editorial and Salvat Editores*, C-240/98 to C-244/98, EU:C:2000:346, paragraph 31).

54 It follows that the principles of legal certainty and of the protection of legitimate expectations cannot be interpreted as meaning that, in order for an adjustment of the deduction entitlement to be capable of being imposed in the event of the method of calculating that entitlement being amended, the national legislation by virtue of which that amendment was made must have expressly pointed out that such adjustment is mandatory.

55 As regards, next, the fact that national legislation, such as that at issue in the main proceedings, amends the method of calculating the deduction entitlement without transitional arrangements being laid down, first of all it is clear from the context of the request for a preliminary ruling that the referring court understands the concept of 'transitional arrangements' as designating provisions which, having the objective of temporarily disapplying the new legislation, render specific arrangements that are created for the particular circumstances applicable for an interim period.

56 It is in principle compatible with EU law for a new rule of law to apply from the entry into force of the act introducing it (judgment of 7 November 2013 in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712 paragraph 22). Consequently, the principles of legal certainty and of the protection of legitimate expectations do not preclude, in principle, a Member State from being able to amend an old law with immediate effect, without laying down transitional arrangements.

57 Nevertheless, in particular situations, where the principles of legal certainty and of the protection of legitimate expectations so require, it may be necessary to introduce transitional arrangements appropriate to the circumstances.

58 Thus, as the referring court points out, the Court has held that a national legislature may breach the principles of legal certainty and of the protection of legitimate expectations when it suddenly and unexpectedly adopts a new law which withdraws a right that taxable persons enjoyed until then,

without allowing them the time necessary to adjust, when the objective to be attained did not so require (see, to this effect, judgment of 29 April 2004 in *Gemeente Leusden and Holin Groep*, C-487/01 and C-7/02, EU:C:2004:263, paragraph 70).

59 In particular, taxable persons must have time to adapt when withdrawal of the right which they enjoyed until then obliges them to carry out consequential economic adjustments (see, to this effect, judgment of 11 June 2015 in *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 87).

60 Even assuming that an amendment of the national legislation defining the method of calculating the deduction entitlement can be regarded as sudden and unexpected, it does not appear that the conditions, recalled in the previous two paragraphs of the present judgment, that justify the adoption of appropriate transitional arrangements are satisfied in circumstances such as those at issue in the main proceedings.

61 First, an amendment of the calculation method has the effect not of withdrawing the right to deduct possessed by taxable persons but of adapting its ambit.

62 Secondly, such an amendment does not in itself mean, in circumstances such as those at issue in the main proceedings, that taxable persons carry out consequential economic adjustments and, therefore, time to adapt does not appear strictly necessary.

63 So far as concerns, finally, the fact that, by virtue of national legislation such as that at issue in the main proceedings, the method of calculating the deduction entitlement is amended although the previous method was described as ‘reasonable’ by one of the supreme courts of the Member State concerned, it should be pointed out that the principles of legal certainty and of the protection of legitimate expectations, in the light of which Article 20 of the Sixth Directive must be interpreted, do not in principle prevent a national legislature from amending its legislation designed to implement EU law (see, by analogy, judgment of 14 January 2010 in *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraph 46 and the case-law cited).

64 It follows, in particular, that the mere fact that certain national rules may have been described as ‘reasonable’ by one of the supreme courts of the Member State concerned does not prevent the national legislature from amending them and adjustments from being made following their amendment.

65 It follows from all the foregoing considerations that the general principles of EU law of legal certainty and of the protection of legitimate expectations must be interpreted as not precluding applicable national legislation which does not expressly prescribe an input tax adjustment, within the meaning of Article 20 of the Sixth Directive, following amendment of the VAT allocation key used to calculate certain deductions or lay down transitional arrangements although the input tax allocation applied by the taxable person in accordance with the allocation key applicable before that amendment had been recognised as generally reasonable by the supreme court.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 17(5) 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, must be interpreted as meaning that, where a building is used in order to carry out certain output transactions in respect of which value added tax is deductible and others in respect of which it is not, the Member States are not required to prescribe that the input goods and services used for the construction, acquisition, use, conservation or maintenance of that building must, in a first stage, be assigned to those various transactions when such assignation is difficult to carry out, in order that, in a second stage, only the deduction entitlement due in respect of those of the goods and services which are used both for certain transactions in respect of which value added tax is deductible and for others in respect of which it is not is determined by applying a turnover-based allocation key or, provided that this method guarantees a more precise determination of the deductible proportion, on the basis of floor area.**

2. **Article 20 of Sixth Directive 77/388, as amended by Directive 95/7, must be interpreted as requiring value-added-tax deductions made in respect of goods or services falling within Article 17(5) of that directive to be adjusted following the adoption, during the adjustment period in question, of a value-added-tax allocation key used to calculate those deductions that departs from the method provided for by the directive for determining the deduction entitlement.**

3. **The general principles of EU law of legal certainty and of the protection of legitimate expectations must be interpreted as not precluding applicable national legislation which does not expressly prescribe an input tax adjustment, within the meaning of Article 20 of the Sixth Directive, as amended by Directive 95/7, following amendment of the value-added-tax allocation key used to calculate certain deductions or lay down transitional arrangements although the input tax allocation applied by the taxable person in accordance with the allocation key applicable before that amendment had been recognised as generally reasonable by the supreme court.**

[Signatures]