Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 6 September 2018[1]

Case C-502/17

C&D Foods Acquisition ApS
v
Skatteministeriet

(Request for a preliminary ruling from the Vestre Landsret (High Court of Western Denmark))

(Preliminary ruling — Common system of value added tax — Holding company — Deduction of input tax — Expenditure on services linked to the proposed sale of shares in a subsidiary)

I. Introduction

1. The Court of Justice has already dealt in a number of cases with the right of a holding company to deduct input tax linked to the acquisition of company shares.[2] The present case is concerned with the mirror-image situation of the disposal of company shares by a holding company, which has not, however, been as frequently considered up to now.[3]

2. These proceedings will therefore provide the Court with the opportunity to clarify its case-law on the right of holding companies to deduct input tax. In particular, it will also involve concretising the conditions under which a direct and immediate link with a specific output transaction, which is necessary for the deduction of input tax, can be assumed to exist.

II. Legal framework

3. The EU legal framework of the case is governed by provisions of Directive 2006/112/EC ('the VAT Directive').[4]

4. Article 9(1) of the VAT Directive states:

'"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

1 Original language: German.

2 See, for example, judgments of 20 June 1991, *Polysar Investments Netherlands* (C-60/90, EU:C:1991:268); of 14 November 2000, *Floridienne and Berginvest* (C-142/99, EU:C:2000:623); of 27 September 2001, *Cibo Participations* (C-16/00, EU:C:2001:495); of 6 September 2012, *Portugal Telecom* (C-496/11, EU:C:2012:557); of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt* (C-108/14 and C-109/14, EU:C:2015:496); and, finally, my Opinion in *Ryanair* (C-249/17, EU:C:2018:301).

3 Of particular note for this case is the judgment of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665).

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

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

5. Article 135 of the VAT Directive provides, inter alia, as follows:

'Member States shall exempt the following transactions:

…

(f) transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2); ...'

6. Under Article 167 of the VAT Directive, a right of deduction is to arise at the time the deductible tax becomes chargeable. Under Article 168 of the Directive:

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

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

7. At national-law level, reference should be made to Lovbekendtgørelse nr. 966 of 14 October 2005 (Law on value added tax), applicable *ratione temporis*.

III. Facts and main proceedings

8. The Danish company C&D Foods belongs to the international Arovit group. During the period to which the main proceedings relate, C&D Foods held 100 % of the shares in Arovit Holding, which, in turn, held all of the shares in Arovit Petfood. Thirteen further companies in various European countries, whose shares are held by Arovit Petfood, belong to the group.

9. As of 2007 C&D Foods had an administrative arrangement to provide its sub-subsidiary Arovit Petfood with various administrative and IT services which were subject to VAT, such as accounting, controlling and budgeting services. In return, it received from Arovit Petfood an amount corresponding to the wage costs incurred plus a mark-up of 10 % and Danish VAT at the rate of 25 %. With regard to the other group companies, C&D Foods' role was limited to holding the shares of those companies.

10. In 2009, the Icelandic financial institution Kaupthing Bank acquired the Arovit group, which had encountered financial difficulties. Kaupthing Bank, through various auditing firms and the law firm Holst Advokater, investigated the possibilities of restructuring the Arovit group. To that end, it entered into consultancy contracts with the auditors concerned, whose fees plus VAT were paid by C&D Foods.

11. In the course of this examination, Holst Advokater also drafted at least one contract for C&D Foods, which involved the sale of C&D Foods' shares in Arovit Holding and Arovit Petfood to an as yet unnamed purchaser. For this consultancy service, Holst Advokater invoiced C&D Foods the corresponding fee plus VAT. The efforts to bring about a sale were abandoned in the autumn of 2009, however, as no purchaser could be found.

12. C&D Foods deducted the input tax in respect of the VAT paid to Holst Advokater and the auditing companies on settlement of the fees. Both the SKAT (Danish Customs and Tax Administration) and, following an appeal, the Landsskatteret (Danish Supreme Tax Authority) denied C&D Foods the input tax deduction, however. As justification, they stated, respectively, that the consultancy services had not been provided to C&D Foods and that the expenditure did not exhibit the necessary relation to C&D Foods' VAT-taxable output transactions.

13. C&D Foods brought proceedings against those decisions which, given their fundamental importance, are pending before the Vestre Landsret (High Court of Western Denmark) as the court of first instance. By order of 15 August 2017, received at the Court of Justice on 18 August 2017, the Vestre Landsret (High Court of Western Denmark) stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling pursuant to Article 267 TFEU:

'(1) Should Article 168 of Directive 2006/112/EC be interpreted as meaning that a holding company, in circumstances such as those in the main proceedings, is entitled to a full deduction of VAT on input services related to due diligence investigations before an envisaged, but not completed, sale of shares in a subsidiary to which the holding company supplies management and IT services that are subject to VAT?

(2) Is the answer to the above question affected by the fact that the price for the VAT taxable management and IT services, which the holding company supplies for the purposes of its economic activity, is a fixed amount corresponding to the holding company's expenditure on employees' salaries, with the addition of a 'mark-up' of 10 %?

(3) Irrespective of the answer to the foregoing questions, can a right of deduction exist if the consultancy costs at issue in the main proceedings are regarded as general costs, and if so, on what conditions?'

14. Denmark and the Commission submitted observations in the written procedure before the Court.

IV. Legal analysis

15. By its three questions, the referring court ultimately wishes to know whether a holding company carrying out an economic activity has a right to deduct input tax in respect of incurred expenditure linked to the proposed disposal of shares. The economic activity of the holding company is precisely to provide management services to the sub-subsidiary[5] whose shares are to be sold along with the shares of the subsidiary.

A. The admissibility of the questions referred for a preliminary ruling.

16. The right to deduct input tax under Article 168 of the VAT Directive exists so long as a taxable person is using supplies or services for the purposes of his taxable transactions. This presupposes that the taxable person is the recipient of the corresponding supplies or services.[6] Consequently, any right of C&D Foods to deduct input tax can arise only in respect of the VAT paid in connection with consultancy services of which it itself was the recipient. Conversely, a deduction of input tax by C&D Foods for the services subject to VAT of which Kaupthing Bank was the recipient is not permissible.

5 Under established case-law this constitutes an economic activity: see judgments of 27 September 2001, *Cibo Participations* (C-16/00, EU:C:2001:495, paragraph 21); of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraphs 30 and 31); and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt* (C-108/14 and C-109/14, EU:C:2015:496, paragraph 21).

6 In this regard, see the judgment of 22 February 2001, *Abbey National* (C-408/98, EU:C:2001:110, paragraph 32).

17. The referring court points out, it is true, that its request for a preliminary ruling does not concern the question as to who was the correct bearer of the consultancy expenditure that was subject to VAT. Against this, however, it must be noted that the Court of Justice has no jurisdiction to answer hypothetical questions.[7] The following statements therefore relate only to the deduction of input tax in respect of the VAT paid to Holst Advokater as only in this instance does the order for reference show clearly that C&D Foods was the recipient of the consultancy services.

B. Answer to the questions referred

18. The first question referred by the national court relates in general to C&D Foods' right to deduct input tax in respect of the consultancy services subject to VAT of Holst Advokater in connection with the proposed sale of the shares in Arovit Petfood.

19. The second and third questions relate, in particular, to the 'direct and immediate link' between the expenses at issue and the actual or proposed output transactions, that is, the transactions arising from the administrative agreement with Arovit Petfood or the proposed sale of shares.

20. As the link with the economic activity is a precondition for the right to deduct input tax mentioned in the first question referred, the three questions referred for a preliminary ruling must be answered together.

21. The referring court's doubts as to C&D Foods' entitlement to deduct input tax rest essentially on two considerations:

22. One raises the question of whether the proposed sale of the shares can be regarded as an economic activity at all and thus whether it comes within the scope of VAT (see point 1). The second question is whether and, if so, under what circumstances the direct and immediate link between input transactions and an activity subject to VAT can be affirmed. This is because there is also no right to deduct input tax if the input transactions are directly and immediately linked to a tax-exempt transaction (see point 2).

23. As an alternative, I will finally also investigate the circumstances under which a link with the overall economic activity of C&D Foods might be affirmed (see point 3).

1. The sale of the shares in Arovit Petfood as an economic activity

24. According to the established case-law of the Court of Justice, the mere acquisition and holding of shares in a company does not constitute an economic activity within the meaning of Article 9(1) of the VAT Directive.[8] The position is different, however, where the acquisition or holding of company shares is for the purpose of being involved directly or indirectly in the management of the company.[9] According to the case-law, administrative, financial or commercial services (so-called management services) are considered to be typical types of involvement in the management of a company.[10]

7 Judgments of 16 July 1992, *Meilicke* (C-83/91, EU:C:1992:332, paragraph 23); of 22 November 2005, *Mangold* (C-144/04, EU:C:2005:709, paragraphs 34 und 37); and of 21 December 2016, *Tele2 Sverige and Watson and Others* (C-203/15 and C-698/15, EU:C:2016:970, paragraph 130).

8 Judgments of 20 June 1991, *Polysar Investments Netherlands* (C-60/90, EU:C:1991:268, paragraph 17); of 14 November 2000, *Floridienne and Berginvest* (C-142/99, EU:C:2000:623, paragraph 17); and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt* (C-108/14 and C-109/14, EU:C:2015:496, paragraph 20).

9 Judgments of 20 June 1991, *Polysar Investments Netherlands* (C-60/90, EU:C:1991:268, paragraph 14); of 14 November 2000, *Floridienne and Berginvest* (C-142/99, EU:C:2000:623, paragraph 17); of 27 September 2001, *Cibo Participations* (C-16/00, EU:C:2001:495, paragraph 19); and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt* (C-108/14 and C-109/14, EU:C:2015:496, paragraph 20).

10 Judgments of 27 September 2001, *Cibo Participations* (C-16/00, EU:C:2001:495, paragraph 21); of 6 September 2012, *Portugal Telecom* (C-496/11, EU:C:2012:557, paragraph 34); and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt* (C-108/14 and C-109/14, EU:C:2015:496, paragraph 21).

25. The provision of management services in a situation such as that in the main proceedings, where a so-called intermediate holding company is still active, is also regarded as an economic activity within the meaning of the VAT Directive. The crucial factor for the classification as an economic activity is the carrying out by C&D Foods of transactions which are subject to VAT. This is shown clearly by the recent judgment of the Court in the *Marle Participations* case.[11]

26. According to the case-law of the Court, the principles set out above should also extend to cases involving the disposal of shareholdings through which the taxable involvement in the management of the subsidiary is terminated.[12]

27. The sale of company shares does not, admittedly, in itself constitute an economic activity. According to the case-law, however, the termination and the commencement of an economic activity must be treated equally for reasons of tax neutrality.[13] Just as the acquisition of shares may under certain conditions be a preparatory act for the carrying out of an economic activity which comes within the scope of VAT, the same must also apply in regard to the disposal of shares by which an economic activity is ended. Otherwise, an arbitrary distinction would be made between the two scenarios.[14] This consideration was also emphasised by the Commission in its written observations.

28. With regard, in particular, to the disposal of company shares, in the *SKF* case the Court affirmed as being an economic activity of a holding company the disposal of all the shares which that company held in a subsidiary which terminated its participation in that subsidiary.[15] This also ended the economic activity of providing management services to the subsidiary which had previously taken place.[16]

29. A similar situation is also at issue in the main proceedings in the present case. By selling the shares in Arovit Holding along with the shares in Arovit Petfood, C&D Foods in fact intended to terminate its economic activity of providing management services to Arovit Petfood which are subject to VAT.

30. This conclusion is also not called into question by the fact that the proceeds from the sale of the shares were to be used to settle debts owed to the new group owner, Kaupthing Bank, whereas in the *SKF* case a restructuring of the group was to take place. In contrast to the *SKF* case, in the main proceedings here no future taxable transactions were planned. This is inconsequential, however, for the following three reasons.

31. First, the Court has made clear that the right to deduct input tax exists even where the taxable person, having made use of the services in question, no longer carries out any transactions because he ultimately has terminated his economic activity.[17] Consequently, the situation can be no different where a taxable person uses the consideration for the transactions leading to the termination of his economic activity in order to repay debts.

11 Judgment of 5 July 2018, *Marle Participations* (C-320/17, EU:C:2018:537, paragraph 35) — it is, however, questionable in this respect whether the letting of property really can be regarded as ‘involvement in the management’ of a company.

12 Judgment of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 34).

13 Judgments of 20 June 1996, *Wellcome Trust* (C-155/94, EU:C:1996:243, paragraph 33); of 3 March 2005, *Fini H* (C-32/03, EU:C:2005:128, paragraphs 22 to 24); of 26 May 2005, *Kretztechnik* (C-465/03, EU:C:2005:320, paragraph 19); and of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 34).

14 In this regard, judgments of 22 February 2001, *Abbey National* (C-408/98, EU:C:2001:110, paragraph 35); of 29 April 2004, *Faxworld* (C-137/02, EU:C:2004:267, paragraph 39); and of 3 March 2005, *Fini H* (C-32/03, EU:C:2005:128, paragraphs 23 and 24).

15 Judgment of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 33).

16 Judgment of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 32).

17 Judgments of 22 February 2001, *Abbey National* (C-408/98, EU:C:2001:110, paragraph 35); of 29 April 2004, *Faxworld* (C-137/02, EU:C:2004:267, paragraph 39); and of 3 March 2005, *Fini H* (C-32/03, EU:C:2005:128, paragraphs 23 and 24).

32. Secondly, the term 'economic activity', like other terms defining taxable transactions under the VAT Directive, must be construed objectively,[18] and consequently the ultimate purpose pursued by a taxable person in respect of an expense is irrelevant.[19] The financial motivation of the taxable person in respect of the action taken cannot therefore be a decisive factor.

33. Thirdly, it also cannot be inferred from the judgment in the *BLP Group* case that transactions which are used to repay debts should in general be excluded from the right to deduct input tax.

34. In that latter case, a holding company disposed of shares in a subsidiary with which it did not carry out any taxable transactions. BLP Group argued that the fact that it would use the proceeds from the sale of the shares to repay debts and thereby indirectly strengthen its remaining economic activities constituted a link with its other taxed activities. The Court did not accept that argument, however. Ultimately, it declined to allow the deduction of input tax not because the proceeds were used to repay debts but because there was no direct and immediate link with an activity subject to VAT.[20]

35. It follows from all of the foregoing that the proposed sale of shares in circumstances such as those in the main proceedings, namely for the purpose of terminating a taxable activity, is to be regarded as an economic activity and, consequently, comes within the scope of VAT.

2. Direct and immediate link with a taxed activity?

36. However, the deduction of input tax can be claimed only for expenses which are directly and immediately linked[21] to a taxed output transaction. According to the Court's case-law, such expenses are directly and immediately linked to certain output transactions where they are a component of the cost of those output transactions.[22] In addition, it is possible to claim a deduction of input tax for the undertaking's general costs which are components of the price of an undertaking's products.[23]

37. On the other hand, as a rule[24] a right to deduct input tax does not exist if there is a direct and immediate link with a tax-exempt activity.[25]

38. However, pursuant to Article 135(1)(f) of the VAT Directive 'transactions … in shares, interests in companies or associations, debentures and other securities' must be exempted from VAT by the Member States. This provision has been transposed into national law by Article 13(1)(11) of the Danish Law on value added tax.

18 See judgments of 12 January 2006, *Optigen and Others* (C-354/03, C-355/03 and C-484/03, EU:C:2006:16, paragraph 44); of 6 July 2006, *Kittel and Recolta Recycling* (C-439/04 and C-440/04, EU:C:2006:446, paragraph 41); and of 16 December 2010, *Euro Tyre Holding* (C-430/09, EU:C:2010:786, paragraph 28).

19 Judgments of 6 April 1995, *BLP Group* (C-4/94, EU:C:1995:107, paragraph 24); of 8 June 2000, *Midland Bank* (C-98/98, EU:C:2000:300, paragraph 20); of 6 September 2012, *Portugal Telecom* (C-496/11, EU:C:2012:557, paragraph 38); and of 22 February 2001, *Abbey National* (C-408/98, EU:C:2001:110, paragraph 25).

20 Judgment of 6 April 1995, *BLP Group* (C-4/94, EU:C:1995:107, paragraph 27). The existence of a direct and immediate link will be examined below; see point 36 et seq. of this Opinion.

21 Judgments of 6 April 1995, *BLP Group* (C-4/94, EU:C:1995:107, paragraphs 18 and 19); of 8 June 2000, *Midland Bank* (C-98/98, EU:C:2000:300, paragraph 20); and of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 57).

22 Judgments of 27 September 2001, *Cibo Participations* (C-16/00, EU:C:2001:495, paragraph 31); of 26 May 2005, *Kretztechnik* (C-465/03, EU:C:2005:320, paragraph 35); of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 57); and of 14 September 2017, *Iberdrola Immobiliaria Real Estate Investments* (C-132/16, EU:C:2017:683, paragraph 28).

23 Judgments of 27 September 2001, *Cibo Participations* (C-16/00, EU:C:2001:495, paragraph 33); of 26 May 2005, *Kretztechnik* (C-465/03, EU:C:2005:320, paragraph 37); of 6 September 2012, *Portugal Telecom* (C-496/11, EU:C:2012:557, paragraph 37); and of 14 September 2017, *Iberdrola Immobiliaria Real Estate Investments* (C-132/16, EU:C:2017:683, paragraph 29).

24 There are some exceptions regulated by, for instance, Article 169 of the VAT Directive.

25 Judgments of 6 April 1995, *BLP Group* (C-4/94, EU:C:1995:107, paragraph 28); of 14 September 2006, *Wollny* (C-72/05, EU:C:2006:573, paragraph 20); of 12 February 2009, *Vereniging Noordelijke Land- en Tuinbouw Organisatie* (C-515/07, EU:C:2009:88, paragraph 28); of 13 March 2008, *Securenta* (C-437/06, EU:C:2008:166, paragraph 30); of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 59); and my Opinion in *Iberdrola Immobiliaria Real Estate Investments* (C-132/16, EU:C:2017:283, point 37).

39. According to the case-law of the Court, this provision of EU law covers transactions which are capable of creating, altering or extinguishing rights and obligations of parties to securities, but excludes the mere (selective) acquisition and sale of securities, which does not constitute an economic activity.[26] As set out above, this is the case in respect of the proposed sale of the shares in Arovit Petfood in the main proceedings.[27]

40. Consequently, under Article 135(1)(f) of the VAT Directive, the proposed transaction would have been exempt from VAT.

41. It is therefore necessary to examine whether the consultancy services at issue have a direct and immediate link to the proposed tax-exempt transaction.

42. It is not possible in every case for a specific output transaction to be distinguished from the other transactions which constitute the total economic activity of a taxable person. If this is the case, however, the direct and immediate link with this specific transaction must be examined first.[28] Only then is it to be ascertained whether the expenditure in question, as a cost component of all the services, has a direct and immediate link to the overall economic activity (so-called general costs).

43. In respect of the disposal of shares, the Court considers relevant, for the purpose of determining a direct and immediate link between an input service and this transaction, whether the expenditure incurred is incorporated into the price of the holding or the shares.[29]

44. Against this background, the referring court appears to be of the opinion that there can be no direct and immediate link with the proposed sale of the shares because the consultancy costs could not have affected the price of the shares. For that reason, in its second and third questions it asks directly about the circumstances in which the expenditure on the consultancy services can be validly claimed as general costs.

45. It should be noted, however, that the wording of the Court, according to which the expenditure incurred must be included in the price of the holding or the shares, does not mean that an actual increase in the price is necessary or, for example, that a specific sum would have to be imposed onto the selling price.

46. This is particularly clear in terms of the example of listed public limited companies: the share price is usually determined on the basis of the current share price index and not through negotiation between seller and buyer. Therefore, the Court's formulation should be construed as meaning that the expenditure must have an immediate negative impact on the profit from a specific transaction involving a holding or shares and not solely on the overall profit of the company. The input transactions must therefore be so closely linked to the sale of the shares that, in financial terms, they represent directly a component of the cost of the intended transaction.

47. Moreover, — in contrast to what was assumed by C&D Foods — the assumption of a link with the tax-exempt sale of shares is not precluded simply because the sale did not ultimately materialise. In such cases the recognition of preparatory acts as an economic activity also depends, in the context of the deduction of input tax, on the link with the intended output transaction.[30]

26 Judgments of 13 December 2001, *CSC Financial Services* (C-235/00, EU:C:2001:696, paragraph 33) and of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 48).

27 See point 26 of this Opinion.

28 See, in this regard, my Opinion in *Iberdrola Immobiliaria Real Estate Investments* (C-132/16, EU:C:2017:283, points 36 and 37).

29 Judgments of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 62) and of 30 May 2013, *X* (C-651/11, EU:C:2013:346, paragraph 56).

30 See judgments of 29 November 2012, *Gran Via Moineşti* (C-257/11, EU:C:2012:759, paragraph 27) and of 22 October 2015, *Sveda* (C-126/14, EU:C:2015:712, paragraph 20).

48. Such a link appears to exist, as the Commission also pointed out in its written observations, between the consultancy service provided by Holst Advokater and the intended sale of the shares in Arovit Petfood. This is because the subject matter of the consultancy advice was specifically the drafting of a contract for the sale of the shares. Thus it appears that the expenses in respect of this advice are linked in a very direct way to the intended tax-exempt transaction.

49. Nor is the consideration of this criterion contrary to the judgment in *Iberdrola* since, having regard to the immediacy of the link, a very generous criterion was applied in that judgment. However, in that situation, the Court did not rule on its attribution to a specific output transaction; its decision concerned solely the link with the overall economic activity of the taxable person.[31]

50. Having regard to those considerations, it is a matter for the referring court to ascertain[32] whether the consultancy services in question have a direct and immediate link to the sale of the shares in Arovit Petfood, which, under Article 135(1)(f) of the VAT Directive, is exempt from tax. Should that be the case, C&D Foods would not be entitled to deduct input tax.

3. Link with the overall economic activity

51. As was also emphasized by the Commission in its written observations, it is only where the referring court cannot establish a direct and immediate link with the tax-exempt transactions resulting from the proposed sale of shares that the link with the overall economic activity should be examined.[33]

52. In this regard, at its core, the same principles apply. In addition, in so far as the Court requires, with regard to the deductibility of general costs, that the costs of the input services should be incorporated in the prices of the goods or services supplied or provided by the taxable person,[34] a mathematical mark-up on the prices is not prescribed. Instead, it describes the necessary economic linkage between the input and output services.[35]

53. However, such a linkage does not require an actual increase in the price but merely that certain expenditure should form part of the elements of the price for the totality of the taxpayer's products or services. This was also highlighted by the Commission in its written observations. The sole determining factor is thus that the input services are economically and objectively linked to the taxable activity,[36] in such a way that the extent of the profit depends on it.

54. Any other solution would result in denying a taxpayer who cannot or does not wish to increase his prices in the event of increased costs the right to deduct the input tax. This would clearly run counter to the principle of neutrality.

55. It follows that the particular situation in respect of a fixed mark-up as contemplated in the second question referred by the national court is also no different. It is true that, in such a case — and this appears to be the object of the referring court's question — it would not be possible for the expenditure on the consultancy services to be reflected in the prices which C&D Foods calculates for

31 See judgment of 14 September 2017, *Iberdrola Immobiliaria Real Estate Investments* (C-132/16, EU:C:2017:683, paragraph 29).

32 Judgment of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraphs 63 and 73).

33 See, in this regard, my Opinion in *Iberdrola Immobiliaria Real Estate Investments* (C-132/16, EU:C:2017:283, points 36 and 37).

34 Judgment of 29 October 2009, *AB SKF* (C-29/08, EU:C:2009:665, paragraph 60).

35 See, in this regard, in detail, my Opinion in *Iberdrola Immobiliaria Real Estate Investments* (C-132/16, EU:C:2017:283, points 25 to 31).

36 Judgment of 22 October 2015, *Sveda* (C-126/14, EU:C:2015:712, paragraph 29).

the management. This is because the calculation of the price consists of the labour costs plus a 10 % mark-up. However, this does not mean that a link with such transactions is excluded in every case. This is because, irrespective of an actual price increase, certain expenditure forms part of the elements of the cost of the goods supplied or services provided by a taxable person.

56. However, it might be argued against a full right of deduction of input tax as general costs that the advice may also be linked to the disposal of the shares in the direct subsidiary (Arovit Holding), for which C&D Foods acts purely as a holding company.[37] Therefore, an apportionment of the input tax deduction between the economic and non-economic activities of the company might be necessary. However, the questions referred for a preliminary ruling do not point in this direction and the decision to refer does not contain sufficient information to enable an appropriate answer to be given.

57. It should be recalled, however, that the link with the overall economic activity is in any event irrelevant if it is already possible clearly to attribute it to a specific tax-exempt output transaction. In such a case it is not possible to allow it as a general cost.

V. Conclusion

58. In view of the considerations set out above, the questions referred for a preliminary ruling by the Vestre Landsret (High Court for Western Denmark) should be answered as follows:

(1) Article 9(1) of Directive 2006/112/EC is to be interpreted as meaning that economic activity within the meaning of that provision includes, in addition to the preparatory acts for the establishment of that activity, the acts which lead to its termination. For that reason, the disposal of shares in a sub-subsidiary, by which a taxable activity which was previously exercised is terminated, namely the involvement in the management of that company in order to carry out taxable transactions, constitutes an economic activity within the meaning of Article 9(1) of Directive 2006/112.

(2) Article 168 of Directive 2006/112 is to be interpreted as meaning that a holding company cannot claim a deduction of input tax for consultancy services that are subject to VAT which were availed of prior to a proposed disposal of shares in a sub-subsidiary if there is a direct and immediate link between those consultancy services and the intended transactions arising from the sale of the shares which are tax exempt under Article 135(1)(f) of Directive 2006/112. This is a matter for the national court to determine.

37 According to the case-law, pure financial holding companies are, however, not to be regarded as liable to tax within the meaning of Article 9(1) of the VAT Directive: see judgments of 20 June 1991, *Polysar Investments Netherlands* (C-60/90, EU:C:1991:268, paragraph 17); of 14 November 2000, *Floridienne and Berginvest* (C-142/99, EU:C:2000:623, paragraph 17); of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt* (C-108/14 and C-109/14, EU:C:2015:496, paragraph 20); and point 24 of the present Opinion.