Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

8 September 2022*

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 2(1), Article 9(1), Article 167 and Article 168(a) – Deduction of input tax – Definition of 'taxable person' – Holding company – Expenditure linked to a shareholder contribution in kind to its subsidiaries – No contribution of expenditure to the general costs – Subsidiaries' activities largely tax-exempt)

In Case C-98/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 23 September 2020, received at the Court on 15 February 2021, in the proceedings

Finanzamt R

v

W GmbH,

THE COURT (Seventh Chamber),

composed of J. Passer, President of the Chamber, A. Prechal (Rapporteur), President of the Second Chamber, and N. Wahl, Judge,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– W GmbH, by M. Dietrich and N. Penner, Rechtsanwälte,

– the German Government, by J. Möller and P.-L. Krüger, acting as Agents,

– the European Commission, by R. Pethke and V. Uher, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 March 2022,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 167 and Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between Finanzamt R (Tax Office R, Germany) and W GmbH concerning the refusal to allow W to deduct input value added tax (VAT) relating to services which enabled that company to supply, as a shareholder contribution, services to its subsidiaries which themselves supply services, which are largely exempt from VAT.

Legal context

European Union law

3 Article 2(1) of the VAT Directive provides:

'The following transactions shall be subject to VAT:

…

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

…'

4 Article 9(1) of that directive provides:

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

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

5 Under Article 167 of that directive:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

6 Article 168 of the directive provides:

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

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

…’

German law

7 Paragraph 2 of the Umsatzsteuergesetz (Law on turnover tax) of 21 February 2005 (BGBl. 2005 I, p. 386), in the version applicable to the dispute in the main proceedings (‘the UStG’), is worded as follows:

‘(1) A trader is any person who carries out a commercial or professional activity independently. An undertaking comprises the whole of a trader’s commercial or professional activity. A commercial or professional activity means any permanent activity carried out for the purpose of obtaining income, even where there is no intention to make a profit and, in the case of a group of persons, even if that group carries out its activity in relation only to its members.

(2) A commercial or professional activity is not carried out independently:

1. if natural persons are, individually or as a group, integrated into an undertaking such that they are obliged to follow the instructions of the trader,

2. if the overall architecture of the actual links shows that a legal entity is financially, economically and organisationally integrated into the undertaking of the controlling company (tax group). The effects of the tax group are limited to internal supplies between the branches of the undertaking located in the country. These branches are to be treated as a single undertaking. …’

8 Paragraph 15 of the UStG, headed ‘Deduction of input tax’, provides, in subparagraph 1 thereof:

‘The trader may deduct the following as input tax:

1. the tax lawfully payable on deliveries and other services provided to his or her business by another trader. …’

9 Paragraph 42 of the Abgabenordnung (Tax Code) provides:

‘(1) It shall not be possible to circumvent tax legislation by abusing arrangements that are provided for under the law. Where the conditions set by a provision of tax law to prevent tax avoidance are satisfied, the legal consequences shall be determined under that provision. In the other cases where an abuse, within the meaning of subparagraph 2, is established, the tax shall be charged under the same conditions as under the legal arrangement appropriate to the economic transactions.

(2) An abuse shall exist where an inappropriate legal arrangement is selected which, in comparison with the consequences of an appropriate legal arrangement, confers a tax advantage on the taxable person or on a third party. This rule shall not apply if the taxable person establishes the existence of non-tax reasons behind the selection of the arrangement, which should be taken into consideration in view of his or her overall situation.'

The main proceedings and the questions referred for a preliminary ruling

10 W's activity consists in the acquisition, management and use of properties, as well as the design, remediation and realisation of building projects.

11 In 2013, W held shares in X GmbH & Co. KG and Y GmbH & Co. KG, whose activity consists in the construction of properties and the sale of individual dwelling units, largely exempt from VAT.

12 More specifically, in the year at issue, W held 94% of the shares of X, the remaining 6% being held by Z KG.

13 By an addendum to X's company contract of 31 January 2013, Z and W agreed to make a shareholder contribution to X. That contribution consisted, for Z, in the payment of a premium of EUR 600 000 and, for W, in the supply – in proportion to its shareholding, that is, at least EUR 9.4 million, and free of charge – of architectural services, static calculation services, planning services for heat and sound insulation, energy supply and network connection services, general contractor services, fit-out services and marketing services for two properties to be built by X.W performed those services partly using its own staff or equipment and partly by procuring goods and services from other undertakings.

14 By another contract of the same day concluded between W and X, it was agreed that W would supply, in exchange for payment, accounting and management services to X in connection with the construction of the two properties referred to in paragraph 13 above. Those services included the recruitment and dismissal of staff, the purchase of equipment, the preparation of annual accounts and the drafting of tax returns and their filing with the tax authorities. They excluded the services that W was to supply as a shareholder contribution.

15 In addition, in 2013, W held 89.64% of the shares of Y, the remaining shares being held by P I GmbH.

16 By an addendum to Y's company contract concluded on 10 April 2013, it was agreed that P I and W would make a shareholder contribution to Y. The contribution made by P I consisted in the payment of EUR 3.5 million and that made by W consisted in the supply of services similar in nature to those supplied to X and described in paragraph 13 of the present judgment, free of charge and in proportion to its shareholdings, that is, at least EUR 30.29 million, in connection with the construction of a third property. W performed those services partly using its own staff or equipment and partly by procuring goods and services from other undertakings.

17 By another contract of the same date, W and Y agreed that, in the context of the construction project of that third property, W would supply to Y, in exchange for payment, accounting and management services similar to those supplied to X and described in paragraph 14 of the present judgment.

18 In its VAT returns for 2013, W deducted the whole of the input VAT paid in respect of the services in question. The German tax authorities considered that the shareholder contributions made by W to X and to Y had to be classified as non-taxable activities since they had not served to earn income for the purposes of the VAT legislation and therefore were not attributable to W's commercial activity. The input VAT amounts paid in connection with those activities were not therefore deductible.

19 After its complaint against that denial of deduction was rejected, W brought an action before the Niedersächsisches Finanzgericht (Finance Court, Lower Saxony, Germany), which upheld that action by decision of 19 April 2018. According to that court, the supply of accounting and management services by W to X and to Y entailed direct or indirect involvement in the management of those companies in exchange for payment. Having regard to that involvement by way of accounting and management services, the supply of separate services, corresponding to the shareholder contribution in kind, to the subsidiaries was part of the commercial activity of active share management. That analysis flowed from the Court's case-law, according to which benefits in kind which served to collect funds paid to subsidiaries as shareholder contributions are part of the commercial activity of holding companies. As a result, the said court considered that W was able to deduct in full the turnover tax chargeable on the services it supplied to X and to Y as its shareholder contribution. In addition, that court specified that there had been no abuse of rights and that there were non-tax reasons warranting the arrangement chosen for the transaction in question.

20 R Tax Office lodged an appeal on a point of law (*Revision*) against that decision before the Bundesfinanzhof (Federal Finance Court, Germany) in support of which it claims inter alia that the services at issue – namely those linked to the shareholder contributions in kind provided to the subsidiaries, which must be distinguished from the management and accounting services supplied in exchange for payment – are not remunerated and do not therefore constitute an exchange of services. Moreover, it alleged that the transactions carried out by W resulted from an abuse of the arrangements provided for by the legislation for the deduction of VAT.

21 In the order for reference, the Bundesfinanzhof (Federal Finance Court) observes that W, on the one hand, and X and Y, on the other hand, do not form a tax group within the meaning of Paragraph 2(2) of the UStG.

22 In addition, the referring court considers that, because W provided accounting and management services to its subsidiaries in exchange for payment and was thus involved in the management of its subsidiaries, it was entitled, despite its status as a holding company, to obtain, in principle, a deduction in full of the tax paid in respect of the input services it obtained. It recalls, in that connection, that it is apparent from the Court's case-law that a taxable person also has a right to deduct 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 costs of the services in question are part of that taxable person's general costs and are, as such, components of the price of the goods or services which he or she supplies. The referring court infers that expenditure incurred by a holding company involved in the management of a subsidiary for the various services it has obtained in acquiring a shareholding in that subsidiary is part of the taxable person's general costs and is, as such, a component of the price of its services, therefore maintaining, in principle, a direct and immediate link with the holding company's economic activity as a whole.

23 However, the referring court questions whether it is impossible for W to deduct the input VAT because it obtained the input services in order to supply them to the subsidiaries which carry out tax-exempt transactions such that those input services have a direct and immediate link with exempt output transactions.

24 In the first place, the referring court thus questions whether the input services that W transferred to X and to Y as shareholder contributions may be regarded as having been obtained by W for its business and whether the associated costs are part of its general costs, that is, cost components of its input accounting and management transactions for its subsidiaries. That uncertainty is due to the judgment of 8 November 2018, *C&D Foods Acquisition* (C-502/17, EU:C:2018:888, paragraph 37 et seq.), from which the referring court infers that, for the purpose of the deduction of the input VAT paid by a holding company, the direct and exclusive reason for that transaction must be the taxable economic activity of that company, or that transaction must constitute the direct, permanent and necessary extension of that activity. Accordingly, without a direct and immediate link between the expenditure related to the input transactions and the taxable economic activity of the holding company, that expenditure cannot be part of W's general costs and cannot be components of the price of the goods or services supplied by W. The referring court also refers to the judgments of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments* (C-132/16, EU:C:2017:683); of 3 July 2019, *The Chancellor, Masters and Scholars of the University of Cambridge* (C-316/18, EU:C:2019:559); and of 1 October 2020, *Vos Aannemingen* (C-405/19, EU:C:2020:785). Although the cases giving rise to those judgments do not concern holding companies, they confirm the need for a direct link between the input services and the taxed transactions of the company concerned in order to allow a deduction of input VAT. However, in the present case, the referring court considers that the input services could be obtained not for W's business and its taxed transactions, but for those of its subsidiaries. Those services would, as a result, have a direct and immediate link with the largely tax-exempt activities of those subsidiaries.

25 In the second place, if it were to be held that the tax paid on the input services is nevertheless deductible, the referring court questions whether the interposition of a parent company in obtaining the subsidiary's services for the purpose of deducting input tax, to which it is in principle not entitled, does not constitute an abuse of rights. It recalls, in that regard, that, at national level, there is no possibility of a parent company obtaining, by its input interposition, a right to deduct the input tax to which it would not be entitled had it obtained those services directly. The mechanism in this case is identical from an economic standpoint to that of an input interposition such that such abuse could be considered to have arisen. In addition, it considers that if such an arrangement were not to be regarded as abusive, there is a risk that there would be a wave of interpositions from holding companies in all obtentions of services by taxable persons.

26 In those circumstances, the Bundesfinanzhof (Federal Finance Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Under circumstances such as those in the main proceedings, is Article 168(a)[, read] in conjunction with Article 167 of [the VAT Directive,] to be interpreted in such a way that a managing holding that supplies taxable output services for subsidiaries is entitled to deduction, also for services that it obtains from third parties and contributes to the subsidiaries in return for the grant of a share in the general profit, even though the obtained inputs are not directly and immediately linked to the holding's own transactions but instead

to the (largely) tax-exempt activities of the subsidiaries, the obtained input services are not included in the price of the taxable transactions (supplied to the subsidiaries), and they do not form part of the general cost components of the holding's own economic activity?

(2) If Question 1 is answered in the affirmative: Does it constitute abuse of rights in the sense of the case-law of the Court …, if a managing holding is involved as an "intermediary" in obtaining services for subsidiaries in such a way that it obtains services itself for which the subsidiaries would have no entitlement to deduction if services were obtained directly, contributes these services to the subsidiaries in return for participation in its profit, and then claims full deduction on the basis of the inputs on the grounds of its position as a managing holding; or can acting as an intermediary in this way be justified on grounds that fall outside the scope of tax law, even though full deduction is in itself in conflict with the system and would result in a competitive advantage for holding structures over single-tier companies?'

The application to reopen the oral part of the procedure

27 Following the delivery of the Advocate General's Opinion, W, by document lodged at the Court Registry on 12 April 2022, applied for the oral part of the procedure to be opened, pursuant to Article 83 of the Rules of Procedure of the Court of Justice. As the oral part of the procedure had been closed following the delivery of the Advocate General's Opinion, that application must be understood as seeking the reopening of that part of the procedure pursuant to that article.

28 In support of its application, W submits, in essence, that the Advocate General's Opinion, points 39 to 43 and 55 to 62 thereof in particular, failed to state a position on certain matters that warrant debate between the parties or state a position on certain matters that had not been debated between the parties. Those omissions and position statements justify the holding of a hearing.

29 In that regard, it should be noted that, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (judgment of 22 November 2018, *MEO – Serviços de Comunicações e Multimédia*, C-295/17, EU:C:2018:942, paragraph 25 and the case-law cited).

30 It should also be recalled that neither the Statute of the Court of Justice of the European Union nor the Rules of Procedure makes provision for interested parties to submit observations in response to the Advocate General's Opinion (judgment of 25 October 2017, *Polbud – Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph 23 and the case-law cited). As a consequence, the fact that a party disagrees with the Advocate General's Opinion, irrespective of the questions examined in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgments of 25 October 2017, *Polbud – Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph 24, and of 29 November 2017, *King*, C-214/16, EU:C:2017:914, paragraph 27 and the case-law cited).

31 By its arguments, W seeks to respond to the Advocate General's Opinion by calling into question his analysis concerning the first question referred.

32 It is true that, pursuant to Article 83 of its Rules of Procedure, the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

33 However, the omissions and position statements challenged by W all relate to matters which W and the other parties had the opportunity to assess during the written part of the procedure. No truly new matter was raised in the Advocate General's Opinion.

34 In those circumstances, the Court, after having heard the Advocate General, considers that it has all the necessary information available to it in order to answer the questions asked by the referring court.

35 Accordingly, there is no need to order that the oral part of the procedure be reopened.

Consideration of the questions referred

The first question

36 By its first question, the referring court asks, in essence, whether Article 168(a) of the VAT Directive, read in conjunction with Article 167 thereof, must be interpreted as meaning that a holding company which carries out taxable output transactions in favour of subsidiaries is entitled to deduct the input tax levied on the services that it obtains from third parties and supplies to the subsidiaries in return for the grant of a share in the general profit, where, first, the input services have direct and immediate links not with the holding company's own transactions but with the largely tax-exempt activities of the subsidiaries, second, those services are not included in the price of the taxable transactions carried out in favour of the subsidiaries and, third, the said services are not part of the general costs of the holding company's own economic activity.

37 In order to answer that question, it should be borne in mind that, according to settled case-law of the Court, the right to deduct VAT provided for in Article 167 et seq. of the VAT Directive is a fundamental principle of the common system of VAT and in principle may not be limited. That right is exercisable immediately in respect of all the taxes charged on input transactions (judgment of 5 July 2018, *Marle Participations*, C-320/17, EU:C:2018:537, paragraph 24 and the case-law cited).

38 The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his or her economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject, in principle, to VAT (judgment of 5 July 2018, *Marle Participations*, C-320/17, EU:C:2018:537, paragraph 25 and the case-law cited).

39 It is, however, apparent from Article 168(a) of the VAT Directive that, in order to enjoy a right of deduction, two conditions must be met. First, the person concerned must be a 'taxable person' within the meaning of the directive. Second, the goods or services relied on to confer entitlement

to that right must be used by the taxable person for the purposes of his or her taxed output transactions and, as inputs, those goods or services must be supplied by another taxable person (see, to that effect, judgment of 3 July 2019, *The Chancellor, Masters and Scholars of the University of Cambridge*, C-316/18, EU:C:2019:559, paragraph 23 and the case-law cited).

40 Regarding the first condition, it follows from Article 9 of the VAT directive that a taxable person means any person who independently carries out in any place any economic activity, whatever the purpose or results of that activity. Furthermore, it is clear from Article 9 that the concept of 'economic activity' encompasses any activity of producers, traders or persons supplying services and, more specifically, the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis.

41 It is settled case-law that the mere acquisition and holding of shares in a company do not, in themselves, amount to an economic activity within the meaning of the VAT Directive, conferring on the holder the status of a taxable person, since the mere acquisition of financial holdings in other undertakings does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis. Any dividend yielded by that holding, or benefit as a result of its sale, is merely the result of ownership of the property. Accordingly, a holding company whose sole purpose is to acquire shares in other companies neither has the status of taxable person within the meaning of Article 9 of the VAT Directive nor, therefore, the right to deduct VAT (see, to that effect, judgments of 17 October 2018, *Ryanair*, C-249/17, EU:C:2018:834, paragraph 16, and of 8 November 2018, *C&D Foods Acquisition*, C-502/17, EU:C:2018:888, paragraph 30).

42 It is otherwise for mixed holding companies where the holding is accompanied by direct or indirect involvement in the management of the companies in which the holding has been acquired. According to settled case-law, such involvement of a holding company in the management of the companies in which it has acquired a shareholding constitutes an economic activity within the meaning of Article 9(1) of the VAT Directive where it entails carrying out transactions which are subject to VAT by virtue of Article 2 of that directive. The Court has specified, in that connection, that the term 'involvement of a holding company in the management of its subsidiary' must be understood as covering all transactions constituting an economic activity, within the meaning of the VAT Directive, performed by the holding company for the benefit of its subsidiary, which include but are not limited to the supply of administrative, financial, commercial and technical services (see, to that effect, judgments of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C-108/14 and C-109/14, EU:C:2015:496, paragraphs 20 and 21 and the case-law cited, and of 5 July 2018, *Marle Participations*, C-320/17, EU:C:2018:537, paragraphs 31 and 32). Consequently, for remunerated services subject to VAT coming under that involvement, a mixed holding company is a taxable person, albeit entitled to only a pro rata deduction of input tax (see, to that effect, judgment of 12 November 2020, *Sonaecom*, C-42/19, EU:C:2020:913, paragraph 32 and the case-law cited).

43 In the present case, the file before the Court shows that W's activity was not limited to the acquisition and holding of shares in X and Y, but that it supplied accounting and management services to its two subsidiaries in exchange for payment, which constitute an economic activity within the meaning of the VAT Directive. Consequently, W must be regarded as a taxable person within the meaning of Article 9(1) of the VAT Directive and meets the first of the two conditions set out in paragraph 39 of the present judgment in order to enjoy a right of deduction.

44 Regarding the second condition, it follows from the wording of Article 168 of the VAT Directive that the right to deduct input tax requires the goods and services obtained by the taxable person to be used for the purposes of his or her taxed transactions.

45 In that connection, the Court has held that, before the taxable person is entitled to deduct input VAT, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to the right to deduct is, in principle, necessary. The right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them is a component of the price of the output transactions giving rise to the right to deduct (see, to that effect, judgment of 12 November 2020, *Sonaecom*, C-42/19, EU:C:2020:913, paragraph 41 and the case-law cited).

46 However, 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 costs of the services in question are part of his or her general costs and are, as such, components of the price of the goods or services which he or she supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole (see, to that effect, judgment of 12 November 2020, *Sonaecom*, C-42/19, EU:C:2020:913, paragraph 42 and the case-law cited).

47 In either case, it is necessary that the cost of the input goods or services be incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his or her economic activities (see, to that effect, judgment of 3 July 2019, *The Chancellor, Masters and Scholars of the University of Cambridge*, C-316/18, EU:C:2019:559, paragraph 27 and the case-law cited).

48 On the other hand, where goods or services acquired by a taxable person are used for purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted (judgment of 17 October 2018, *Ryanair*, C-249/17, EU:C:2018:834, paragraph 29 and the case-law cited).

49 The Court has further specified that the existence of such a link between transactions must be assessed in the light of the objective content of those transactions. More specifically, it is necessary to consider all the circumstances surrounding the transactions concerned and to take account only of the transactions which are objectively linked to the taxable person's taxable activity (see, to that effect, judgment of 17 October 2018, *Ryanair*, C-249/17, EU:C:2018:834, paragraph 28 and the case-law cited). To that effect, the Court has held that account must be taken of the actual use of the goods and services purchased by the taxable person (see, to that effect, judgment of 12 November 2020, *Sonaecom*, C-42/19, EU:C:2020:913, paragraph 66) and of the exclusive reason for the transaction in question, since that reason must be regarded as a criterion for determining the objective content (judgment of 8 November 2018, *C&D Foods Acquisition*, C-502/17, EU:C:2018:888, paragraph 37 and the case-law cited).

50 In the present case, it is apparent from the file before the Court that W obtained static calculation services, planning services for heat and sound insulation, energy supply and network connection services, general contractor services, fit-out services and marketing services in order to fulfil its obligations relating to shareholder contributions to its subsidiaries.

51 In order for W to be able to deduct the VAT paid on those input services, it falls, in accordance with the case-law recalled in paragraphs 45 and 46 of the present judgment, to the referring court to verify either that those services have a direct and immediate link with the output transactions of that company giving rise to a right to deduct or that they are part of its general costs, such that they constitute components of the price of the goods or services which it supplies.

52 Regarding the existence of a direct and immediate link with W's output transactions, it must be pointed out that the input services listed in paragraph 50 of the present judgment are not used by W to be able to offer its output accounting and management services including the recruitment and dismissal of staff, the purchase of equipment, the preparation of annual accounts and the drafting of tax returns and their filing with the tax authorities. It follows that the expenditure incurred by W to obtain those input services cannot be regarded as being part of the components of the price of its taxed output services giving rise to a right to deduct.

53 As to whether the input services obtained by W and listed in paragraph 50 of the present judgment are part of W's general costs, such that they constitute components of the price of the goods or services which it supplies and therefore have a direct and immediate link with its economic activity as a whole, it must be stated that those services are the object of W's shareholder contributions to its subsidiaries X and Y. As the Advocate General also indicated in point 58 of his Opinion, these are not, therefore, expenditure which W needs to incur to acquire shares, but expenditure which itself constitutes the very object of W's shareholder contribution to its subsidiaries. Such a contribution from a holding company in favour of its subsidiaries, whether in cash or in kind, comes under holding of shares which, as is set out in paragraph 41 of the present judgment, does not amount to an economic activity within the meaning of the VAT Directive and does not therefore give rise to a right to deduct. The exclusive reason for the transaction in question is a shareholder contribution from W.

54 Furthermore, when the actual use of the services obtained by W is taken into account, it must be recalled that W has claimed that those services were a shareholder contribution in kind and that, to that end, it had to transfer them free of charge to its subsidiaries for them to use them for their transactions. The fact that those services are intended to be used by W's subsidiaries establishes a direct link with the transactions of those subsidiaries and confirms that there is no direct and immediate link with W's economic activity. The finding that the said services have a direct link with the activities of those subsidiaries is not called into question by the fact that they were transferred by W to its subsidiaries, since it is necessary to take into account the actual use of those services.

55 As is stated in paragraph 38 of the present judgment, the deduction system is intended to relieve the trader entirely of the burden of the VAT payable and paid in the course of all his or her economic activities. Accordingly, the Court has found that no right to deduct can arise from expenses linked not to transactions carried out by the taxable person but to transactions carried out by a third party (see, to that effect, judgment of 1 October 2020, *Vos Aannemingen*, C-405/19, EU:C:2020:785, paragraph 38). The fact that that finding was made in the context of a case which did not concern a holding company is, contrary to what W argues, irrelevant since it corresponds to a rule which is applicable generally to the right to deduct. As it is apparent from the actual use of the services obtained by W that they are linked directly to its subsidiaries' transactions, that link precludes the grant of a right to deduct to W in respect of those services.

56 The objective content of the transaction therefore reveals that there is no direct and immediate link between the costs of the services obtained by W and its economic activity. Those costs are not part, as general costs, of the components of W's management and accounting services.

57 That conclusion cannot be called into question by the circumstance put forward by W that it is only thanks to its shareholder contributions that its subsidiaries are able to maintain their own activities and, accordingly, need its accounting and management services. Assuming that those circumstances are established, they do not demonstrate a direct and immediate link between the services forming the object of those contributions and W's economic activity. The objective behind acquiring the input services was to permit a shareholder contribution which could not be regarded as a transaction the exclusive and direct reason for which was W's economic activity, that is, the supply to its subsidiaries of accounting and management services subject to VAT.

58 Having regard to the foregoing considerations, the answer to the first question is that Article 168(a) of the VAT Directive, read in conjunction with Article 167 thereof, must be interpreted as meaning that a holding company which carries out taxable output transactions in favour of subsidiaries is not entitled to deduct the input tax levied on the services that it obtains from third parties and supplies to the subsidiaries in return for the grant of a share in the general profit, where, first, the input services have direct and immediate links not with the holding company's own transactions but with the largely tax-exempt activities of the subsidiaries, second, those services are not included in the price of the taxable transactions carried out in favour of the subsidiaries and, third, the said services are not part of the general costs of the holding company's own economic activity.

The second question

59 In the light of the answer given to the first question, there is no longer any need to answer the second question.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 167 thereof,

must be interpreted as meaning that:

a holding company which carries out taxable output transactions in favour of subsidiaries is not entitled to deduct the input tax levied on the services that it obtains from third parties and supplies to the subsidiaries in return for the grant of a share in the general profit, where, first, the input services have direct and immediate links not with the holding company's own transactions but with the largely tax-exempt activities of the subsidiaries, second, those services are not included in the price of the taxable transactions carried out

in favour of the subsidiaries and, third, the said services are not part of the general costs of the holding company's own economic activity.

[Signatures]