



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 13 September 2012¹

Case C-310/11

Grattan plc

v

The Commissioners of Her Majesty's Revenue & Customs

(Reference for a preliminary ruling from the First-tier Tribunal, Tax Chamber (United Kingdom))

(Taxation — Value added tax — Article 8(a) of Second Directive 67/228/EEC — Basis of assessment in the event of repayment of part of the consideration after the supply takes place)

I – Introduction

1. United Kingdom undertakings are inventive. Their ingenuity in relation to complex sales methods has repeatedly occupied the Court with regard to value added tax ('VAT') and led to important rulings with evocative names such as 'Naturally Yours', 'Elida Gibbs' or, most recently, 'Loyalty Management'.²

2. The present reference for a preliminary ruling also concerns a sophisticated marketing technique used by United Kingdom undertakings, which was however invented several decades ago. Nevertheless, in the main proceedings the consequences of this sales technique for the basis of assessment for VAT in respect of the years from 1973 to 1977 have still not been clarified. In the present case the Court will therefore have to return again to the very beginnings of European Union ('EU') law on VAT and deal with the interpretation of legal provisions which have not been in force for over 30 years.

II – Legislative framework

A – EU law

1. Second VAT Directive 67/228/EEC

3. During the period at issue in the main proceedings, VAT was regulated in EU law inter alia by Directive 67/228/EEC³ ('the Second Directive').

¹ — Original language: German.

² — See Case 230/87 *Naturally Yours Cosmetics* [1988] ECR 6365; Case C-317/94 *Elida Gibbs* [1996] ECR I-5339; and Joined Cases C-53/09 and C-55/09 *Loyalty Management UK* [2010] ECR I-9187.

³ — Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16).

4. According to Article 2(a) of the Second Directive, ‘the supply of goods and the provision of services within the territory of the country by a taxable person against payment’ are subject to VAT.

5. Article 5 of the Second Directive explains this chargeable event in greater detail as follows:

‘1. “Supply of goods” means the transfer of the right to dispose of tangible property as owner.

2. The following shall also be considered as supply within the meaning of paragraph 1:

...

(c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale;

...

...

5. The chargeable event shall occur at the moment when delivery is effected. ...’

6. Article 8 of the Second Directive contains rules on the basis of assessment and includes the following provision:

‘The basis of assessment shall be:

(a) in the case of supply of goods and of the provision of services, everything which makes up the consideration for the supply of the goods or the provision of services, including all expenses and taxes except the value added tax itself;

...’

7. With regard to Article 8(a), Annex A to the Second Directive, which under Article 20 forms an integral part of the directive, includes the following explanation in the first paragraph of point 13:

‘The expression “consideration” means everything received in return for the supply of goods or the provision of services ...’

8. Lastly, Article 9 of the Second Directive contains the following provision on the application of the rate of tax to the basis of assessment:

‘1. The standard rate of value added tax shall be fixed by each Member State at a percentage of the basis of assessment which shall be the same for the supply of goods and for the provision of services.

...’

2. Sixth VAT Directive 77/388/EEC

9. Directive 77/388/EEC⁴ ('the Sixth Directive') replaced the Second Directive in the United Kingdom on 1 January 1978.⁵

10. With regard to the basis of assessment, the Sixth Directive contains more detailed provisions than Article 8 of the Second Directive. The ninth recital in the preamble explains:

'... the taxable base must be harmonised so that the application of the Community rate to taxable transactions leads to comparable results in all the Member States'.

11. Article 11A of the Sixth Directive includes the following provision in this regard:

'1. The taxable amount shall be:

(a) in respect of supplies of goods and services ... everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies ...

...'

12. Furthermore, in Article 11C(1) of the Sixth Directive there is a provision governing cases where the taxable amount is reduced after the supply takes place:

'In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

However, in the case of total or partial non-payment, Member States may derogate from this rule.'

B – *National law*

13. For the period at issue in the main proceedings, section 10(2) of the Finance Act 1972 made the following provision for determining the basis of assessment:

'If the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of the tax chargeable, is equal to the consideration.'

14. On the other hand, national law contained no provision for the case of a reduction of the basis of assessment after the supply has taken place.

III – Main proceedings and questions referred

15. The appellant in the main proceedings is Grattan plc ('Grattan'). In the main action, it is putting forward claims against the United Kingdom tax authorities for repayment of VAT in its own right and under assigned rights. Those claims relate to VAT which was paid for the years from 1973 to 1977 in respect of the activity of several mail order companies.

4 — 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).

5 — See Article 37 and Article 1(2) of the Sixth Directive. The extension of the period for implementation by Ninth Council Directive 78/583/EEC of 26 June 1978 on the harmonisation of the laws of the Member States relating to turnover taxes (OJ 1978 L 194, p. 16) did not concern the United Kingdom.

16. The mail order companies operated a special sales system. That system included persons who were described as ‘agents’ and who held a special account with the relevant mail order company. Agents received in that account a credit amounting to 10% of the amount remitted, as a ‘commission’, both in relation to their own purchases of goods from the mail order catalogue (‘agent’s own purchases’) and in relation to purchases made by third parties through them (‘third-party purchases’).

17. Generally, an agent had a limited number of ‘third-party customers’ and processed third-party purchases by passing on catalogues to the third-party customers, placing their orders with the mail order companies, distributing the ordered goods to the third-party customers and collecting the catalogue price owed from the third-party customers.

18. The agents could, inter alia, claim the amounts credited to their accounts on the basis of their own purchases and third-party purchases as a cheque payment or offset those amounts against their outstanding debts to the mail order companies.

19. The United Kingdom tax authorities treated amounts credited for third-party purchases which were used in this way as payment for the agent’s services in managing third-party customers.

20. In the main proceedings Grattan objects to this treatment. In its submission, the credits to the agents merely reduce the purchase price paid by the agent for purchases of goods. This applies not only to the agent’s own purchases, where this is common ground, but also to third-party purchases. Consequently, the ‘commissions’ reduce subsequently the consideration and thus the basis of assessment for the supplies of goods by the mail order companies to the agents, as soon as the agents receive the credited amounts. To this extent the mail order companies therefore overpaid VAT in the years from 1973 to 1977.

21. The First-tier Tribunal (Tax Chamber), which is hearing the claim for repayment, is confronted with interpretation of the Second Directive, which was applicable at the time, and doubts whether under that directive a subsequent reduction of the basis of assessment was required by EU law. Against this background, it asks the Court the following question:

In relation to the period before 1 January 1978, does a taxable person have a directly effective right under Article 8(a) of the Second Directive and/or the principles of fiscal neutrality and of equal treatment, to treat the basis of assessment of a supply of goods as retrospectively reduced where, after the time of that supply of goods, the recipient of the supply received a credit from the supplier which the recipient then elected either to take as a payment of money, or as a credit against amounts owed to the supplier in respect of supplies of goods to the recipient that had already taken place?

IV – Legal assessment

22. Since the referring tribunal has explained in the order for reference that only repayment of VAT in respect of amounts credited for third-party purchases is in dispute in the main proceedings, the question referred for a preliminary ruling must be interpreted restrictively to that effect. I will not therefore examine below the consequences, for the purposes of VAT, of the payment of ‘commissions’ in relation to an agent’s own purchases.

23. It thus remains to be considered whether under EU law the amounts which were initially credited to agents in the years from 1973 to 1977 for third-party purchases and were subsequently paid as cheques or by way of offset reduced the basis of assessment of the VAT payable by the mail order companies and whether the mail order companies enjoy a directly effective right in this regard.

24. Article 8 of the Second Directive governed the determination of the basis of assessment for this period. Under Article 8(a) in conjunction with point 13 of Annex A to the directive, the basis of assessment of the supplies of goods at issue in the main proceedings is everything received in return for the supply.

25. In the present case, the mail order companies initially received payments of the purchase price. After the goods were supplied, they themselves, however, made payments to the agents, namely the amounts credited and subsequently paid to the agents. The present case now concerns whether under the Second Directive those payments by the mail order companies reduce the basis of assessment of their supplies of goods because they ultimately received less.

26. According to the order for reference, the referring tribunal considers that it is only necessary to clarify whether under Article 8(a) of the Second Directive a reduction of the basis of assessment is also possible after the time of the supply. However, the first condition for a reduction of the basis of assessment under that provision is that the described payments by the mail order companies are actually repayments of parts of the consideration, which reduce the basis of assessment. This question should therefore be considered first (under section A), before I explore whether the Second Directive requires a reduction of the basis of assessment after the supply takes place (under section B).

A – Repayment of consideration by the taxable person

27. Under Article 8(a) of the Second Directive, the basis of assessment may be reduced *a priori* on the basis of a payment by the taxable person only where that payment actually constitutes the repayment of consideration from the recipient of the payment. Not every payment by a taxable person to a person who has paid consideration should be regarded as a repayment of that consideration.

28. It is for the referring tribunal to examine, on the basis of the facts to be determined by it in the main proceedings, whether the payments by the mail order companies to the agents constitute repayments of consideration. However, the facts set out in the order for reference and the submissions by the parties have raised certain doubts as to whether the payments referred to are to be regarded as repayments of consideration. In particular, the legal and business relationships between the mail order companies, the agents and the third-party customers do not appear to be clarified sufficiently and are evidently disputed between the parties to the main proceedings.

29. Against this background, I consider it necessary to make a few remarks regarding the Court's case-law to which regard must be had, in order to enable the referring tribunal to give a ruling in the main proceedings which is consistent with EU law on VAT. In so far as the case-law cited below does not concern the Second Directive, I consider that it is also applicable to the Second Directive because of the comparability of the provisions of the Sixth Directive interpreted there.⁶

30. In the main proceedings the referring tribunal should first clarify whether in the case of third-party purchases the mail order companies sold directly to the third-party customers or whether there was a supply chain whereby the agents themselves were purchasers in the case of third-party purchases and sold the goods on to the third-party customers either independently or in the context of a sales commission. The conditions for accepting the existence of a repayment of consideration are different in these two situations.

⁶ — See, in this regard, also Case 102/86 *Apple and Pear Development Council* [1988] ECR 1443, paragraph 10, and *Naturally Yours Cosmetics* (cited in footnote 2), paragraph 10.

1. Direct sale of goods by the mail order companies to third-party customers

31. If the mail order companies sold directly to third-party customers, as the United Kingdom Government has submitted, it would be clear, first of all, that the ‘commissions’ granted to agents for third-party purchases cannot constitute a repayment of the consideration in respect of the sales of goods by the mail order companies to the third-party customers. In that case it would be irrelevant that the mail order companies ultimately received only the catalogue price payable by the third-party customer minus the ‘commissions’ paid to the agents. The Court has stated on several occasions that in a situation where a third party is involved in the payment process and, by virtue of this, retains part of the purchase price paid by the purchaser, the full purchase price nevertheless forms the basis of assessment of the supply provided by the seller to the purchaser.⁷ The situation can be no different in the present case if the agent, whilst not immediately retaining part of the purchase price paid by the third-party customer, received it subsequently.

32. If the mail order companies sold directly to third-party customers, it is also uncertain whether part of the consideration for another transaction, namely an agent’s own purchase, was repaid through the ‘commissions’ granted to the agent for third-party purchases. In principle, this would seem to require a provision to that effect in the legal relationship that defines the consideration for the agent’s own purchase. It is true that in *Elida Gibbs* the Court found for the first time that a reduction of the basis of assessment is potentially to be accepted even where the contractually defined consideration is not modified at all.⁸ According to that case-law, however, at least the payment by the taxable person is conditional on the acquisition of a certain supply by the recipient of the payment. In the main proceedings, it is doubtful whether that condition is satisfied with regard to the basis of assessment of the agent’s own purchases, as the credited amounts did not appear to be dependent on an agent’s specific own purchase because, in particular, an independent cheque payment was also possible.

33. If a repayment of the consideration for an agent’s own purchases were nevertheless to be established, the referring tribunal would then be required to examine whether a reduction of the basis of assessment is ruled out because the ‘commissions’ constitute payment for a supply made by the agents to the mail order companies. If the repayment itself is consideration, there cannot in the final analysis be a reduction of the basis of assessment. For the purposes of determining the basis of assessment, the repaid part of the consideration is replaced by the value of the supply provided. The Court has already ruled to this effect in *Naturally Yours Cosmetics*, in relation to a discount.⁹

34. According to settled case-law, a finding that the ‘commissions’ were payment for a supply provided by the agents requires, first, that there was a legal relationship between the agent and the mail order companies pursuant to which there was reciprocal performance.¹⁰ Second, there must be a direct link between the supply and the consideration received.¹¹ According to the Court’s case-law, that link must be construed as a reciprocal condition of supply and consideration in the context of the legal

7 — See Case C-18/92 *Bally* [1993] ECR I-2871, paragraph 14, and Case C-34/99 *Primback* [2001] ECR I-3833, paragraph 28 et seq.

8 — See *Elida Gibbs* (cited in footnote 2), paragraph 31.

9 — See *Naturally Yours Cosmetics* (cited in footnote 2). In that judgment, the Court took the view that, where goods are supplied, a discount which is conditional on a service provided by the customer who thus provides a supply for consideration himself means that the basis of assessment of the supply of goods is composed of the reduced cash payment plus the value of the service provided. The monetary value of the service is to be set at the amount of the discount. Consequently, the basis of assessment of the supply of goods is equivalent to the selling price not including the discount.

10 — See, inter alia, Case C-16/93 *Tolsma* [1994] ECR I-743, paragraph 14; Case C-48/97 *Kuwait Petroleum* [1999] ECR I-2323, paragraph 26; and Case C-520/10 *Lebara* [2012] ECR, paragraph 27.

11 — See, inter alia, Case 154/80 *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445, paragraph 12; *Naturally Yours Cosmetics* (cited in footnote 2), paragraphs 11 and 12; and *Lebara* (cited in footnote 10), paragraph 27.

relationship.¹² In the present case, an agreement should therefore have existed between the mail order companies and the agents, under which payment of ‘commissions’ was made dependent on a supply by the agents. On the other hand, it is not possible to infer further conditions – for example an obligation on the agents to act¹³ – from the case-law.

2. Supply chain

35. If, on the other hand, there were a supply chain, the agent’s own purchases and third-party purchases would fundamentally have to be treated in the same way. A supply chain may be taken to exist if the sole purchasers for all sales of goods by the mail order companies were the agents, who in turn sold on to the third-party customers independently, as is argued by Grattan. A supply chain would also have to be taken to exist under Article 5(2)(c) of the Second Directive¹⁴ if the agents acted for the mail order companies in the context of a sales commission, as the Commission has rightly pointed out.

36. On the basis of the equal treatment of an agent’s own purchases and third-party purchases, questions relating to the allocation of credits to third-party purchases or an agent’s own purchases would not arise if there were a supply chain. In that case the ‘commissions’ could only be a misleadingly named general price reduction, which was effected only indirectly, however, by means of a credit and payment by cheque or offsetting against other purchases.

37. It should nevertheless also be examined in this situation whether the ‘commissions’ constituted payment for a supply made by the agents to the mail order companies. As I have already stated,¹⁵ in this event even the repayment of consideration cannot ultimately lead to a reduction of the basis of assessment.

3. Interim conclusion

38. If the principles of case-law described above were not to allow the referring tribunal to assess the question whether in the main proceedings the effective repayment of consideration should be taken to exist, there would be the option, if necessary, of referring another question for a preliminary ruling in that regard. However, for the purposes of answering the question at issue, I will assume hereinafter that the ‘commission’ paid by the mail order companies to agents for third-party purchases should be regarded as repayment of consideration for purchases of goods by the agents and that that repayment did not constitute payment for a supply made to the mail order companies.

B – Reduction of the basis of assessment after the supply

39. The referring tribunal asks whether, in the situation described, a taxable person has a directly effective right, under Article 8(a) of the Second Directive or under the principles of fiscal neutrality and of equal treatment, to treat the basis of assessment of a supply of goods as retrospectively reduced. Such a retrospective reduction of the basis of assessment on the basis of the ‘commissions’ paid would then result in a reduced tax debt, which would substantiate Grattan’s claims for repayment which are contested in the main proceedings.

12 — See the Opinion of Advocate General Stix-Hackl in Case C-380/99 *Bertelsmann* [2001] ECR I-5163, point 32.

13 — See the judgment of the Court of Appeal in *Commissioners of Customs and Excise v Littlewoods Organisation plc and Others* [2001] EWCA Civ 1542, paragraph 72.

14 — See, in this regard, my Opinion in Case C-305/03 *Commission v United Kingdom* [2006] ECR I-1213, point 67, in relation to the identically worded Article 5(4)(c) of the Sixth Directive.

15 — See above, point 33.

1. Interpretation of the Second Directive

40. A taxable person's tax debt results from a chargeable event occurring. In the present case this concerns Article 2(a) of the Second Directive, which makes the supply of goods against payment subject to VAT. The amount of the tax debt follows from application of the rate of tax to the basis of assessment, as is shown by Article 9(1) of the Second Directive. Under Article 5(5) of the Second Directive, the chargeable event occurs at the moment when delivery is effected.

41. The United Kingdom Government has rightly argued that, against this background, the basis of assessment must be determined at the time of delivery. The Court has also made this finding with regard to the similar provision contained in the first subparagraph of Article 10(2) of the Sixth Directive.¹⁶ Under the Second Directive, a taxable person's tax debt therefore arises in an amount derived from the basis of assessment which is to be determined at the time of delivery.

42. Article 8(a) of the Second Directive governs the determination of the basis of assessment. Under that provision, in the case of the supplies of goods at issue in the main proceedings, the basis of assessment is 'everything which makes up the consideration for the supply of the goods'. In accordance with the first paragraph of point 13 of Annex A to the Second Directive, the thus crucial 'consideration' is 'everything received in return for the supply of goods'.

43. The question thus arises, first of all, whether, in determining the basis of assessment at the time of delivery, the consideration includes amounts which the taxable person is to receive, but is subsequently to repay at the request of the other party to the contract.

44. The wording of the abovementioned provisions on the determination of the basis of assessment does not provide any information in this regard. As the Commission has rightly argued, however, the Court's case-law on Article 11A(1)(a) of the Sixth Directive may be used for the interpretation of Article 8(a) of the Second Directive. The two provisions have a similar wording and function.

45. The Court has already ruled with regard to Article 11A(1)(a) of the Sixth Directive, in *Freemans* which concerned a situation similar to that in the present case, that the determination of the basis of assessment does not have to have regard to contractually agreed, but not yet effected, repayments of the consideration.¹⁷ According to the case-law, the situation is different only in the special case¹⁸ where there is a *statutory* obligation to repay parts of the consideration in the context of a prize competition.¹⁹

46. The Court founded its decision in *Freemans* on the principle, repeated in settled case-law on the Second and Sixth Directives,²⁰ that the basis of assessment is the 'consideration actually received'.²¹ Accordingly, it is not convincing for the Commission to argue that compliance with that principle means that subsequent repayments of the consideration must reduce the basis of assessment. The meaning of this principle developed in case-law turns on the time when the basis of assessment is determined. In other words, the crucial factor is how much the taxable person has 'actually received' at the time when the basis of assessment is to be determined. As the wording of Article 11A(1)(a) of the Sixth Directive explains more clearly, this is the amount 'which has been or is to be obtained' by the taxable person at that time, that is to say, the amount which must be paid to him. Consequently,

16 — See Case C-281/91 *Muys' en De Winter's Bouw- en Aannemingsbedrijf* [1993] ECR I-5405, paragraph 16.

17 — See Case C-86/99 *Freemans* [2001] ECR I-4167, paragraphs 27 to 29.

18 — See *Freemans* (cited in footnote 17), paragraph 30.

19 — See Case C-377/11 *International Bingo Technology* [2012] ECR, paragraphs 26 to 29 and the case-law cited.

20 — See, inter alia, *Coöperatieve Aardappelenbewaarplaats* (cited in footnote 11), paragraph 13; Case C-33/93 *Empire Stores* [1994] ECR I-2329, paragraph 18; and *International Bingo Technology* (cited in footnote 19), paragraph 25.

21 — See *Freemans* (cited in footnote 17), paragraph 27.

it makes a difference whether a purchaser is required to pay a reduced purchase price from the outset or whether he must first pay the full purchase price, but can subsequently recover some of the money under certain conditions. For as the Court stated in *Freemans*, it is uncertain whether, in fact, part of the consideration will subsequently be repaid.²²

47. The possibility of repayment of parts of the consideration after the supply has taken place thus has no bearing, under Article 8(a) of the Second Directive, on the determination of the basis of assessment and thus the amount of the tax debt accrued.

48. In addition, the Second Directive does not include any provision which prescribes the modification of a tax debt, once accrued. The situation is different with regard to the deduction of input tax, for which an adjustment procedure is laid down under the second and third subparagraphs of Article 11(3) of the Second Directive. The situation is also different under the Sixth Directive, Article 11C(1) of which provides for a procedure, in respect of the years from 1978, for the subsequent reduction of the basis of assessment and thus of the tax debt that accrues from the occurrence of a chargeable event.

49. The requirement for a subsequent adjustment procedure cannot be read into Article 8(a) of the Second Directive, contrary to the arguments put forward by Grattan and the Commission. It is not permissible to infer from such a procedure later being laid down in Article 11C(1) of the Sixth Directive that it already applied under the Second Directive. The degree of harmonisation under the Second and Sixth Directives is not comparable.

50. The Second Directive was intended, in conjunction with First Directive 67/227/EEC,²³ to replace the different national turnover tax systems with a common system of VAT based on uniform basic rules. The seventh recital in the preamble to the First Directive states that ‘it is necessary to proceed by stages’. The third recital in the preamble to the Second Directive explains that it is possible to accept on a transitional basis ‘certain differences in the procedure for applying the tax in Member States’. The VAT system initially introduced did not therefore yet contain definitive provisions in various respects, and in particular no determination of a uniform basis of assessment, to which the Sixth Directive would later refer in its title. It was therefore not until the Sixth Directive, as the ninth recital in its preamble indicates, that the basis of assessment was harmonised comprehensively.

51. Consequently, the Second Directive does not provide for a retrospective reduction of the basis of assessment and an ensuing reduction of the tax debt by virtue of repayment of the consideration after the time of the supply, which is when the chargeable event occurs. Nor, therefore, can a directly effective right for the taxable person be inferred in this regard from the Second Directive.

2. Principle of fiscal neutrality

52. Furthermore, observance of the principle of fiscal neutrality does not lead to any other conclusion.

53. This principle is admittedly not, contrary to the United Kingdom Government’s submissions, merely a reflection of the principle of equality. In addition to this meaning, the Court also uses the principle of neutrality in the sense of a neutral tax burden, which protects the taxable person, since the common system of VAT is intended to tax only the final consumer.²⁴

22 — See *Freemans* (cited in footnote 17), paragraph 28.

23 — First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14).

24 — See, *inter alia*, *Elida Gibbs* (cited in footnote 2), paragraphs 19 and 23.

54. In this variant of meaning, however, the principle of neutrality has no authority which transcends the legislation.²⁵ It may therefore be used as an aid to interpretation in case of doubt, but may not extend or restrict the provisions of the applicable VAT directive.²⁶ Thus, in particular it cannot compensate for the fact that the Second Directive does not contain any provision comparable to Article 11C(1) of the Sixth Directive.

3. Principle of equal treatment

55. Lastly, in its question the referring tribunal also refers to the principle of equal treatment. However, it is not clear from the request for a preliminary ruling to what extent the principle of equal treatment is supposed to be relevant in the present case.

56. In any event, this principle does not require any equal treatment over time. The different degree of harmonisation of the common system of VAT before and after 1 January 1978 may well result in bases of assessment being determined differently before and after that date. The principle of equal treatment does not require further harmonisation resulting from the Sixth Directive, in the form of Article 11C(1) thereof, to be applicable retrospectively.

V – Conclusion

57. I therefore propose that the question referred by the First-tier Tribunal (Tax Chamber) be answered as follows:

Article 8(a) of Second Directive 67/228/EEC is to be interpreted as meaning that a taxable person does not have a directly effective right to treat the basis of assessment of a supply of goods as retrospectively reduced where, after the time of that supply of goods, the recipient of the supply received a credit from the supplier which the recipient then elected either to take as a payment of money, or as a credit against amounts owed to the supplier in respect of supplies of goods to the recipient that had already taken place.

25 — See the Opinion of Advocate General Bot in Case C-174/08 *NCC Construction Danmark* [2009] ECR I-10567, points 84 to 86.

26 — See Case C-44/11 *Deutsche Bank* [2012] ECR, paragraph 45, with regard to the principle of neutrality in its manifestation as a principle of equal treatment.