Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 May 2019*

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 168(a) — Deduction of input tax — Principle of VAT neutrality — Taxable person carrying out both economic and non-economic activities — Goods and services acquired for the purpose of carrying out both transactions subject to VAT and transactions not subject to VAT — Lack of apportionment criteria in national legislation — Principle of fiscal legality)

In Case C-566/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław, Poland), made by decision of 10 July 2017, received at the Court on 26 September 2017, in the proceedings

Związek Gmin Zagłębia Miedziowego w Polkowicach

v

Szef Krajowej Administracji Skarbowej,

THE COURT (Second Chamber),

composed of K. Lenaerts, President of the Court, acting as President of the Second Chamber, A. Prechal, C. Toader, A. Rosas (Rapporteur) and M. Ilešič, Judges,

Advocate General: E. Sharpston,

Registrar: R. Şereş, administrator,

having regard to the written procedure and further to the hearing on 20 September 2018,

after considering the observations submitted on behalf of:

– Związek Gmin Zagłębia Miedziowego w Polkowicach, by P. Koźmiński and K. Ziemski, radcowie prawni, and by P. Kaźmierczak, doradca podatkowy,

– the Szef Krajowej Administracji Skarbowej, by B. Kołodziej and J. Kaute,

– the Polish Government, by B. Majczyna and A. Kramarczyk-Szaładzińska, acting as Agents,

– the European Commission, by J. Jokubauskaitė and M. Siekierzyńska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2018,

* Language of the case: Polish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between Związek Gmin Zagłębia Miedziowego w Polkowicach (Association of Municipalities of Zagłębie Miedziowe in Polkowice, Poland) ('the Association of Municipalities') and the Szef Krajowej Administracji Skarbowej (Head of the National Tax Administration, Poland) ('the tax authority') regarding a request for a tax ruling concerning the right to deduct value added tax (VAT) charged in respect of goods and services purchased by the Association of Municipalities with a view to carrying out both economic activities subject to VAT and non-economic activities falling outside the scope of VAT ('mixed expenditure').

Legal framework

European Union law

3 Title III of the VAT Directive is headed 'Taxable Persons'. Under that title, the first subparagraph of Article 9(1) of that 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.'

4 Under that same title, the first subparagraph of Article 13(1) of that directive provides:

'States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.'

5 Title X of the same directive, headed 'Deductions', comprises five chapters, the first of which is entitled 'Origin and scope of right of deduction'. Under that chapter, Article 168 provides:

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

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

…'

6 Chapter 2 of the same title is headed 'Proportional deduction'. Under that chapter, Article 173 of the VAT Directive provides:

'1. In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to [Article] 168 … and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.

The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.

2. Member States may take the following measures:

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

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

(d) authorise or require the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph of paragraph 1, in respect of all goods and services used for all transactions referred to therein;

(e) provide that, where the VAT which is not deductible by the taxable person is insignificant, it is to be treated as nil.'

7 Articles 174 and 175 of that directive concern the calculation of the deductible proportion.

Polish law

Constitution of the Republic of Poland

8 Pursuant to Article 217 of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland) of 2 April 1997 (Dziennik Ustaw No 78, item 483), the imposition of taxes and other contributions is to be determined by means of a law. That law is to determine taxable persons, tax rates and the rules for granting tax reliefs and remissions, together with the categories of taxable persons exempt from taxation.

Law on VAT

9 Under Article 15(6) of the Ustawa o podatku od towarów i usług (Law on the tax on goods and services) of 11 March 2004 (Dziennik Ustaw No 177, item 1054), in the version applicable to the dispute in the main proceedings ('the Law on VAT'):

'"Taxable persons" shall not include public authorities and the offices of such authorities as regards duties laid down by separate provisions for the accomplishment of which they have been appointed, with the exception of activities carried out under private law contracts.'

10 Article 86(1) of the Law on VAT provides:

'In so far as the goods and services are used to conduct taxed transactions, a taxable person within the meaning of Article 15 shall have the right to deduct the amount of input tax from the amount of tax due …'

11 Article 90(1) to (3) of that law provides:

‘1. With regard to goods and services used to conduct transactions in connection with which he has the right to reduce the amount of tax due and transactions in connection with which he has no such right, the taxable person shall be required to determine separately the amounts of input tax paid in connection with transactions in respect of which he has the right to reduce the amount of tax due.

2. Where it is not possible to separate, in whole or in part, the amounts referred to in paragraph 1, the taxable person may reduce the amount of tax due by such part of the amount of input tax which can be apportioned proportionately to transactions in respect of which he has the right to reduce the amount of tax due …

3. The proportion referred to in paragraph 2 shall be determined as a share of the annual turnover from the transactions in respect of which the taxable person has the right to reduce the amount of tax due, calculated on the basis of the overall turnover obtained from both transactions in connection with which he has the right to reduce the amount of tax due and transactions in connection with which he has no such right.’

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

12 It is apparent from the order for reference that the Association of Municipalities is a legal person, established in accordance with Polish law, which performs some of the statutory duties for which its member municipalities are responsible. Its remit includes, inter alia, planning and performing duties relating to municipal waste management in its members’ territory. Those activities, which are financed through a fee collected by the municipalities, are not economic activities covered by the common system of VAT and are therefore not subject to that tax.

13 Since 2013, the Association of Municipalities has provided additional services to individuals consisting of, in particular, supplying properties with appropriate containers for mixed waste and removing and transporting containers for green waste and for construction and demolition waste. Supply of those services is an economic activity that is covered by the common system of VAT. In the financial years 2013, 2014 and 2015, the Association of Municipalities received revenue from that economic activity amounting to an annual total of 59 368.18 Polish zlotys (PLN) (approximately EUR 13 845), PLN 372 166.48 (approximately EUR 86 796) and PLN 386 393.79 (approximately EUR 90 114), respectively.

14 During those financial years, the Association of Municipalities incurred expenditure relating, in particular, to that entity’s operation and to waste management. Some of that expenditure was mixed expenditure. It is apparent from the order for reference that such expenditure cannot be attributed exclusively either to non-economic transactions carried out by the Association of Municipalities, which fall outside the common system of VAT, or to its economic transactions, that is, transactions subject to VAT.

15 As the Association of Municipalities had doubts as to the amounts of VAT which it owed for the financial years 2013 to 2015, it requested the tax authority to give a tax ruling interpreting the Law on VAT. In its tax ruling of 17 October 2016, the tax authority considered that in respect of mixed expenditure, the Association of Municipalities should, first, apportion the input VAT in order to determine how much of that tax was connected to its economic activity. Since there were no national rules in that regard, it was for a taxable person to choose an appropriate method for apportioning input VAT between his economic activities and his non-economic activities. In order to calculate the amount of deductible VAT, the Association of Municipalities should, second, apply the proportion referred to in Article 90(3) of the Law on VAT in respect of economic activities so as to determine, as

appropriate, the respective amounts of input VAT connected with taxed transactions in respect of which VAT was deductible and with exempted transactions in respect of which VAT was not deductible.

16 The Association of Municipalities has brought an action before the referring court, the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław, Poland) seeking annulment of that tax ruling on the basis of a breach of Article 86(1) of the Law on VAT. In particular, the Association of Municipalities has relied on the fact that in respect of mixed expenditure, the Law on VAT does not lay down any rules regarding the apportionment of input VAT according to whether that expenditure relates to a taxable person's economic or non-economic activities. The Association of Municipalities therefore submits, first, that it cannot be required to apply a method for apportioning the input VAT paid in respect of mixed expenditure. Second, the right of deduction in respect of mixed expenditure may not therefore be limited beyond the proportion referred to in Article 90 of the Law on VAT regarding economic activities subject to or exempt from VAT.

17 In the light of those considerations, the referring court observes that, prior to 1 January 2016, with the exception of the rules laid down in Articles 90 and 91 of the Law on VAT, the Polish legislature had not adopted any other rules regarding the apportionment of the input VAT paid in respect of mixed expenditure. That issue has now been resolved with the entry into force of amendments to the Law on VAT on 1 January 2016, but those new provisions are not applicable to the financial years 2013 to 2015, which constitute the material period for the dispute before it.

18 In addition, the referring court notes that the VAT Directive contains no rules regarding the apportionment of the amounts of input tax paid in respect of a taxable person's mixed expenditure. It is clear from the Court's case-law that, since the VAT Directive is silent on that point, it is for the Member States to establish, within the limits of compliance with EU law and observance of the principles on which the common system of VAT is based, the methods and criteria for that apportionment.

19 In that regard, the referring court states that the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) held in a judgment of 24 October 2011 that, in the absence of such criteria in national law, a taxable person was entitled to deduct VAT in full, including the share of the input tax connected with transactions falling outside the scope of the common system of VAT. On the basis of, inter alia, the principle of legality of taxation and public levies and of the setting of tax rates, enshrined in Article 217 of the Constitution of the Republic of Poland, that court held that, prior to the entry into force of amendments to the Law on VAT on 1 January 2016, taxable persons could not be charged with non-compliance with the criteria established by those amendments.

20 However, the referring court has doubts as to whether such an interpretation of national law is compatible with the VAT Directive. That court notes, in particular, that Article 86(1) of the Law on VAT — like Article 168 of the VAT Directive, which it transposes into national law — expressly states that the right to deduct VAT is connected solely to transactions subject to VAT.

21 In particular, it considers that the lack of 'technical' provisions in national law regarding the apportionment between economic and non-economic activities of the input VAT paid in respect of mixed expenditure cannot, in such a situation, entitle taxable persons to deduct that VAT in full. According to that court, such a national practice would be contrary to the wording of Article 168 of the VAT Directive and to the principle of VAT neutrality, in particular in so far as, in the case before it, that practice would confer an undue advantage on the Association of Municipalities. The referring court further states that the view expressed by the tax authority, according to whom a taxable person, in such a situation, can choose the most appropriate method of apportionment, appears to be in line with the VAT Directive.

22 In those circumstances, the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do Article 168(a) of [the VAT Directive] and the principle of VAT neutrality preclude a national practice where the right is granted to a full deduction of input tax in connection with the purchase of goods and services used both for the purposes of a taxable person's transactions falling within the scope of VAT (taxed and exempted) and falling outside the scope of VAT, owing to the absence in national law of methods and criteria for apportioning the input tax in relation to those types of transaction?'

Consideration of the question referred

23 By its question, the referring court asks, in essence, whether Article 168(a) of the VAT Directive must be interpreted as precluding a national practice which permits a taxable person to deduct the input tax charged in respect of mixed expenditure in full, owing to the lack of specific rules in the applicable tax legislation regarding the criteria and methods of apportionment which would enable that taxable person to determine the share of that input VAT which must be regarded as being connected to his economic and non-economic activities respectively.

24 In order to answer that question, it is necessary, as a preliminary point, to recall the legal bases of the right to deduct VAT, as specified in the VAT Directive and the case-law of the Court.

25 In the first place, arrangements relating to the right of deduction are governed, in particular, by Article 168 of the VAT Directive. Under Article 168(a), a taxable person is entitled to deduct from the VAT which he is liable to pay the VAT due or paid in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person, in so far as the goods and services are used for the purposes of his taxed transactions.

26 The structure of the system established by the VAT Directive is based on neutrality. Only the input tax charged in respect of goods or services used by a taxable person for his taxed transactions may be deducted. In other words, the deduction of input taxes is linked to the collection of output taxes. Where goods or services acquired by a taxable person are used for the purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected and no input tax deducted. However, where goods or services are used for the purposes of taxed output transactions, deduction of the input tax charged in respect of those goods or services is required in order to avoid double taxation (see, to that effect, judgment of 16 June 2016, *Mateusiak*, C-229/15, EU:C:2016:454, paragraph 24 and the case-law cited).

27 Thus, the question of whether there is a right to deduct presupposes, first, that a taxable person acting as such acquires goods or services and uses them for the purposes of his economic activity (see, inter alia, judgment of 16 February 2012, *Eon Aset Menidjmunt*, C-118/11, EU:C:2012:97, paragraph 69). Second, for VAT to be deductible, the input transactions must, as a general rule, have a direct and immediate link with the output transactions giving rise to a right of deduction. Ultimately, the right to deduct VAT charged in respect of the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the taxed output transactions (see, to that effect, judgments of 13 March 2008, *Securenta*, C-437/06, EU:C:2008:166, paragraph 27; of 6 September 2012, *Portugal Telecom*, C-496/11, EU:C:2012:557, paragraph 36; and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C-108/14 and C-109/14, EU:C:2015:496, paragraphs 23 and 24).

28 In the second place, where a taxable person uses goods and services to carry out both economic transactions in respect of which VAT is deductible and economic transactions in respect of which it is not (that is, exempt transactions), Articles 173 to 175 of the VAT Directive lay down rules for determining the share of deductible VAT, which must be proportional to the amount attributable to the taxable person's taxed economic transactions. In that regard, the Court has stated that those rules concern the input VAT chargeable on expenditure relating exclusively to economic transactions, distinguishing between economic activities which are taxed and give rise to a right of deduction and those which are exempt and do not give rise to such a right (see, to that effect, judgments of 13 March 2008, *Securenta*, C-437/06, EU:C:2008:166, paragraph 33; of 6 September 2012, *Portugal Telecom*, C-496/11, EU:C:2012:557, paragraph 42; and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C-108/14 and C-109/14, EU:C:2015:496, paragraph 27). However, so as not to compromise the objective of neutrality guaranteed by the common system of VAT, transactions falling outside the scope of the VAT Directive must be excluded from the calculation of the deductible proportion referred to in those provisions (see, to that effect, judgments of 14 November 2000, *Floridienne and Berginvest*, C-142/99, EU:C:2000:623, paragraph 32; of 27 September 2001, *Cibo Participations*, C-16/00, EU:C:2001:495, paragraph 44; and of 29 April 2004, *EDM*, C-77/01, EU:C:2004:243, paragraph 54).

29 In the third place, it should be borne in mind that the Court has already held that, since the VAT Directive is silent on this point, the determination of the methods and criteria for apportioning input VAT between economic and non-economic activities falls within the discretion of the Member States. When exercising that discretion, Member States must have regard to the aims and broad logic of the VAT Directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to those two types of activity (see, inter alia, judgment of 25 July 2018, *Gmina Ryjewo*, C-140/17, EU:C:2018:595, paragraph 58 and the case-law cited).

30 In the present case, it is apparent from the order for reference that, during the financial years at issue in the main proceedings, the legislation in force in Poland contained no specific rules regarding the criteria and methods for apportioning the input VAT paid in respect of mixed expenditure between economic and non-economic activities. On the basis of that lack of national legislation, the Association of Municipalities submits before the referring court that it cannot be required to carry out such an apportionment and that therefore it is entitled to deduct in full the tax relating to that type of expenditure.

31 It is therefore necessary to examine whether that lack of national legislation has the effect of permitting, for that reason alone, a taxable person, such as the Association of Municipalities, to deduct in full the input VAT paid in respect of mixed expenditure.

32 At the outset, it must be emphasised that the obligation on a taxable person to apportion input VAT between economic and non-economic activities arises from the very wording of Article 168(a) of the VAT Directive, which provides for a right to deduct input tax only in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person.

33 As is apparent in particular from the case-law cited in paragraph 26 above, where goods or services acquired by a taxable person are used for the purposes of transactions which do not fall within the scope of VAT, no output tax can be collected and no input tax deducted.

34 It is true that the VAT Directive does not lay down any specific rules regarding the criteria and methods for apportioning the input VAT paid in respect of mixed expenditure between economic and non-economic activities. The Member States thus have a margin of discretion in selecting such apportionment criteria or methods.

35 However, the mere lack of such rules in the applicable tax legislation in no way means that a taxable person is entitled to deduct the input VAT relating to such expenditure in full in respect also of the share of input tax which is connected to transactions falling outside the scope of the common system of VAT. Establishing such a right of deduction in full would broaden the scope of that right, contrary to the basic principles of the common system of VAT.

36 Indeed, as the Advocate General observed in point 57 of her Opinion, to permit a taxable person, such as the Association of Municipalities, carrying out both economic and non-economic activities, to deduct the input VAT paid in respect of mixed expenditure in full would give it an advantage contrary to the principle of fiscal neutrality, which, in the Court's view, was intended by the EU legislature to reflect, in matters relating to VAT, the general principle of equal treatment (see, to that effect, judgment of 29 October 2009, *NCC Construction Danmark*, C-174/08, EU:C:2009:669, paragraph 41 and the case-law cited).

37 It follows that the lack, in the legislation of a Member State, of specific rules regarding the criteria and methods for apportioning input VAT between economic and non-economic activities cannot, as a matter of principle, affect the scope of the right of deduction provided for in Article 168 of the VAT Directive.

38 However, the referring court observes that the national practice of granting a right of full deduction in respect of mixed expenditure is based on an interpretation of Article 217 of the Constitution of the Republic of Poland, which enshrines the principle of fiscal legality.

39 In that respect, it is important to note that, as is apparent from the constitutional traditions common to the Member States, the principle of fiscal legality may be regarded as forming part of the EU legal order as a general principle of law. Although that principle requires, as observed by the Advocate General in point 110 of her Opinion, that any obligation to pay a tax, such as VAT, and all the essential elements defining the substantive features thereof must be provided for by law, that principle does not require every technical aspect of taxation to be regulated exhaustively, as long as the rules established by law enable a taxable person to foresee and calculate the amount of tax due and determine the point at which it becomes payable.

40 Consequently, the lack of technical rules in the applicable tax legislation that are ancillary to an essential element of the tax does not inherently constitute a breach of the principle of fiscal legality as a general principle of EU law. Similarly, the fact that the applicable tax legislation leaves it to the taxable person to choose from among several possible courses of action in order to be able to qualify for a right cannot be considered inherently contrary to that principle.

41 When it comes to an essential element of a tax that has been harmonised by the EU legislature, such as VAT, the question of which elements must be specified by law must be examined in the light of the principle of fiscal legality as a general principle of EU law and not on the basis of an interpretation of that principle in national law.

42 As regards, more specifically, the right of deduction, this is an essential element of the obligation to pay VAT. The scope of that right is clearly delineated in Article 168 of the VAT Directive. As the Court has pointed out, that provision specifies the conditions giving rise to the right of deduction and the scope of that right and does not leave the Member States any discretion as to its implementation (see, to that effect, judgment of 10 March 2005, *Commission* v *United Kingdom*, C-33/03, EU:C:2005:144, paragraph 16 and the case-law cited).

43 Therefore, as long as the taxable person can establish, on the basis of the applicable tax legislation, the precise scope of the right of deduction, it cannot be considered that his obligation to determine the share of his mixed expenditure that relates to economic transactions is contrary to the principle of fiscal legality. In the common system of VAT, such a requirement is not an essential element that

defines one of the substantive features of VAT and which, for that reason, must be expressly provided for by the applicable tax legislation, but, as a pre-condition which the taxable person must satisfy in order to qualify for the right of deduction, is merely an ancillary element.

44 While, ultimately, it is for the referring court to assess, in the dispute in the main proceedings, whether the requirements arising from the principle of fiscal legality referred to in the preceding paragraphs are met, it is for the Court of Justice to provide that court with all the necessary information regarding EU law to enable it to resolve the dispute before it.

45 First of all, it should be noted that Article 168 of the VAT Directive was transposed into Polish law by Article 86 of the Law on VAT. Like Article 168 of the VAT Directive, Article 86 provides that the taxable person is entitled to deduct input VAT from the tax due in so far as the goods and services are used for the purposes of taxed transactions. Article 86 of the Law on VAT thus appears to define precisely the scope and extent of the right of deduction, which it is for the referring court to verify.

46 Next, as is apparent from the order for reference, in the absence of specific rules expressly laid down by the applicable tax legislation regarding the criteria and methods for apportioning input VAT between economic and non-economic activities, the taxable person may obtain from the competent national tax authorities a tax ruling analysing his particular situation and stating how the law is to be applied correctly. Furthermore, according to the information available to the Court, the taxable person may choose a suitable method for performing that apportionment. In those circumstances, and particularly in the light of Article 86 of the Law on VAT, that lack of rules does not seem to be such as to prevent the taxable person from determining the amount of deductible VAT.

47 Lastly, following on from the foregoing considerations, the national practice at issue in the main proceedings is considered by the referring court to be contrary to Article 168 of the VAT Directive.

48 In that regard, it should be borne in mind, first, that the national courts are bound to interpret, where possible, national law in a manner consistent with EU law, and that such an interpretation can, in principle, be relied on against a taxable person by the competent national tax authority (see, to that effect, judgments of 26 September 1996, *Arcaro*, C-168/95, EU:C:1996:363, paragraphs 41 and 42; of 5 July 2007, *Kofoed*, C-321/05, EU:C:2007:408, paragraph 45; and of 15 September 2011, *Franz Mücksch*, C-53/10, EU:C:2011:585, paragraph 34).

49 Second, although the obligation to interpret national law in a manner consistent with EU law cannot serve as the basis for an interpretation of national law *contra legem* (see, inter alia, judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 100 and the case-law cited), national courts must alter their established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive (judgments of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 33; of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 72; and of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 64).

50 In the light of the foregoing considerations, the answer to the question referred is that Article 168(a) of the VAT Directive must be interpreted as precluding a national practice which permits a taxable person to deduct the input VAT charged in respect of mixed expenditure in full, owing to the lack of specific rules in the applicable tax legislation regarding the criteria and methods of apportionment which would enable that taxable person to determine the share of that input VAT which must be regarded as being connected to his economic and non-economic activities respectively.

Costs

51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Second Chamber) hereby rules:

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national practice which permits a taxable person to deduct in full the input value added tax (VAT) charged in respect of his acquisition of goods and services for the purposes of both economic activities subject to VAT and non-economic activities not falling within the scope of VAT, owing to the lack of specific rules in the applicable tax legislation regarding the criteria and methods of apportionment which would enable that taxable person to determine the share of that input VAT which must be regarded as being connected to his economic and non-economic activities respectively.

[Signatures]