



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

26 April 2012 *

(VAT — Directive 2006/112/EC — Articles 73 and 80(1) — Sale of immovable property between connected companies — Value of the transaction — National legislation providing that for transactions between connected persons the taxable amount for VAT purposes is the open market value of the transaction)

In Joined Cases C-621/10 and C-129/11,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Administrativen sad Varna (Bulgaria), made by decisions of 17 December 2010 and 1 March 2011, received at the Court on 29 December 2010 and 14 March 2011, in the proceedings

Balkan and Sea Properties ADSITs (C-621/10),

Provadinvest OOD (C-129/11)

v

Direktor na Direktsia 'Obzhalvane i upravljenje na izpalnenieto' — Varna pri Tsentralno upravljenje na Natsionalnata agentsia za prihodite,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, U. Lõhmus, A. Rosas, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Bulgarian Government, by T. Ivanov and E. Petranova (C-621/10), acting as Agents,
- the European Commission, by S. Petrova and L. Lozano Palacios (C-621/10) and by the latter and V. Savov (C-129/11), acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 January 2012,

gives the following

* Language of the case: Bulgarian.

Judgment

- 1 These references for a preliminary ruling concern the interpretation of Article 80(1) 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 references have been made in proceedings between Balkan and Sea Properties ADSITs (‘Balkan and Sea Properties’) and Provadinvest OOD (‘Provadinvest’) and the Direktor na Direktsia ‘Obzhalvane i upravlienie na izpalnenieto’ — Varna pri Tsentralno upravlienie na Natsionalnata agentsia za prihodite (Director of the Appeals and Enforcement Management Directorate, Varna, at the Central Administration of the National Revenue Agency, ‘the Director’) concerning tax assessment notices refusing them the right to deduct input value added tax (VAT).

Legal context

European Union law

- 3 According to recital 3 in the preamble to the VAT Directive, ‘[t]o ensure that the provisions are presented in a clear and rational manner, consistent with the principle of better regulation, it is appropriate to recast the structure and the wording 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)] although this will not, in principle, bring about material changes in the existing legislation. ...’
- 4 Recital 26 in the preamble to the VAT Directive states that ‘[t]o prevent loss of tax revenues through the use of connected parties to derive tax benefits, it should, in specific limited circumstances, be possible for Member States to intervene as regards the taxable amount of supplies of goods or services and intra-Community acquisitions of goods’.
- 5 Article 12 of the VAT Directive provides:

‘1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:

 - (a) the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;
 - (b) the supply of building land.

2. For the purposes of paragraph 1(a), “building” shall mean any structure fixed to or in the ground.

Member States may lay down the detailed rules for applying the criterion referred to in paragraph 1(a) to conversions of buildings and may determine what is meant by “the land on which a building stands”.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply, or the period elapsing between the date of first occupation and the date of subsequent supply, provided that those periods do not exceed five years and two years respectively.

3. For the purposes of paragraph 1(b), “building land” shall mean any unimproved or improved land defined as such by the Member States.’

6 Article 73 of the directive provides that '[i]n respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply'.

7 Article 80 of the directive provides:

'1. In order to prevent tax evasion or avoidance, Member States may in any of the following cases take measures to ensure that, in respect of the supply of goods or services involving family or other close personal ties, management, ownership, membership, financial or legal ties as defined by the Member State, the taxable amount is to be the open market value:

- (a) where the consideration is lower than the open market value and the recipient of the supply does not have a full right of deduction under Articles 167 to 171 and Articles 173 to 177;
- (b) where the consideration is lower than the open market value and the supplier does not have a full right of deduction under Articles 167 to 171 and Articles 173 to 177 and the supply is subject to an exemption under Articles 132, 135, 136, 371, 375, 376, 377, 378(2), 379(2) or Articles 380 to 390;
- (c) where the consideration is higher than the open market value and the supplier does not have a full right of deduction under Articles 167 to 171 and Articles 173 to 177.

For the purposes of the first subparagraph, legal ties may include the relationship between an employer and employee or the employee's family, or any other closely connected persons.

2. Where Member States exercise the option provided for in paragraph 1, they may restrict the categories of suppliers or recipients to whom the measures shall apply.

3. Member States shall inform the VAT Committee of national legislative measures adopted pursuant to paragraph 1 in so far as these are not measures authorised by the Council prior to 13 August 2006 in accordance with Article 27(1) to (4) of Directive 77/388/EEC, and which are continued under paragraph 1 of this Article.'

8 In accordance with Article 135(1)(j) and (k) of the directive, Member States are to exempt the following transactions:

- '(j) the supply of a building or parts thereof, and of the land on which it stands, other than the supply referred to in point (a) of Article 12(1);
- (k) the supply of land which has not been built on other than the supply of building land as referred to in point (b) of Article 12(1)'.

9 Article 273 of the directive provides:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

National law

- 10 Article 12(1) of the Law on value added tax (Zakon za danak varhu dobavenata stoynost, DV No 63, 4 August 2006, ‘the ZDDS’) provides:

‘Any supply of goods or services within the meaning of Articles 6 and 9, where it is effected by a person taxable under the present law and where the place of performance is on national territory, and any supply taxed at zero rate and effected by a taxable person, unless the present law provides otherwise, is a taxable supply’.

- 11 Article 27(3)(1) of the ZDDS provides that, in the case of a supply between connected persons, the taxable amount is the open market value.

- 12 Under Article 45(1) of the ZDDS, ‘the transfer of ownership of land, the grant or transfer of limited rights in rem over land, and the leasing of land are exempt supplies’.

- 13 Paragraph 5(2) of that article states that ‘paragraph 1 does not apply to the transfer of ownership of or other rights in rem in, or to the leasing of, equipment, machines, installations or structures which are firmly attached to the ground or constructed underground’.

- 14 Article 67(1) of the ZDDS provides that ‘the amount of tax is calculated by multiplying the taxable amount by the tax rate’.

- 15 Under Article 70(5) of the ZDDS, ‘no right to deduct a tax credit arises from tax invoiced unlawfully’.

- 16 Paragraph 1(3) of the additional provisions of the Code of tax and social security procedure (Danachno-osiguritelnia protsesualen kodeks, DV No 105, 29 December 2005) specifies that ‘connected persons’ are:

‘(a) spouses, relatives in the direct line, relatives in the collateral line to the third degree; relatives by marriage to the second degree, and, for the purposes of Article 123(1)(2), where they form part of a common household;

(b) employers and employees;

(c) partners;

(d) persons one of whom participates in the management of the other or its subsidiary;

(e) persons in whose management or supervisory bodies one and the same legal or natural person takes part, including where the natural person represents another person;

(f) a company and a person who is in possession of more than 5% of the holdings or shares with voting rights in the company;

(g) persons one of whom exercises control over the other;

(h) persons whose activity is controlled by a third person or by its subsidiary;

(i) persons who jointly control a third party or its subsidiary;

(j) persons one of whom is a commercial agent of the other;

(k) persons one of whom has made a donation to the other;

(l) persons who directly or indirectly participate in the management, supervision or share capital of another person or persons, as a result of which conditions can be agreed between them which deviate from the normal conditions.’

17 Under Paragraph 1(4) of the additional provisions, there is ‘control’ where the person controlling:

‘(a) directly or indirectly or in combination with another person possesses more than half of the votes at the general assembly of another person, or

(b) has the possibility directly or indirectly of appointing more than half of the members of the management or supervisory body of another person, or

(c) has the possibility, including through or together with a subsidiary, on the basis of the articles of association or of a contract, of directing the activity of another person, or

(d) as shareholder or partner in a company, on the basis of agreement with other partners or shareholders in the same company, independently controls more than half of the number of votes in the general meeting of that company, or

(e) in any other way can exercise a determining influence on decisions about the activity of the company’.

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

Case C-621/10

18 Balkan and Sea Properties is a share company whose activity is the investment of funds collected by issuing immovable property securities.

19 In March 2009 Balkan and Sea Properties bought, by notarial acts, immovable property from the company Ravda tur EOOD, for a total amount of BGN 21 318 852. That company is owned by Holding Varna AD, which owns 27.98% of the share capital of Balkan and Sea Properties.

20 VAT was deducted on the conclusion of the definitive contract and the issue of the final invoices.

21 Since the national legislation provides that, in the event of a sale between connected persons, the taxable amount is the open market value of the property, two expert reports were commissioned, one by Balkan and Sea Properties and one by the tax authorities. The authorities concluded that the open market value of the property was lower than the actual sale price, and estimated it at BGN 21 216 300.

22 The tax authorities thereupon considered that the VAT calculated on a price higher than the open market value of the property was unlawfully invoiced tax which could not be deducted and that, consequently, for the tax period corresponding to July 2009, Balkan and Sea Properties was not entitled to deduct the input VAT on the difference between the open market value and the actual sale price of the property in question.

23 The amended tax notice was challenged in administrative proceedings before the Director. The Director confirmed the refusal of deduction of VAT.

24 Balkan and Sea Properties brought proceedings in the Administrativen sad Varna (Administrative Court, Varna).

25 That company submits in particular that the provisions of the ZDDS are not compatible with Article 80(1) of the VAT Directive, and seeks for that provision of European Union law to be applied directly.

26 In those circumstances, the Administrativen sad Varna decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1. Is Article 80(1)(c) of [the VAT Directive] to be interpreted as meaning that, where there are supplies between connected persons, in so far as the consideration is higher than the open market value, the taxable amount is the open market value of the transaction only if the supplier does not qualify for the full right to deduct the tax credit on the purchase or production of the goods which are supplied?
2. Is Article 80(1)(c) of [the VAT Directive] to be interpreted as meaning that, if the supplier has exercised the full right to deduct the tax credit on goods and services which are the subject of subsequent supplies between connected persons at a price which is higher than the open market value, and that right to deduct the tax credit has not been corrected under Articles 173 to 177 of that directive, a Member State is not permitted to adopt measures whereby the taxable amount is exclusively the open market value?
3. Does Article 80(1) of [the VAT Directive] constitute an exhaustive list of cases representing the circumstances in which the Member States may take measures whereby the taxable amount in respect of supplies is to be the open market value of the transaction?
4. Is a provision of national law such as Article 27(3)(1) of the ZDDS permissible in cases other than those listed in Article 80(1)(a), (b) and (c) of [the VAT Directive]?
5. In a case such as the present, does Article 80(1)(c) of [the VAT Directive] have direct effect, and may the national court apply it directly?

Case C-129/11

- 27 Provadinvest is a limited company whose principal activity is the leasing of agricultural land and steel structures used for polyethylene greenhouses.
- 28 In June 2009 that company sold, by notarial acts, two plots of land to be used for greenhouses to one of its partners and one plot to its representative. Those plots were sold with the polyethylene structures erected on them, and with all the improvements and permanent crops on them, at a price of BGN 25 000 each.
- 29 Provadinvest issued invoices not indicating VAT for those sales.
- 30 The tax authorities took the view that the sales of the immovable property included both a supply of land that was exempt from VAT and a taxable supply of installations, improvements and permanent crops.
- 31 Under national legislation, as the sales in question were sales between connected persons, the taxable amount for VAT purposes was the open market value determined by an expert. The expert assessed the total open market value solely of the polyethylene structures on the three plots of land at BGN 392 700, a greater sum than that actually paid as consideration.
- 32 The tax authorities issued an amended tax notice for the tax period corresponding to June 2009. That notice was challenged in administrative proceedings before the Director, who confirmed the amount of VAT charged to Provadinvest.
- 33 Provadinvest brought proceedings in the Administrativen sad Varna.
- 34 That court considers that the sale of the agricultural land in question represents an exempt supply under Article 45(1) of the ZDDS and that the sale of the installations erected on the land represents a taxable supply, as they fall within the exceptions mentioned in Article 45(5)(2) of that law.

35 In those circumstances, the Administrativen sad Varna decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1. Is Article 80(1)(a) and (b) of [the VAT Directive] to be interpreted as meaning that, where there are supplies between connected persons, in so far as the consideration is lower than the open market value, the taxable amount is the open market value of the transaction only if the supplier or the acquirer does not qualify for the full right to deduct the tax credit on the purchase or production of the goods which are supplied?
2. Is Article 80(1)(a) and (b) of [the VAT Directive] to be interpreted as meaning that, if the supplier has exercised the full right to deduct the tax credit on goods and services which are the subject of subsequent supplies between connected persons at a value which is lower than the open market value, and that right to deduct the tax credit has not been corrected under Articles 173 to 177 of the directive and the supply is not subject to a tax exemption within the meaning of Articles 132, 135, 136, 371, 375, 376, 377, 378(2), 379(2) and 380 to 390 of the directive, a Member State is not permitted to adopt measures whereby the taxable amount is exclusively the open market value?
3. Is Article 80(1)(a) and (b) of [the VAT Directive] to be interpreted as meaning that, if the acquirer has exercised the full right to deduct the tax credit on goods and services which are the subject of subsequent supplies between connected persons at a lower value than the open market value, and that right to deduct the tax credit has not been corrected under Articles 173 to 177 of the directive, a Member State is not permitted to adopt measures whereby the taxable amount is exclusively the open market value?
4. Does Article 80(1) of [the VAT Directive] constitute an exhaustive list of cases representing the circumstances in which a Member State is permitted to take measures whereby the taxable amount in respect of supplies is to be the open market value of the transaction?
5. Is a provision of national law such as Article 27(3)(1) of the ZDDS permissible in cases other than those listed in Article 80(1)(a), (b) and (c) of [the VAT Directive]?
5. In a case such as the present, does Article 80(1)(a) and (b) of [the VAT Directive] have direct effect, and may the national court apply it directly?

36 By order of the President of the Court of 13 July 2011, Cases C-621/10 and C-129/11 were joined for the purposes of the oral procedure and the judgment.

Consideration of the questions referred

Preliminary observations

37 In Case C-129/11 the referring court considers it necessary, in order to decide on the lawfulness of the amended tax notice which is the subject of the main proceedings, to determine, as well as the amount of the tax due, whether the conditions were satisfied for subjecting the sales of agricultural land and the installations erected on the land to VAT.

38 For that purpose, it must be assessed whether the supplies of structures, namely polyethylene greenhouses, and the land on which they stand at issue in that case are exempt under Article 135 of the VAT Directive. The answer to that question depends on whether those structures may be classified as ‘buildings’ within the meaning of the first subparagraph of Article 12(2) of that directive.

- 39 If so, if the supplies of those goods may be regarded as taking place before first occupation, there is a taxable transaction, whereas in the opposite case the transaction must be exempt in accordance with Article 135(1)(j) of the VAT Directive, subject to a possible right to opt for taxation.
- 40 If those structures and the ground on which they stand cannot be classified as ‘buildings’ within the meaning of the first subparagraph of Article 12(2) of the VAT Directive, a distinction must be drawn depending on whether there are distinct supplies of land and of other elements or one single transaction consisting primarily of the supply of land (see, to that effect, Case C-461/08 *Don Bosco Onroerend Goed* [2009] ECR I-11079, paragraphs 35 to 38). It should also be ascertained whether the land in question falls within the definition of ‘building land’ in Article 12(3) of the VAT Directive. If so, the supplies would be taxable. If not, the supplies would be exempt in accordance with Article 135(1)(k) of the directive, subject to a possible right to opt for taxation.
- 41 Such assessments of fact are within the jurisdiction of the referring court in the procedure established in Article 267 TFEU (see, to that effect, Case 104/77 *Oehlschläger* [1978] ECR 791, paragraph 4; Case C-30/93 *AC-ATEL Electronics Vertriebs* [1994] ECR I-2305, paragraphs 16 and 17; and Case C-318/98 *Fornasar and Others* [2000] ECR I-4785, paragraphs 31 and 32).

Questions 1 to 4 in Case C-621/10 and Questions 1 to 5 in Case C-129/11

- 42 By these questions, which should be considered together, the referring court essentially asks whether Article 80(1) of the VAT Directive must be interpreted as meaning that the conditions it states are exhaustive or whether it may be accepted that the taxable amount is the open market value of the transaction between connected persons in cases other than those expressly provided for in that provision, in particular where the taxable person has a full right of deduction.
- 43 In accordance with the general rule set out in Article 73 of the VAT Directive, the taxable amount for the supply of goods or services for consideration is the consideration actually received for them by the taxable person. That consideration is thus the subjective value, that is to say, the value actually received, and not a value estimated according to objective criteria (see, to that effect, Case 154/80 *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445, paragraph 13; Case C-412/03 *Hotel Scandic Gåsabäck* [2005] ECR I-743, paragraph 21; and Case C-285/10 *Campsa Estaciones de Servicio* [2011] ECR I-5059, paragraph 28).
- 44 Article 73 of the VAT Directive is the expression of a fundamental principle, the corollary of which is that the tax authorities may not collect as VAT an amount exceeding the tax paid to the taxable person (see, to that effect, Case C-330/95 *Goldsmiths* [1997] ECR I-3801, paragraph 15).
- 45 By allowing the taxable amount to be taken as the open market value of the transaction in certain cases, Article 80(1) of the VAT Directive lays down an exception to the general rule stated in Article 73 of the directive, which must as such be interpreted strictly (see Case C-453/05 *Ludwig* [2007] ECR I-5083, paragraph 21, and Case C-41/09 *Commission v Netherlands* [2011] ECR I-831, paragraph 58 and the case-law cited).
- 46 It should be recalled that, as stated in recital 26 in the preamble to the VAT Directive, the objective of Article 80(1) is to prevent tax evasion or avoidance.
- 47 As the Advocate General observes in point 30 of her Opinion, where goods or services are supplied at an artificially low or high price between parties who both enjoy a full right of deduction of VAT, there cannot be any evasion or avoidance of tax at that stage. It is only at the stage of the final consumer, or of a mixed taxable person enjoying only a proportional right of deduction, that an artificially low or high price can lead to a loss of tax revenue.

- 48 Consequently, it is only where the person concerned by the transaction does not enjoy a full right of deduction that there is a risk of tax evasion or avoidance which Article 80(1) of the directive allows the Member States to prevent.
- 49 That conclusion does not in any way prevent the Member States from laying down other obligations in order to avoid evasion, on the basis of and in compliance with the conditions set out in Article 273 of the VAT Directive.
- 50 That interpretation is confirmed by the wording of Article 11(A)(6) of the Sixth Directive 77/388, as amended by Council Directive 2006/69/EC of 24 July 2006 (OJ 2006 L 221, p. 9), the provisions of which are substantially reproduced in Article 80(1) of the VAT Directive (see recital 3 in the preamble to that directive), and which states that the derogation ‘may apply only in any of the following circumstances’.
- 51 It follows from the foregoing that the conditions of application laid down in Article 80(1) of the VAT Directive are exhaustive and, consequently, that national legislation cannot on the basis of that provision provide that the taxable amount is to be the open market value of the transaction in cases other than those listed in that provision, in particular where the supplier or acquirer has a full right of deduction of VAT.
- 52 The answer to Questions 1 to 4 in Case C-621/10 and Questions 1 to 5 in Case C-129/11 is therefore that Article 80(1) of the VAT Directive must be interpreted as meaning that the conditions of application it sets out are exhaustive and, consequently, that national legislation cannot on the basis of that provision provide that the taxable amount is to be the open market value of the transaction in cases other than those listed in that provision, in particular where the taxable person has a full right of deduction of VAT, which is for the national court to ascertain.

Question 5 in Case C-621/10 and Question 6 in Case C-129/11

- 53 By these questions the referring court essentially asks whether Article 80(1) of the VAT Directive has direct effect and whether the national court can consequently apply it directly to the disputes in the main proceedings.
- 54 It is for the referring court, to the full extent of its discretion under national law, to interpret and apply national law in conformity with the requirements of European Union law and, where such an interpretation is not possible, to disapply any provision of domestic law that would be contrary to those requirements (see, to that effect, Case C-357/06 *Frigerio Luigi & C.* [2007] ECR I-12311, paragraph 28, and Joined Cases C-395/08 and C-396/08 *Bruno and Others* [2010] ECR I-5119, paragraph 74).
- 55 As found in paragraphs 42 to 51 above, Article 80(1) of the VAT Directive allows exceptions to be made to the general rule laid down in Article 73 of that directive only in the cases it lists.
- 56 According to settled case-law of the Court, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied on before the national courts by individuals against the State where the State has failed to transpose the directive into national law within the time-limit or has transposed it incorrectly (see Case C-226/07 *Flughafen Köln-Bonn* [2008] ECR I-5999, paragraph 23, and Case C-203/10 *Auto Nikolovi* [2011] ECR I-1083, paragraph 61).
- 57 It also follows from the Court’s case-law that the fact that a provision of a directive gives Member States a choice does not necessarily render it impossible to determine with sufficient precision, on the basis of the provisions of the directive alone, the content of the rights thus conferred on individuals (see *Flughafen Köln-Bonn*, paragraph 30, and Case C-138/07 *Cobelfret* [2009] ECR I-731, paragraph 61).

- 58 Article 80(1) of the VAT Directive establishes unequivocally and exhaustively the conditions to be satisfied for a Member State to be able to provide in its legislation for the possibility of correcting the taxable amount of a transaction between connected persons.
- 59 That being so, if the transactions at issue in the main proceedings which fall within Article 27(3) of the ZDDS correspond to one of the situations set out in Article 80(1), the Member State concerned must be regarded as having made use of the option provided for in that provision.
- 60 By contrast, if those transactions do not correspond to those referred to in Article 80(1) of the VAT Directive, that article must be interpreted as conferring on companies such as the applicants in the main proceedings the right to rely on it directly to oppose the application by the referring court of provisions of national legislation that are contrary to it (see, by analogy, *Flughafen Köln-Bonn*, paragraph 33). In that case, should it prove impossible to interpret the relevant provisions of the ZDDS in conformity with Article 80(1) of the VAT Directive, the national court would have to disapply those provisions in so far as they are incompatible with Article 80(1).
- 61 That would have the consequence that Article 73 of the VAT Directive would be applicable in order to establish that, subject to the exceptions provided for by that directive, the taxable amount of the transactions at issue in the main proceedings is the consideration actually received. As the Court has held with respect to Article 11(A)(1)(a) of the Sixth Directive 77/388, as amended by Directive 2006/69, which became Article 73 of the VAT Directive, that provision has direct effect (see, to that effect, Case C-62/93 *BP Soupergaz* [1995] ECR I-1883, paragraphs 34 to 36, and Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 47).
- 62 The answer to Question 5 in Case C-621/10 and Question 6 in Case C-129/11 is therefore that, in circumstances such as those of the main proceedings, Article 80(1) of the VAT Directive confers on the companies concerned the right to rely on it directly to oppose the application of provisions of national legislation that are incompatible with that provision. If it is not possible to interpret the national legislation in conformity with Article 80(1) of the directive, the national court should disapply any provision of that legislation that is contrary to it.

Costs

- 63 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:

1. **Article 80(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the conditions of application it sets out are exhaustive and, consequently, that national legislation cannot on the basis of that provision provide that the taxable amount is to be the open market value of the transaction in cases other than those listed in that provision, in particular where the taxable person has a full right of deduction of value added tax, which is for the national court to ascertain.**
2. **In circumstances such as those of the main proceedings, Article 80(1) of Directive 2006/112 confers on the companies concerned the right to rely on it directly to oppose the application of provisions of national legislation that are incompatible with that provision. If it is not possible to interpret the national legislation in conformity with Article 80(1) of the directive, the national court should disapply any provision of that legislation that is contrary to it.**

[Signatures]