Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 3 May 2018 [1]

Case C-153/17

Commissioners for Her Majesty's Revenue and Customs
v
Volkswagen Financial Services (UK) Ltd

(Request for a preliminary ruling
from the Supreme Court of the United Kingdom)

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Articles 168 and 173 — Deduction of input tax — Vehicle hire purchase transactions — Goods and services used for both taxable transactions and exempt transactions — Origin and scope of the right to deduct — Proportional deduction)

Introduction

1. The parties to the main proceedings are in disagreement as to the defendant's right to deduct input value added tax ('VAT') paid on goods and services used for the purposes of its hire purchase transactions. [2]

2. In the context of this dispute, both parties seem to have very good arguments in support of their views. However, it seems to me that this discussion is taking place without seeing what is referred to by the well-known English expression as 'the elephant in the room'. That 'elephant' is the United Kingdom's classification for tax purposes of hire purchase contracts, which is, in my view, incorrect.

3. Under the legislation of that Member State, such contracts are to be treated as two distinct transactions, one being the taxable supply of a vehicle, and the other, an exempt supply of credit. Given that the price of the vehicle charged to the customer must be limited to the exact purchase price of that vehicle, paid by the lessor to the dealer, the amount of output VAT collected is also exactly equal to the input VAT on that vehicle and fully deductible in respect of that supply. The remainder of the lessor's costs, as well as his profit margin, are, on the other hand, covered by the revenue from the exempt supply of credit. The referring court is therefore uncertain as to the correct approach for the deduction of input VAT on the lessor's overhead costs, used to an extent for the purposes of the taxable supply of the vehicle, but which are in fact covered by the revenue from the supply of credit, which, as an exempt transaction, is not subject to output VAT.

1 Original language: French.

2 These are contracts, referred to by different names in different legal systems ('hire purchase' in English, 'location-vente' or 'crédit-bail' in French, the English term 'leasing' being used in a number of systems, including the German and Polish systems), whereby specialist companies purchase capital goods to their customers' specifications and, while retaining ownership of those goods, lease them out to those customers in return for the payment of fees calculated to cover the costs of depreciation of the goods and the financing costs. The contracts usually contain an option for the lessee to purchase the goods leased, which the lessee may exercise at the end of the lease subject to the payment of an amount corresponding to the estimated residual value of the goods.

4. It therefore seems impossible to give a correct response to this question without addressing the issue of the splitting of hire purchase contracts into two distinct transactions, which I very much doubt is consistent with EU legislation on VAT.

Legal framework

EU law

5. The first and second subparagraphs of Article 1(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[3] provide:

'The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.'

6. Article 73 of Directive 2006/112 provides:

'In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, [4] 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. Under Article 135(1)(b) of that directive:

'1. Member States shall exempt the following transactions:

…

(b) the granting and the negotiation of credit and the management of credit by the person granting it;'

8. In accordance with Article 168(a) of Directive 2006/112:

'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;'

3 OJ 2006 L 347, p. 1.

4 Those articles are not relevant to the present case.

9. Finally, according to the first subparagraph of Article 173(1) of that directive:

'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 Articles 168, 169 and 170, 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.'

10. The different methods for calculating the proportion mentioned in that provision ('proportional deduction') are governed by Article 173(2) and Article 174 of Directive 2006/112.

United Kingdom law

11. The provisions transposing Directive 2006/112 into UK law are to be found primarily in the Value Added Tax Act 1994 ('the VAT Act 1994') and the Value Added Tax Regulations 1995 ('the VAT Regulations 1995'). The right to deduct input VAT is governed by Article 26 of the VAT Act 1994 and by Articles 101 and 102 of the VAT Regulations 1995. Notably, Article 102 of the VAT Regulations 1995 allows the Commissioners for Her Majesty's Revenue and Customs ('the tax authority') to adopt a special method of determining the proportional deduction of input VAT for taxable persons performing both taxable transactions and exempt transactions.

12. Under Article 31(1) of the VAT Act 1994, the supplies of goods and services listed in Schedule 9 of that act are exempt. Group 5 concerns financial services, which include:

'2. The making of any advance or the granting of any credit.

…

3. The provision of the facility of instalment credit finance in a hire-purchase, conditional sale or credit sale agreement for which facility a separate charge is made and disclosed to the recipient of the supply of goods.'

According to an explanatory note contained in that schedule, group 5:

'Item 2 includes the supply of credit by a person, in connection with a supply of goods or services by him, for which a separate charge is made and disclosed to the recipient of the supply of goods or services.'

13. In UK law, hire purchase agreements are subject to the Consumer Credit Act 1974. According to the defendant in the main proceedings, UK legislation requires the lessor to disclose separately on the hire purchase agreement, to the lessee, the price of the vehicle, as paid by the lessor to purchase it. Any additional amount charged to the lessee is to be considered as the price of the granting of credit.

Facts, procedure and questions referred for a preliminary ruling

14. Volkswagen Financial Services (UK) Ltd ('VWFS') is a company established in the United Kingdom, which is part of the German group Volkswagen AG. Its activities include, inter alia, hire purchase transactions whereby Volkswagen AG vehicles are supplied to individuals.

15. In that context, VWFS offers various types of contract which may result in the acquisition of ownership of the vehicle by the customer, or simply allow the customer to use the vehicle for a given period. For the purposes of those hire purchase transactions, VWFS purchases vehicles from dealerships and then supplies those vehicles, in its own name, to customers to whom it also provides

certain related services. The consideration paid by the customer under a hire purchase agreement is divided into two parts: the price of the vehicle, which is equal to the price paid by VWFS to the dealership, and the 'finance charges', which include all the other fees and provisions as well as a profit margin.

16. For VAT purposes, those hire purchase agreements are treated as two distinct transactions: a taxable supply of goods and an exempt supply of credit. In the context of the supply of goods, only the price of the vehicle, as paid by VWFS and charged to the customer, is regarded as consideration. That price therefore includes VAT, the amount of which is equal to the input VAT paid by VWFS on the purchase of the vehicle. The remainder of the amount charged to the customer does not include VAT.

17. The input VAT paid by VWFS on the purchase of the vehicles is fully deducted from the output VAT charged to customers. The dispute between VWFS and the tax authority concerns the right to deduct the input VAT on VWFS' various overhead costs in so far as the goods and services in respect of which those costs were incurred have been used for the purposes of VWFS' taxable transactions, namely, supplies of vehicles.

18. According to VWFS, supplies of vehicles to customers and the services directly linked to those supplies necessarily require the use of certain resources, in particular, in the form of the purchase of goods and services which are part of the overhead costs it incurs in running its business. The input VAT paid on those goods and services should therefore be deductible from the VAT payable to the Treasury by VWFS on its taxable transactions, or be refunded if there is no sufficient output VAT. VWFS has therefore proposed a method for the calculation of that deductible proportion of input VAT on its overhead costs. That method is based on the number of output transactions carried out, with each hire purchase agreement counting as two transactions, one of which is taxable. A proportion of the overhead costs is therefore attributed to that taxable transaction relating to a hire purchase agreement.

19. For its part, the tax authority adopted a method for calculating the deductible proportion of VAT on overhead costs, based on the value of the taxable transactions and the exempt transactions. Since the price of the vehicle charged to the customer is excluded from the calculation of the value of the transactions relating to hire purchase agreements,[5] the remaining value of the transactions relating to hire purchase agreements is virtually zero,[6] as is the deductible proportion of VAT on overhead costs.

20. Applying that method of calculating the deductible VAT, the tax authority, by decisions of 16 June and 30 September 2008, set the amount of VAT payable by VWFS.

21. VWFS challenged that decision before the First-tier Tribunal (Tax Chamber) (United Kingdom), which upheld the action brought by VWFS by judgment of 18 August 2011. The tax authority brought an action before the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom). That court delivered a judgment upholding that action on 12 November 2012. VWFS' appeal before the Court of Appeal (United Kingdom) was upheld by the latter, by judgment of 28 July 2015.

5 That price reflects only the value of the vehicle, and the input VAT on the purchase of the vehicle is fully deducted from the output VAT on the same vehicle.

6 That value is zero, with the exception that some payments not included in the price of the vehicle, such as allowances for early payment or option to purchase fees, are considered to relate to taxable transactions.

22. The referring court granted the tax authority permission to appeal on 23 December 2015, and it heard the appeal on 3 November 2016. In the course of considering that appeal, the Supreme Court of the United Kingdom decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Where general overhead costs attributed to hire purchase transactions (which consist of exempt supplies of finance and taxable supplies of cars), have been incorporated only into the price of the taxable person's exempt supplies of finance, does the taxable person have a right to deduct any of the input tax on those costs?

(2) What is the proper interpretation of paragraph 31 of the judgment of 8 June 2000, *Midland Bank* (C-98/98, EU:C:2000:300), and specifically the statement that overhead costs "are part of the taxable person's general costs and are, as such, components of the price of an undertaking's products"?

In particular:

(a) Should this passage be interpreted to mean that a Member State must always attribute some input tax to every supply in any special method adopted under Article 173(2)(c) of Directive [2006/112]?

(b) Is this the case even if the factual circumstances are that the overhead costs are not incorporated in the price of taxable supplies made by the undertaking?

(3) Does the fact that the overhead costs have been actually used, at least to some extent, in making taxable supplies of cars,

(a) entail that some proportion of the input tax on those costs must be deductible?

(b) Is this the case even if the factual circumstances are that overhead costs are not incorporated in the price of the taxable supplies of cars?

(4) Can it be legitimate in principle to ignore the taxable supplies of cars (or their value) for the purposes of arriving at a special method under Article 173(2)(c) of Directive [2006/112]?'

23. The request for a preliminary ruling was received by the Court on 27 March 2017. Written observations have been submitted by VWFS, the United Kingdom Government and the European Commission. The same parties were represented at the hearing on 8 February 2018.

Analysis

Preliminary observations

24. The question of law raised in the reference for a preliminary ruling in this case may be summarised as follows: does a taxable person, who carries out both taxable transactions and exempt transactions which are closely connected to those taxable transactions, have the right to deduct a proportion of the input VAT paid on goods and services used indissociably for the purposes of both the taxable and the exempt transactions, despite the fact that the costs of purchasing those goods and services are not incorporated into the price of taxable transactions, but are covered entirely by revenue from the exempt transactions?

25. That question draws a contrast between two fundamental principles of the VAT system: the principle that any transaction which falls within the scope of the system and is not expressly exempt should be taxed at each stage of the economic cycle until delivery to the consumer, who bears the full burden of that tax, and the principle that that tax must be wholly neutral for all operators other than the consumer, in other words, that operators must only collect tax at the stage (of production or distribution) in which they are involved, without bearing the economic burden thereof.

26. Accordingly, as regards the overhead costs incurred by VWFS in connection with its taxable transactions, the VAT attributable thereto would ordinarily be payable to the Treasury. At the same time, VWFS should be relieved of the economic burden of that VAT. It does not seem to me to be possible to achieve that result in a situation such as that in the main proceedings. Any answer given to the referring court will therefore be flawed from the point of view of the coherence of the VAT system.

27. In my opinion, that contradiction is the result of the incorrect transposition into UK law of the provisions of Directive 2006/112 and the incorrect application of those provisions to hire purchase agreements. Indeed, there are several arguments, stemming from the logic of the VAT system, from the purpose of its provisions and from the case-law of the Court, which show, in my view, that these agreements constitute single transactions that should not be split into several transactions, each of which is treated differently for VAT purposes. Splitting hire purchase transactions in this way is contrary to the principle of fiscal neutrality for taxable persons, reduces tax revenue and distorts competition.

28. In the present Opinion. I shall therefore propose that, in addition to carrying out an analysis of the questions referred for a preliminary ruling as they have been framed, the Court should address the issue of the tax treatment of hire purchase agreements.

29. I am well aware that that analysis is beyond the scope of the request for a preliminary ruling in the present case. It is, nonetheless, within the ambit of the dispute in the main proceedings, the subject matter of which is the taxation of hire purchase transactions carried out by VWFS. According to the Court's settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. With this in mind, the Court may, where necessary, have to reformulate the questions referred to it. Furthermore, the Court may decide to take into consideration rules of EU law to which the national court has made no reference in the wording of its question.[7] In my view, the present case requires such an approach.

The questions referred for a preliminary ruling

30. To recap, by the questions referred for a preliminary ruling, the national court asks, in essence, whether taxable persons making supplies which, for the purposes of applying VAT, are split into two distinct transactions, one of which is taxable and the other exempt, and the overhead costs of those supplies are fully incorporated in the price of the exempt transactions, have the right to deduct part of the input VAT on those overhead costs because they are partly used for the purposes of taxable transactions. As I have already stated in my preliminary observations, that question must be assessed in the light of two fundamental principles of VAT: the principle of fiscal neutrality for taxable persons and the principle of the general application of tax.

7 See, most recently, judgment of 13 October 2016, *M. and S.* (C-303/15, EU:C:2016:771, paragraph 16 and the case-law cited).

Fiscal neutrality and the right to deduct

31. VAT is a tax on consumption. Although taxable persons collect and pay tax to the Treasury, they should not bear the economic burden thereof, as that must be borne entirely by the consumer. That is what fiscal neutrality is in the field of VAT. That neutrality is achieved through two mechanisms: the addition of VAT by a taxable person to the price of its supplies or provisions (input VAT) and the deduction of VAT paid by that taxable person on the price of the goods and services it has purchased for the purposes of its taxable supplies (output VAT). Those mechanisms are repeated at each stage of the production and distribution process (or the provision of services) until reaching the consumer who, not being entitled to deduct VAT, bears the full burden of the tax. If the taxable person is unable to deduct input VAT, the chain is broken, and it is that taxable person which bears the burden. In most cases, that taxable person would then incorporate that tax (as 'hidden' VAT) in the price of its own supplies. Thus, that VAT, which has been incorporated in the value of the goods or services, artificially increases the VAT on goods and services further downstream of the production or distribution chain, creating the cascade effect (or 'tax on tax'), which is common in other systems of indirect taxation, and which is precisely what the VAT system should eliminate. The absence of a right to deduct VAT is therefore detrimental not only to the taxable person in question, but more broadly to all the operators concerned and to the functioning of the whole system. Although that negative effect is assumed in the case of exemptions, [8] it must be avoided as far as possible in the case of taxable transactions.

32. Accordingly, the Court attaches particular importance to a taxable person's right to deduct. According to settled case-law, the right of taxable persons to deduct the VAT due or paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT, is an integral part of the VAT scheme and, in principle, may not be limited. VAT applies to each transaction by way of production or distribution, so each transaction must be the subject of a specific evaluation, independently of the VAT due on previous or subsequent transactions. The goods and services relied on to give entitlement to that right must be used by the taxable person for the purposes of his own taxable transactions, and, as inputs, those goods or services must be supplied by another taxable person. Provided those two conditions are met, a taxable person is, in principle, entitled to deduct input tax. The result of an economic transaction is irrelevant for the right to deduct, provided that the activity itself is subject to VAT. Therefore, if the supply price is lower than the cost price, the deduction cannot be limited in proportion to the difference between the supply price and the cost price, even if the supply price is considerably lower than the cost price, unless it is purely symbolic. [9]

33. The Court has also held that the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to a right to deduct is, in principle, necessary before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement. Nevertheless, the Court has held that a taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the expenditure incurred is part of its overhead costs. Such expenditure does have a direct and immediate link with the taxable person's economic activity as a whole. Conversely, where goods or services acquired by a taxable person are used for the purposes of transactions which are exempt or which do not fall within the scope of VAT, no output tax may be collected and no input tax may be deducted. [10]

8 See, as regards the purpose of exemption for financial transactions, point 78 et seq. of this Opinion.

9 See, most recently, judgment of 22 June 2016, *Gemeente Woerden* (C-267/15, EU:C:2016:466, paragraphs 30 to 35, 40 and 41).

10 See, most recently, judgment of 22 October 2015, *Sveda* (C-126/14, EU:C:2015:712, paragraphs 27, 28 and 32).

34. In the main proceedings, it is common ground that some of the goods and services constituting VWFS' overhead costs are used for the purposes of its taxable transactions, namely, supplies of vehicles. This appears logical because these transactions cannot be carried out without the involvement of VWFS, and that involvement inevitably requires the use of certain resources. It therefore seems clear that VWFS should enjoy the right to deduct the input VAT on its overhead costs in so far as they are used for the purposes of the supplies of vehicles made by VWFS.

35. However, given that those overhead costs are not incorporated in the price of those taxable transactions, but in the price of the exempt supplies of credit, the right to deduct is incompatible with the principle of the general application of tax

The right to deduct, the price of supplies and the general application of tax

36. Under the first and second subparagraphs of Article 1(2) of Directive 2006/112, VAT is a general tax. It is chargeable on each transaction and calculated on the price of the goods or services which are the subject of the transaction. In order for each transaction to be subject to a tax calculated on the price, and for the input tax paid to be deducted at the same time, the costs of earlier transactions must necessarily be incorporated in that price. This is explicitly stated in the second subparagraph of Article 1(2) of Directive 2006/112, which provides that VAT 'shall be chargeable after deduction of the amount of VAT borne directly by *the various cost components*'. [11]

37. The only transactions which are not subject to tax [12] are those which are exempt under the provisions of Directive 2006/112. However, exempt transactions do not, in principle, give rise to the right to deduct. The only exceptions are transactions with a cross-border element: intra-Community supplies (which will, nonetheless, be taxed in the Member State of acquisition), exports and certain transactions in the context of international transport, transactions with international organisations or embassies, etc. However, as regards transactions carried out in the territory of a Member State which do not relate to international trade, Directive 2006/112 does not provide for exemptions with the right to deduct, except in the case of the temporary continuation of certain exemptions already in force in different Member States pursuant to Articles 109 to 129 of that Directive.

38. Although the Court has not explicitly imposed the condition that, in order for taxable persons to exercise the right to deduct, the cost of the goods and services used for the purposes of their taxable transactions must be among the cost components of the output transactions, it is because that requirement stems from the very logic of the VAT system.

39. The Court treats that requirement as self-evident, as rightly noted by the national court in its second question referred for a preliminary ruling. Therefore, according to the case-law, the right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a cost component of the output transactions that gave rise to the right to deduct. [13] The same applies where the expenditure incurred is part of the taxable person's overhead costs and is, as such, a component of the price of the goods or services which it supplies. [14]

40. Of course, the reality in economic activities is that prices may sometimes, in certain specific situations, not cover all costs. Those situations cannot arise as a rule, otherwise the activity would not be profitable. However, they are fairly common, particularly when the activity is just beginning and the amount being invested by an undertaking exceeds the amount of its sales. It would then have the right

11 Emphasis added.

12 Apart from the activities which fall outside the scope of the VAT system, because, for example, they are devoid of pecuniary interest.

13 See, in particular, judgments of 29 October 2009, *SKF* (C-29/08, EU:C:2009:665, paragraph 57 and the case-law cited), and of 22 October 2015, *Sveda* (C-126/14, EU:C:2015:712, paragraph 27).

14 See, in particular, judgments of 29 October 2009, *SKF* (C-29/08, EU:C:2009:665, paragraph 58 and the case-law cited), and of 22 October 2015, *Sveda* (C-126/14, EU:C:2015:712, paragraph 28).

to deduct and the right to recover input VAT on those investments, but that recovery would then be covered by the output VAT on the undertaking's future transactions. An undertaking at the end of its economic life may also be required to sell its goods below their cost price, for example, in the event of liquidation. This is, therefore, merely a temporary situation. A non-profit-making taxable person, such a municipality, may, for various reasons, sell goods for a price lower than the purchase cost.[15] In such situations, the Court fully recognises the taxable person's right to deduct.[16]

41. However, those situations cannot be compared to the situation which has arisen in the present case, where a hybrid taxable person, on a consistent and regular basis, and in accordance with the provisions of the national law of its Member State, finances the costs of its taxable activity with the revenue from an exempt activity. To recognise a right to deduct in such a case would be tantamount to subsidising that taxable person, or even the entire sector of activity, by means of systematic refunds of input VAT, which is deductible in principle, but not in practice, where there is no output VAT.

42. I disagree, in that regard, with the idea, expressed by VWFS in its observations, that the Treasury does not incur any financial loss, because the input VAT in question is paid by VWFS and accounted for by the dealers. That VAT has been paid and accounted for, because it is payable under tax provisions. It is true that the VAT mechanism, which is rather complicated, makes the application of VAT into a 'to-and-fro' between taxable persons and the tax authorities, but at the end of the process, the Treasury must ordinarily always have a positive balance: this is the nature of all taxation. Consequently, if the Treasury must refund input VAT, and this is not compensated by output VAT, it undoubtedly incurs a loss in the form of reduced tax revenue.

43. In its observations, the Commission seeks to explain the situation of VWFS, suggesting that VWFS may be making a loss on its supplies of vehicles, which, being part of a group, it can afford, since the rest of the group can compensate for that loss. Thus, according to the Commission, the proportion of VWFS' overhead costs relating to supplies of vehicles is incorporated in the price of those supplies, which establishes the right to deduct input VAT on that proportion of the overhead costs, in accordance with the case-law of the Court set out above.[17]

44. That artificial proposal is irrelevant for at least two reasons.

45. First, that proposal is contrary to the UK legislation as set out by the parties to the main proceedings, which requires that the price charged to the customer as the price of the supply of the vehicle must be equal to the exact purchase price of the vehicle, paid by the lessor to the dealer, excluding any other costs. The lessor is therefore not at liberty to include an additional amount in the price of the supply, even if he reduces the price of the vehicle to less than the price that he paid himself. The purpose of that requirement is to ensure the proper disclosure of information to the client, and that purpose could not be fulfilled if the lessor manipulated the purchase price of the vehicle.

46. Secondly, the Commission's proposal is factually inaccurate. It is common ground in the main proceedings that VWFS does not make any supply at a loss, but finances the overhead costs attributed to the supply with the revenue from the exempt supply of credit, of which those overhead costs are a component of the price. The fact that VWFS is part of a group has no bearing on the profitability of the hire purchase supplies.

15 That was the case in the main proceedings in the case which gave rise to the judgment of 22 June 2016, *Gemeente Woerden* (C-267/15, EU:C:2016:466).

16 See point 32 of this Opinion.

17 See points 32 and 33 of this Opinion.

47. Ultimately, it appears that granting VWFS the right to deduct input VAT on overhead costs financed with the revenue from exempt transactions would be tantamount to applying to those transactions, in part, an exemption with the right to deduct, which is contrary to the first subparagraph of Article 1(2) of Directive 2006/112.

Conclusion on this part

48. On the one hand, there is no doubt that VWFS uses some of the goods and services constituting its overhead costs for the purposes of its taxable transactions, so it must be able to benefit from the right to deduct the input VAT levied on the purchase of those goods and services. On the other hand, this right to deduct is contrary to other fundamental principles of the VAT system. It therefore seems to me to be impossible to find a proper solution to the problem raised by the questions referred in the present case without more closely analysing the tax treatment, under UK law, of hire purchase agreements in the light of Directive 2006/112.

The classification of hire purchase agreements for the purposes of VAT

49. The provisions of EU law concerning VAT have already been interpreted by the Court on several occasions in the context of hire purchase agreements or leasing contracts. However, most of those cases involved determining whether such a contract should be classified as a supply of goods or a supply of services. As regards the question whether such a contract constitutes a single transaction or several distinct transactions, it is necessary, first, to refer to the Court's case-law on complex transactions.

The case-law of the Court concerning complex transactions

50. Directive 2006/112 contains no specific rules governing complex transactions. On the contrary, it follows from the second subparagraph of Article 1(2) of Directive 2006/112, that each transaction should, in principle, be treated as distinct and independent. However, a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system.[18] This distortion of the VAT system would be even more serious if one of the elements of a complex transaction were exempt, as is the case here.

51. Thus, in a line of case-law which is now well established, the Court reached the conclusion that, in certain circumstances, several formally distinct services, which could be supplied separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent. There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split. In order to determine whether a transaction that comprises several supplies constitutes a single transaction for the purposes of VAT, the Court takes into account the economic objective of that transaction and the interests of the recipients of the supplies.[19]

52. Moreover, the fact that a single price is charged, or that separate prices have been contractually stipulated, has no decisive significance for the purposes of determining whether it is necessary to find that there are two or more distinct and independent transactions or only a single economic transaction. The transaction can thus be regarded as a single transaction, even if separate prices for the different components of that transaction are charged to customers.[20]

18 See judgment of 25 February 1999, *CPP* (C-349/96, EU:C:1999:93, paragraph 29).

19 See, inter alia, judgment of 8 December 2016, *Stock '94* (C-208/15, EU:C:2016:936, paragraphs 26, 27 and 29 and the case-law cited).

20 See, inter alia, judgment of 2 December 2010, *Everything Everywhere* (C-276/09, EU:C:2010:730, paragraphs 29 and 30 and the case-law cited).

53. Therefore, in order to know whether a supply constitutes a single complex transaction or distinct transactions, it is necessary to determine whether each component of that supply is, economically, an end in itself for the customer, or whether his interest relates only to the complex supply in its entirety. [21]

54. Finally, although it is for the national courts to determine whether the taxable person makes a single supply in a particular case and to make all definitive findings of fact in that regard, it is for the Court to provide the national courts with all the guidance as to the interpretation of European Union law which may be of assistance in adjudicating on the case pending before them. [22]

55. As regards hire purchase agreements such as those at issue in the main proceedings, it seems to me, contrary to what the United Kingdom Government and the Commission state in their written pleadings, that, in the light of the case-law cited above, those agreements should be regarded as single transactions, which it would be artificial to split.

56. Neither the obtaining of credit nor the purchase or hire of a vehicle constitutes an end in itself for a lessee who enters into a hire purchase agreement. That lessee is seeking to use the vehicle under conditions which are specific to a hire purchase agreement and which would not be satisfied by any other method of acquiring the vehicle. Accordingly, on the one hand, the lessee receives a new vehicle, the features of which he has specified, because the lessor has purchased the vehicle to meet that customer's requirements. The lessee can then make autonomous and exclusive use of the vehicle (save for a few minor restrictions) and normally, moreover, has the option to acquire ownership of it at the end of the agreement. Those are the features that distinguish a hire purchase agreement from an operating lease. On the other hand, the lessee is not obliged to pay the full price of the vehicle, because payment is made in instalments. Moreover, he does not bear the economic risks arising from ownership of the vehicle, such as the risk of breakdown or accident, or the need to dispose of the vehicle at the end of its useful economic life, because provided that the lessee has not exercised the option to purchase the vehicle, those risks are to be borne by the lessor. Finally, the lessee often benefits from ancillary services, such as vehicle maintenance services. A hire purchase agreement is thus also different from the mere purchase of the vehicle from the point of view of the lessee.

57. I do not, therefore, share the Commission's view that a hire purchase agreement is equivalent to purchasing a vehicle by obtaining a loan for that purpose, which should lead to the conclusion that a hire purchase agreement should be regarded as two distinct transactions, namely a supply of credit and a supply of a vehicle. It is true that a vehicle may be purchased in different ways, including by obtaining a bank loan.

58. However, first of all, that would not involve the same parties, since, according to information provided in its own observations, VWFS does not supply vehicles by any means other than hire purchase agreements and does not provide financing for the purchase of such vehicles other than under such agreements. The customer would, first, have to apply to a credit institution, and then go to a vehicle dealership.

59. Secondly, as the Court has already held, the fact that a third party could, in principle, provide similar services is not decisive for the purpose of classifying the transaction as complex. The possibility that elements of a single supply may, in other circumstances, be supplied separately is inherent in the concept of a single composite transaction. [23]

21 See judgments of 27 October 2005, *Levob Verzekeringen and OV Bank* (C-41/04, EU:C:2005:649, paragraph 24); of 2 December 2010, *Everything Everywhere* (C-276/09, EU:C:2010:730, paragraph 30); and of 27 September 2012, *Field Fisher Waterhouse* (C-392/11, EU:C:2012:597, paragraph 25).

22 See, inter alia, judgment of 8 December 2016, *Stock '94* (C-208/15, EU:C:2016:936, paragraph 30).

23 Judgment of 27 September 2012, *Field Fisher Waterhouse* (C-392/11, EU:C:2012:597, paragraph 26).

60. Thirdly, purchasing a vehicle, with or without a bank loan, does not enable the buyer to use the car under the same, in many respects more favourable, conditions as those granted by a hire purchase agreement, as described in point 56 of this Opinion.

61. Finally, fourthly, according to the recent case-law of the Court,[24] and in accordance with the statements made by the United Kingdom Government in its reply to the written question of the Court in the present case, some types of hire purchase agreements offered by VWFS should be treated not as supplies of goods, but as services, thus more closely resembling operating leases. According to the rationale behind the split, each leasing transaction can be treated as including a supply of credit, in so far as the lease payments made by the lessee normally cover not only the depreciation of the leased asset, but also the owner's other costs, including any financing costs.

62. Moreover, I do not share the Commission's concern that classifying a hire purchase agreement as a single taxable transaction gives rise to an inequality of treatment in relation to supplies of credit, which are exempt. Providers of financial services that are exempt from VAT are in a different situation from that of providers of services such as the supply of vehicles under hire purchase agreements.[25] Taxing them is therefore not an infringement of the principle of fiscal neutrality — quite the opposite, since taxable persons who are taxed may benefit from the right to deduct.[26]

63. The conclusion that a hire purchase agreement must be classified as a single transaction, rather than two distinct transactions, is corroborated by the case-law of the Court concerning the tax treatment of supplies which include the provision of finance.

The case-law concerning supplies which include the provision of finance

64. It is true, as observed by the United Kingdom Government, that the Court has held, in a case concerning a contract for the purchase of land and the construction of a building, that a supplier of goods or services who authorises his customer to defer payment of the price, in return for payment of interest, is in principle making an exempt grant of credit within the meaning of the provisions on VAT.[27] That interpretation is based primarily on the requirement for equal treatment of a buyer who obtains a credit (in the form of deferred payment) from his supplier, and a buyer who obtains a bank loan.[28]

65. However, the risk of such unequal treatment does not appear to be present in the case of hire purchase agreements such as those at issue in the main proceedings. According to the distributive property of multiplication over addition, with non-variable financing costs (in terms of the percentage of the value of the goods financed), the cost to the buyer will be the same whether he finances the purchase of the goods with an exempt loan, and pays VAT on the purchase price, or he pays the price of the goods exclusive of VAT, plus the financing costs, and the VAT is then added to the total cost.[29] In my view, the Court's reasoning in the abovementioned judgment is not, therefore, directly applicable to the present case.

24 See judgment of 4 October 2017, *Mercedes-Benz Financial Services UK* (C-164/16, EU:C:2017:734).

25 Judgment of 2 December 2010, *Everything Everywhere* (C-276/09, EU:C:2010:730, paragraph 31).

26 See, as regards the impact of exemptions on VAT neutrality, points 78 et seq. of this Opinion.

27 Judgment of 27 October 1993, *Muys' en De Winter's Bouw- en Aanemingsbedrijf* (C-281/91, EU:C:1993:855, operative part).

28 Judgment of 27 October 1993, *Muys' en De Winter's Bouw- en Aanemingsbedrijf* (C-281/91, EU:C:1993:855, paragraph 14), and Opinion of Advocate General Jacobs in *Muys' en De Winter's Bouw- en Aanemingsbedrijf* (C-281/91, EU:C:1993:81, points 10 and 11).

29 Let us take, for example, goods at EUR 1 000 exclusive of tax, with VAT at 20% and total financing costs at 30%. In the case of financing by means of a bank loan: the price of goods including VAT is EUR 1 200, financing costs are EUR 360, making a total of EUR 1 560. In the case of hire purchase: the price of goods exclusive of tax, plus financing costs is EUR 1 300, plus EUR 260 VAT, making a total of EUR 1 560. Schematically: (a + ta) + s(a + ta) = (a + sa) + t(a + sa), or a = price of the goods exclusive of tax, t = VAT rate, s = financing costs. These calculations were made by reference to Pardon, J., 'La TVA et les opérations bancaires', *Droit bancaire et financier*, V, 2006, p. 274.

66. Moreover, the case-law has evolved considerably since the abovementioned judgment was delivered. Two judgments seem to be to be particularly relevant.

67. The first is the judgment in *Stock '94*.[30] In that case, the Court held that '[a transaction] providing that an economic operator delivers goods to a farmer and grants him a loan intended for purchasing those goods constitutes a single transaction for the purposes of [Directive 2006/112], in which the supply of the goods is the principal supply. The taxable amount of that single transaction is made up of both the price of those goods and the interest paid on the loans granted to the farmers'.[31] What was at issue in that case was an agricultural cooperation in which an operator granted a loan to farmers, who could use it only to purchase, from that operator, seeds and other resources for agricultural production. The farmers paid, in addition to the price of the goods purchased, interest on the loan granted. The question was, as in this case, whether that service constituted two distinct transactions (a taxable supply of goods and an exempt supply of credit), or a single complex transaction.

68. The Court held, first, that the grant of the loans did not constitute a supply with an independent interest from the perspective of the farmers, inasmuch as those financial resources could not be used freely; secondly, that the operator in question, not having authorisation to act as a credit institution, could not grant loans to the farmers without their being intended for the purchase of goods from that operator[32] and, thirdly, that the supply of goods and the loan pursued the same economic objective.[33] In those circumstances, according to the Court, the supply as a whole constituted a single transaction for the purposes of VAT.

69. In response to a question at the hearing, the Commission stated that it found the judgment 'curious'. However, I do not find it curious at all: the Court simply adopted a functional approach in examining the relationship at issue in order to determine its actual nature.

70. If the Court was able to make such a ruling in a situation where, in addition to the supply of goods, there was a real financial flow between the supplier and the buyer, the same must apply, a fortiori, to the case of a hire purchase agreement, where the only 'flow' is the supply of the vehicle, and where the lessee pays the price of that vehicle using his own funds. Thus, as in the abovementioned judgment, in the hire purchase agreements at issue in the main proceedings, there is no supply of credit which is independent from the supply of the vehicle, the lessor is not offering financing outside the context of hire purchase agreements, and all the elements of those agreements pursue the same economic objective, namely, that of supplying the vehicle under the conditions of a hire purchase agreement. The Court's reasoning in *Stock '94* is therefore fully applicable to the present case.

71. The second is the judgment in *Part Service*,[34] which concerns even more directly hire purchase agreements and the splitting of those agreements into distinct transactions. In that case, the contracts at issue were vehicle leasing contracts split into several transactions, so that the leasing company received from the lessee, as part of a taxable transaction, an amount essentially equal to the purchase price of the vehicle paid to the dealer. The remainder was paid by the lessee to another operator, belonging to the same group as the leasing company, under an insurance and guarantee contract, which is an exempt transaction. Those amounts were subsequently transferred to the leasing company. The Italian tax authority held that, although the different agreements signed by the

30 Judgment of 8 December 2016 (C-208/15, EU:C:2016:936).

31 Judgment of 8 December 2016, *Stock '94* (C-208/15, EU:C:2016:936, first indent of the operative part).

32 This represents a clear reversal of what was held in paragraph 13 of the judgment of 27 October 1993, *Muys' en De Winter's Bouw- en Aannemingsbedrijf* (C-281/91, EU:C:1993:855), according to which the expression 'the granting and the negotiation of credit', used to define the scope of the exemption, is sufficiently broad to include credit granted by a supplier of goods in the form of deferral of payment. According to the judgment of 8 December 2016, *Stock '94* (C-208/15, EU:C:2016:936), such a credit is normally to be treated as ancillary to the supply of the goods and therefore it could not benefit from exemption.

33 Judgment of 8 December 2016, *Stock '94* (C-208/15, EU:C:2016:936, paragraphs 32 to 34).

34 Judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108).

interested parties were contained in separate contracts, they together constituted a single contract concluded between three parties. According to that authority, the consideration paid by the customer for the leasing arrangement had been artificially divided to reduce the taxable amount, as the role of lessor was split between the leasing company itself and the other operator. [35]

72. The Court carried out an analysis of the contracts at issue in the light of its case-law on complex transactions. [36] It pointed out, in particular, that the transactions at issue had the following characteristics:

– the two companies taking part in the leasing transaction were part of the same group;

– the service supplied by the leasing company was subject to a division, the financing element being entrusted to another company to be split into a credit service, an insurance service and a brokerage service;

– the service of the leasing company was therefore reduced to a vehicle rental service;

– the lease payments made by the customer were of an amount which was only slightly higher than the purchase cost of the vehicle;

– that service, considered in isolation, therefore seemed to be economically unprofitable, so that the viability of the business could not be ensured solely by means of contracts concluded with the customers;

– the leasing company received the consideration of the leasing transaction only through the cumulative lease payments made by the customer and the amounts transferred from the other company of the same group. [37]

73. The Court then held that practice to be contrary to the objective of Article 11A(1) of the Sixth Directive, [38] namely the taxation of everything which constitutes consideration received or to be received from the customer. Since the leasing of vehicles under leasing contracts constitutes a supply of services within the meaning of Article 6 of the Sixth Directive, [39] such a transaction is normally subject to VAT, for which the taxable amount is determined in accordance with Article 11A(1) of the Sixth Directive. Accordingly, the anticipated result was the accrual of a tax advantage linked to the exemption, pursuant to Article 13B(a) and (d) of the Sixth Directive, [40] of the services entrusted to the co-contracting company of the leasing company. [41]

74. In *Part Service*, the questions referred for a preliminary ruling were raised from the point of view of the abuse of rights, so the Court did not give a definite response, leaving the assessment of any possible abuse to the referring court. In the case in the main proceedings, VWFS cannot be accused of any abuse because, apparently, the splitting of hire purchase agreements is permitted, if not required, under UK law. The fact remains that the analysis of such a practice, made by the Court in

35 Judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108, paragraphs 8 to 17).

36 Judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108, paragraphs 48 to 53).

37 Judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108, paragraph 57).

38 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), which has been recast by Directive 2006/112. Article 11A(1) of the Sixth Directive is now Article 73 of Directive 2006/112.

39 Now Articles 24 to 29 of Directive 2006/112. It should be noted that certain leasing contracts can be classified as supplies of goods within the meaning of Article 14(2)(b) of Directive 2006/112, which does not change anything in terms of their being subject to tax.

40 Now Article 135(1)(a) and (b) of Directive 2006/112.

41 Judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108, paragraphs 59 to 61).

paragraph 57 of the judgment in *Part Service*,[42] is perfectly applicable to the situation at issue in the main proceedings, except that here, it is not even a matter of two suppliers and two contracts, but a single contract and a single supplier, the split occurring only when the lease payments are disclosed to the lessee. The artificial nature of that split is even more obvious.

75. The insights provided by the judgment cited in the previous paragraph are, in my opinion, perfectly valid in the circumstances of the case in the main proceedings. The fact that the practice is allowed or required under UK law does not alter this conclusion. The Court does not assess the compliance of a practice with the national law of a Member State, but with the provisions of EU law. Accordingly, if it held that splitting a leasing contract into a number of separate transactions was contrary to the principle of taxing the full amount of the consideration received in a transaction, in that it gives rise to an unfair tax advantage in the form of an exemption, that finding applies both to the abusive practices of taxable persons and to the provisions of national law requiring such a split.

76. To conclude this part of my reasoning, it seems to me that the above analysis of the case-law concerning the tax treatment of complex supplies, including, more specifically, leasing contracts, is sufficient for a finding that splitting the hire purchase agreements at issue in the main proceedings into taxable supplies of goods and exempt supplies of credit, whether this is allowed or required under UK legislation, is contrary to the provisions of Directive 2006/112 as interpreted by the Court.

77. Such a treatment of those agreements also appears to me to be contrary to the purpose of the exemption for supplies of credit, provided for in Article 135(1)(b) of Directive 2006/112, and to the principle that exceptions are to be interpreted restrictively.

The purpose of the exemption for supplies of credit

78. The VAT system is based on the general taxation of all goods and services at every stage of production and distribution (or provision of a service). VAT is, however, a tax on consumption, which is to say that the economic burden of the tax is borne at the stage of consumption. At each stage of the economic cycle, that burden is therefore passed on to the next stage, up until the stage of consumption. As a result of the mechanism for deducting input tax, the tax burden relates only to the value added at each stage, and remains neutral for economic operators.

79. Each exemption breaks that chain, thus preventing the proper functioning of the taxation mechanism and introducing distortions of competition resulting from the infringement of the principle of neutrality. Indeed, if goods or services are exempt, the input tax cannot be deducted because there is no output tax. An exempt operator is therefore treated as a consumer and bears the tax burden himself. Accordingly, all VAT exemptions must be interpreted strictly, that is, in such a way as to limit them to the minimum necessary from the point of view of their purpose or the reasons for their adoption.[43]

80. The recitals of Directive 2006/112 do not explain the reasons that led the European Union legislature to exempt financial services, including the granting of credit. Such an exemption exists, however, in most States which have introduced VAT. In the literature, it is generally acknowledged that those services, which relate only to financial movements, are too difficult to tax because of the difficulty in determining the taxable amount.[44]

42 Judgment of 21 February 2008, *Part Service* (C-425/06, EU:C:2008:108).

43 See, as regards the exemption provided for in Article 135(1)(d) of Directive 2006/112, judgment of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 34).

44 See, inter alia, Tait, A., *Value Added Tax. International Practice and Problems*, International Monetary Fund, Washington 1988, pp. 92-100. See also, Parolini, A., *Exemptions in VAT Law — Recent Case Law of the CJEU*, in: Lang, M. (ed.), *CJEU — Recent Developments in Value Added Tax 2015*, Vienna, 2016, p. 285, and Pardon, J., 'La TVA et les opérations bancaires', *Droit bancaire et financier*, V, 2006, p. 274.

81. Such difficulties to not arise in the case of hire purchase agreements. In that type of contract there is, on the one hand, a well-defined service consisting of the supply of the leased goods with, potentially, the option to acquire ownership thereof, and, on the other hand, financial consideration in the form of lease payments and any additional payments. The tax base is, therefore, easy to determine — it consists of all the payments which the lessor obtains from the lessee. The fact that those payments cover a number of the lessor's costs in addition to the cost of purchasing the leased asset, financing costs, overhead costs or the cost of ancillary services, does not change anything because all those costs are incurred in connection with the service of supplying the goods in question.

82. The classification of such a contract, even in part, as a supply of credit goes beyond the necessary scope of the exemption provided for in Article 135(1)(b) of Directive 2006/112 and fails to fulfil the purpose of that exemption. That classification thus infringes the principle of the general application of tax set out in the first subparagraph of Article 1(2) of that directive. The Court, moreover, applied the same reasoning in the judgment in *Velvet & Steel Immobilien*, in which it held that the purpose of the exemption for financial transactions was to alleviate the difficulties connected with determining the tax base and the amount of VAT deductible, and to avoid an increase in the cost of consumer credit. It also held that 'since subjecting the assumption of an obligation to renovate a property to VAT does not present such difficulties, that transaction cannot be exempted'. [45]

83. It should also be noted, in that regard, that the fact that a transaction is classified as a supply of credit under the national law of a Member State is not sufficient, in itself, for that transaction to be granted the exemption provided for in Directive 2006/112. According to the case-law of the Court, the exemptions laid down in Article 135(1) of Directive 2006/112 constitute autonomous concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another. [46]

84. In my opinion, Article 135(1)(b) of Directive 2006/112 therefore does not constitute a sufficient basis for the partial exemption of a hire purchase transaction such as those at issue in the main proceedings.

Conclusion on this part

85. It is, in my view, clear from those considerations that, in the light of the various provisions of Directive 2006/112, as interpreted by the Court, hire purchase transactions such as those at issue in the main proceedings should not be split into distinct supplies of goods and supplies of credit. The partial exemption which results from this split disadvantages the suppliers in question by depriving them of the right to deduct the input VAT on a part of their costs, reduces the tax revenue both in the national budget of the Member State concerned and in the European Union, and may cause distortions of competition if the same supplies are treated in different ways in different Member States. [47]

45 Judgment of 19 April 2007, *Velvet & Steel Immobilien* (C-455/05, EU:C:2007:232, paragraph 24).

46 Judgment of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 33 and the case-law cited).

47 I note, in that regard, for example, that, as it appears from the case which gave rise to the judgment of 19 September 2017, *Commission* v *Ireland* (C-552/15, EU:C:2017:698), providers of vehicle rental or leasing services established in Northern Ireland are in direct competition with providers of the same services established in Ireland.

86. I do not deny the right of the United Kingdom legislature to require hire purchase companies, for reasons of consumer protection, to disclose separately, to the lessee, the amounts relating to the purchase price of vehicles. This way of setting out the price is not, however, decisive and should not lead to those supplies being split for the purposes of VAT, in accordance with the case-law cited in point 52 of this Opinion.[48]

Final observations

87. In my opinion, the only correct answer that can be given to the questions referred in this case is that hire purchase agreements such as those at issue in the main proceedings constitute single complex transactions which must be subject to tax, it being understood that suppliers have the right to deduct all the input VAT on the goods and services used for the purposes of those supplies.

88. Of course, such an approach can be applied fully in the future. As regards past situations, including the dispute in the main proceedings, the problem is more complicated.

89. On the one hand, providers of hire purchase services have benefited from the partial exemption of their supplies as a result of those supplies being split into two distinct transactions, one of which is exempt. On the other hand, since that exemption is contrary to EU law, in the normal course of events, they should have benefited from the right to deduct all the input VAT in relation to those supplies. The question therefore arises whether they should benefit from that right to deduct despite the exemption at issue.

90. Guidance for answering that question can be found in the case-law of the Court. According to the Court, even where an exemption provided for by national law is incompatible with Directive 2006/112, Article 168 of that directive does not permit a taxable person both to benefit from that exemption and to exercise the right to deduct tax.[49] Admittedly, the Court has taken that view with regard to the deduction of input VAT on goods and services used by the taxable person only for the purposes of exempt transactions. However, I think that the same approach should be followed with regard to input VAT on goods and services which, while some are used for the purposes of taxable transactions, are all a component of the price of the exempt transactions. That logic of the VAT system applies in both situations, namely, that the deduction of input taxes is linked to the collection of output taxes.[50]

91. Alternatively, since the provisions of Directive 2006/112 according to which hire purchase services must be treated as single taxable transactions, in particular Article 73, are, in my opinion, unconditional and sufficiently precise for taxable persons to be able to rely on them directly, taxable persons may request that their hire purchase services be taxed in order to be able to benefit from the right to deduct input VAT.[51] It is for the referring court to ascertain whether that is possible in practice in the main proceedings.

48 At the hearing, the parties noted that this obligation arises from Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66). However, first, under Article 2(2)(d) of that directive, the directive does not apply to 'hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement'. According to the information provided by the United Kingdom Government in response to a written question from the Court, the types of hire purchase agreements used by VWFS do not contain an obligation to purchase, but only an option to purchase. Secondly, although the obligation in question could be inferred from Article 10(2)(e) of Directive 2008/48, the obligation laid down there in concerns the provision of information to the lessee, which cannot determine the tax treatment of the supply.

49 Judgment of 28 November 2013, *MDDP* (C-319/12, EU:C:2013:778, paragraph 45).

50 Judgment of 28 November 2013, *MDDP* (C-319/12, EU:C:2013:778, paragraph 43).

51 See judgment of 28 November 2013, *MDDP* (C-319/12, EU:C:2013:778, paragraphs 47 and, by analogy, 56, second and third subparagraphs).

Conclusion

92. In the light of all of the foregoing, I propose that the Court should answer the questions referred for a preliminary ruling by the Supreme Court of the United Kingdom as follows:

The provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that hire purchase agreements such as those at issue in the main proceedings constitute single complex transactions which are subject to tax, the suppliers in question having the right to deduct all the input value added tax (VAT) on the goods and services used for the purpose of those supplies.

Taxable persons who have benefited from the partial exemption of those transactions under national law do not have the right to deduct the input VAT levied on the goods and services used for the purposes of those transactions, the cost of which has been incorporated into the price of the exempt transactions. It is for the referring court to ascertain whether those taxable persons may request the full taxation of those transactions in order to be able to benefit from the right to deduct.