JUDGMENT OF THE COURT (Fourth Chamber)

11 December 2008 *

In Case C-371/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Vestre Landsret (Denmark), made by decision of 1 August 2007, received at the Court on 3 August 2007, in the proceedings

Danfoss A/S,

AstraZeneca A/S

v

Skatteministeriet,

THE COURT (Fourth Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, T. von Danwitz, R. Silva de Lapuerta, G. Arestis and J. Malenovský, Judges,

* Language of the case: Danish.

Advocate General: E. Sharpston,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 25 June 2008,

after considering the observations submitted on behalf of:

— Danfoss A/S, by H. Hansen and T. Kristjánsson, advokater,

— AstraZeneca A/S, by M. Vesthardt and M. Bruus, advokater,

— the Danish Government, by B. Weis Fogh, acting as Agent, assisted by K. Lundgaard Hansen, advokat,

— the Commission of the European Communities, by D. Triantafyllou, S. Schønberg and S. Maaløe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(2) and the second subparagraph of Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; 'the Sixth Directive').

2 The reference has been made in the course of proceedings brought by the companies Danfoss A/S ('Danfoss') and AstraZeneca A/S ('AstraZeneca') against the Skatteministeriet (Danish Ministry of Taxation) as to how the provision, free of charge, of company canteen meals to business contacts and staff in the course of meetings is to be treated for purposes of value added tax ('VAT').

Legal context

Community legislation

3 The first subparagraph of Article 6(2) of the Sixth Directive provides:

'The following shall be treated as supplies of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible;

(b) supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business.'

4 Article 17(6) of the Sixth Directive provides:

'Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of value added tax. Value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.'

5 The Community rules envisaged in the first subparagraph of Article 17(6) of the Sixth Directive have still to be adopted, since agreement has not been reached within the Council on the expenditure in respect of which an exclusion from the right to deduct VAT may be contemplated.

6 Under Article 1 of Ninth Council Directive 78/583/EEC of 26 June 1978 on the harmonisation of the laws of the Member States relating to turnover taxes (OJ 1978 L 194, p. 16), a number of Member States, including the Kingdom of Denmark, were authorised to implement the Sixth Directive by 1 January 1979 at the latest.

National rules

7 Pursuant to Law No 102 of 31 March 1967, the first Danish Law on VAT ('VAT Law'), supplies of services were, as a general rule, subject to VAT only where this was specifically provided for. Under that law, supplies of services in the course of operation of company canteens were not subject to VAT and, consequently, company canteens were not entitled to deduct VAT on purchases relating to such supplies.

8 Paragraph 16(3) of the VAT Law provided:

'Input tax shall not include tax on purchases, etc. relating to:

(a) food for the company's owners and staff;

…

(e) hospitality and gifts.'

9 Law No 204 of 10 May 1978, which entered into force on 1 October 1978, amended the VAT Law with a view to implementing the Sixth Directive. In keeping with the latter, supplies of goods were made generally subject to VAT. Accordingly, sales of food and drinks by company-run canteens were made subject to VAT. However, the provisions in Paragraph 16(3) of the VAT Law excluding the right to deduct the cost of food and hospitality, which were hitherto applicable, remained unchanged.

10 In the course of November 1978, the Momsnævn (the highest administrative authority in VAT matters) issued a decision that the taxable amount for VAT in the sale of food and drinks in company canteens was, in any event, to be assessed as being no less than a cost price calculated on the basis of the cost of production in the form of the price of the raw materials plus the cost of wages for preparation and sale of the food and drinks and the administration of the canteens ('cost price'). That administrative practice allowed for the full deduction of input VAT relating to the provision of meals. The Momsnævn's decision was embodied in administrative guidelines of 31 October 1983 dealing specifically with canteens ('VAT guidelines — canteens').

11 The VAT Law was revised by Law No 375 of 18 May 1994. The limitation on deductions in Paragraph 16(3) of the VAT Law remained, substantively unchanged, in Paragraph 42(1)(1) and (5) of Law No 375.

12 Law No 375 also introduced into the VAT Law provisions on the taxation of applications pursuant to which applications of services for purposes other than those of the business were to be treated as supplies for consideration. Those provisions, which are set out in Paragraph 5(2) and (3) of the VAT Law, read as follows:

'2. Applications of goods and services for the purposes referred to in Paragraph 42(1) and (2) shall be treated as supplies for consideration, provided that there is full or partial entitlement to deduct in the event of purchase, production, etc., of the goods or services in question.

3. Applications of services for private use of the business's owner or staff or otherwise for purposes other than those of the business shall be treated as supplies for consideration.'

13 However, because of the administrative practice referred to in paragraph 10 above, there was no question of the rules on applications being applied to the provision, free of charge, of meals by company canteens to business contacts and staff in connection with work meetings. Since such meals were regarded as being provided for (fictitious) consideration equivalent to the cost price, the goods or the provision of services

concerned could not be regarded as being 'applied for private use', since the application rule presupposes that no consideration is given for the goods or the provision of services.

14 In three orders made in 1999, the Landsskatteret (National Tax Tribunal) disallowed the administrative practice. It held that, in order not to infringe the Sixth Directive, the general rules in the VAT Law concerning the calculation of the tax on sales had to apply also to company-run canteens, with the result that VAT on sales had to assessed on the consideration actually received, and not on the cost price.

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

15 Danfoss is a limited liability company incorporated under Danish law with headquarters in Denmark and establishments in several countries. The company produces and markets industrial automation products for use in the regulation of refrigeration and heating systems. Food and drinks are sold to staff in its canteens, which are also used for the provision, free of charge, of meals for business contacts during meetings held on company premises and meals for staff in conjunction with work meetings held within the company.

16 AstraZeneca is a pharmaceutical company which, as part of its sale and marketing activities, invites doctors and other health professionals to meetings in order to pass on knowledge relating to epidemiological fields and the positioning and use of its pharmaceutical products. Depending on the starting time and duration of the meetings,

which can range from a few hours to whole days, participants are offered meals free of charge in the company's canteen, which is otherwise used for the sale of food and beverages to staff.

17 The cases in the main proceedings arise from actions brought before the Vestre Landsret (Western Regional Court) by those two companies against the Skatteministeriet concerning the treatment, for VAT purposes, of the provision of meals free of charge by the companies' canteens for business contacts and staff in the course of work meetings. For AstraZeneca, the case relates to the period from 1 October 1994 to 31 December 1999; for Danfoss, it relates to the period from 1 October 1996 to 30 September 2001.

18 With respect to those two companies, the administrative practice which had applied since 1978 meant that VAT was assessed on the basis of the cost price of the provision of those meals. All purchases for the canteens were deemed to be used for purposes of the taxable transactions, with the result that the VAT on those purchases was deductible in full from the canteens' VAT liability.

19 Given that the Landsskatteret disallowed that administrative practice in 1999 and took the view, set out in paragraph 14 of the present judgment, that VAT had to be assessed on the actual consideration received rather than on a cost price, the companies requested a refund of the VAT which had been assessed on the basis of the cost price of the meals provided free of charge to business contacts and staff in the course of work meetings, amounting to DKK 5920848.19 for Danfoss and DKK 825 275 for AstraZeneca.

20 The Skatteministeriet refused those claims for refunds, on the ground that it regarded the provision of meals to business contacts as 'hospitality' covered by the deduction exclusion in Paragraph 42(1)(5) of the VAT Law, and the provision of meals to staff in conjunction with work meetings as 'food' covered by the exclusion in Paragraph 42(1)(1) of that Law.

21 However, since Danfoss and AstraZeneca had deducted in full the VAT on their canteen purchases, in accordance with the abovementioned administrative practice, the Skatteministeriet found that those meals — as an application for private use — had to be subject to VAT, in accordance with Paragraph 5(2) of the VAT Law. According to the Skatteministeriet, given that that tax on application for private use had to be assessed on the cost price, just like VAT under the disallowed administrative practice, it was not appropriate to reimburse the VAT amounts in question.

22 Danfoss and AstraZeneca challenged the existence of a legal basis for the assessment of VAT on the so-called 'applications for private use' and the legality of the limitation of the right to deduct under the VAT Law.

23 In those circumstances, the Vestre Landsret decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the second subparagraph of Article 17(6) of the Sixth VAT Directive to be interpreted in such a way that it is a condition for the refusal by a Member State of a right to deduct [VAT] on supplies used for the provision of meals to business contacts and staff in a company's canteen in connection with meetings that there was, prior to the entry into force of the directive, authority under national

legislation for the deduction refusal in question and that this authority was applied in practice by the tax authorities in such a way that the right to deduct [VAT] on these supplies was refused?

(2) Does it have any significance in answering Question 1 that company-operated canteens were not subject to VAT under the national VAT rules in force in the Member State in question before the implementation of the Sixth VAT Directive in 1978, that the national deduction exclusion rules were not changed by the implementation of the Sixth VAT Directive, and that it was exclusively as a result of the fact that company-operated canteens became subject to VAT on the implementation of the Sixth VAT Directive that the deduction exclusion rule could become relevant to that type of business?

(3) Is an exclusion from the right to deduct "retained" within the meaning of the second subparagraph of Article 17(6) of the Sixth VAT Directive if, from the implementation of the Sixth VAT Directive in 1978 until 1999, as a result of an administrative practice such as that described in the main proceedings there was a right to deduct VAT on the expenditure in question?

(4) Are subparagraphs (a) and (b) of Article 6(2) of the Sixth VAT Directive to be interpreted in such a way that the provision covers the supply of meals by the company free of charge to business contacts in its own canteen in connection with meetings at the company?

(5) Are subparagraphs (a) and (b) of Article 6(2) of the Sixth VAT Directive to be interpreted in such a way that the provision covers the supply of meals by the company free of charge to its staff in its own canteen in connection with meetings at the company?'

The first, second and third questions

24 By its first three questions, which must be examined together, the referring court asks, essentially, whether the 'standstill' clause in the second subparagraph of Article 17(6) of the Sixth Directive allows a tax authority to deny a taxable person the right to deduct input VAT — in the present case, to prohibit the deduction of input VAT in respect of expenditure for food for staff and for hospitality — where that exclusion existed under national law prior to the entry into force of the Sixth Directive but was not in practice applicable to services provided by canteens on the ground that, until 1 October 1978, those services were not subject to VAT, and, from November 1978 onwards, were governed by an administrative practice that made them subject to VAT assessed on their cost price in exchange for the right to deduct input VAT in full.

25 From the outset, it must be recalled that the Sixth Directive entered into force in Denmark on 1 January 1979 (see, to that effect, Joined Cases C-177/99 and C-181/99 *Ampafrance and Sanofi* [2000] ECR I-7013, paragraphs 5 and 9, and Case C-40/00 *Commission* v *France* [2001] ECR I-4539, paragraphs 5 and 9; see also Article 1 of Directive 78/583 and, finally, the second paragraph of Article 176 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1)).

26 It must also be borne in mind that, according to the fundamental principle which underlies the VAT system and which follows in particular from Article 2 of the Sixth Directive, VAT applies to each transaction by way of production or distribution after deduction has been made of the VAT which has been levied directly on transactions relating to inputs. It is settled case-law that the right of deduction provided for in Article 17 et seq. of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. That right must be exercised immediately in respect of all the taxes charged on input transactions. Any limitation on the right to deduct VAT affects the level of the tax burden and must be applied in a similar manner in all the Member States. Consequently, derogations are permitted only in the cases expressly provided for in the Sixth Directive (see, to that effect, Case C-409/99 *Metropol and Stadler* [2002] ECR I-81, paragraph 42 and the case-law cited). Furthermore, provisions

laying down derogations from the principle of the right to deduct VAT, which ensures the neutrality of that tax, must be interpreted strictly (*Metropol and Stadler*, paragraph 59).

27 Article 17(2) of the Sixth Directive sets out in express and specific terms the principle of the taxable person's right to deduct the amounts invoiced as VAT for goods supplied or services rendered to him, in so far as such goods or services are used for the purposes of his taxable transactions (*Metropol and Stadler*, paragraph 43).

28 That principle is none the less subject to the derogation in Article 17(6) of the Sixth Directive, and in particular the second subparagraph thereof. The Member States are thereby authorised to retain their existing legislation as at the date of entry into force of the Sixth Directive in regard to exclusion from the right of deduction until such time as the Council has adopted the provisions envisaged by that article (see Case C-345/99 *Commission* v *France* [2001] ECR I-4493, paragraph 19, and *Metropol and Stadler*, paragraph 44).

29 Since, however, as has been indicated in paragraph 5 of this judgment, none of the proposals put to the Council by the Commission under the first subparagraph of Article 17(6) of the Sixth Directive has been adopted by the Council, the Member States may retain their existing legislation in regard to exclusion from the right to deduct VAT until such time as the Community legislature has established a Community system of exclusions and thus brought about the progressive harmonisation of national VAT legislation. Community law therefore does not yet contain any provision listing the expenditure excluded from the right to deduct VAT (Case C-280/04 *Jyske Finans* [2005] ECR I-10683, paragraph 23 and the case-law cited).

30 As the Court stated in paragraph 48 of *Metropol and Stadler*, the second subparagraph of Article 17(6) of the Sixth Directive contains a standstill clause which provides for the retention of national exclusions from the right to deduct VAT which were applicable before the Sixth Directive entered into force.

31 The Court has explained in this respect that the objective of that provision is to allow the Member States, pending the establishment by the Council of the Community system of exclusions from the right to deduct VAT, to maintain any rules of national law excluding the right to deduct which were actually applied by their public authorities at the date of entry into force of the Sixth Directive (*Metropol and Stadler*, paragraph 48).

32 In this context, where, after the entry into force of the Sixth Directive, the legislation of a Member State is amended in such a way as to reduce the scope of existing exclusions and thereby brings itself into line with the objective of the Sixth Directive, that legislation must be considered to be covered by the derogation provided for by the second subparagraph of Article 17(6) of the Sixth Directive and is not in breach of Article 17(2) thereof (Case C-345/99 *Commission* v *France*, paragraph 22, and *Metropol and Stadler*, paragraph 45).

33 By contrast, national legislation does not constitute a derogation permitted by the second subparagraph of Article 17(6) of the Sixth Directive, and infringes Article 17(2) thereof, if its effect is to increase, after the entry into force of the Sixth Directive, the extent of existing exclusions, thus diverging from the objective of that directive (Case C-40/00 *Commission* v *France*, paragraph 17, and *Metropol and Stadler*, paragraph 46).

34 The same is true of any amendment subsequent to the entry into force of the Sixth Directive which increases the extent of exclusions applicable immediately before that amendment (Case C-40/00 *Commission* v *France*, paragraph 18).

35 The first three questions submitted by the referring court must be answered in the light of those considerations.

36 On the one hand, it must be noted that, in Denmark, until 1 October 1978, the date on which the VAT Law entered into force, the provision of canteen services was not subject to VAT. Since those services were not subject to VAT, the national rules on exclusion of the right to deduct input VAT were not applicable.

37 When, following the amendment to the VAT Law, the provision of services became subject to VAT, the exclusion under the VAT Law of the right to deduct was also not applied to the provision of services by company canteens.

38 Immediately after that legislative amendment, in November 1978, the Momsnævn issued its decision according to which, first, the taxable amount for VAT in the sale of food and beverages in company canteens was, in any event, to be assessed as being no less than the cost price of the services offered and, second, the input VAT was deductible in full.

39 As is evident from the foregoing, when the Sixth Directive entered into force in Denmark the national rules in Paragraph 16(3) of the VAT Law on exclusion of the right to deduct input VAT were not in practice applicable to services provided by company canteens.

40 Therefore, it must be held that, when the Sixth Directive entered into force in Denmark, the deductions exclusion at issue was, for the purposes of the case-law of the Court, not actually applied to the expenditure in respect of company canteen meals provided free of charge to staff and business contacts.

41 On the other hand, as stated in paragraph 33 of this judgment, national legislation is not permitted if its effect is to increase, after the entry into force of the Sixth Directive, the extent of existing exclusions, thus diverging from the objective of that directive.

42 In the present case, it must be held that, by introducing, through an administrative practice that remained in force from November 1978 until 1999, a right to deduct in full input VAT relating to the provision of food and beverages by company canteens, the Danish administration precluded itself from subsequently limiting the right to deduct that tax. In this respect, it must be stressed that, in the context of the second subparagraph of Article 17(6) of the Sixth Directive, it is not only legislative acts in the strict sense that must be taken into account, but also administrative measures and practices of the public authorities of the Member State concerned (*Metropol and Stadler*, paragraph 49).

43 Therefore, by refusing, pursuant to Paragraph 42(1)(1) and (5) of the VAT Law, the right to deduct input VAT in relation to the provision of food and beverages by company canteens, the Skatteministeriet is seeking to increase the extent of the exclusion applicable when the Sixth Directive entered into force in order to cover expenditure in respect of the meals at issue, thereby introducing an amendment which makes Danish legislation diverge from the objective of the Sixth Directive — something which is not permissible under the derogation provided for in the second subparagraph of Article 17(6) of that directive.

44 In the light of the foregoing, the answer to the first three questions must be that the second subparagraph of Article 17(6) of the Sixth Directive must be interpreted as precluding a Member State from applying, after the entry into force of the Sixth Directive, an exclusion from the right to deduct input VAT on expenditure in respect of meals provided by company canteens free of charge to business contacts and staff in the course of work meetings, where, at the moment when the Sixth Directive entered into force, that exclusion was not actually applied to that expenditure because of an administrative practice of taxing services provided by company canteens at cost price in return for the right to deduct input VAT in full.

The fourth and fifth questions

45 By its fourth and fifth questions, which must be examined together, the referring court asks, essentially, whether a company subject to VAT, the canteen of which provides meals free of charge to business contacts or staff in connection with work meetings held on the company's premises, provides services free of charge for purposes other than those of the business that are to be treated as supplies of services for consideration subject to VAT, within the meaning of Article 6(2) of the Sixth Directive.

46 First of all, it must be recalled that Article 6(2) of the Sixth Directive treats certain transactions for which no consideration is actually received by the taxable person as supplies of goods and provisions of services effected for consideration. The purpose of that provision is to ensure equal treatment as between a taxable person who applies goods or services for his own private use or for that of his staff and a final consumer who acquires goods or services of the same type (see, to that effect, Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 35; Case C-258/95 *Fillibeck* [1997] ECR I-5577, paragraph 25; Joined Cases C-322/99 and C-323/99 *Fischer and Brandenstein* [2001] ECR I-4049, paragraph 56; and Case C-412/03 *Hotel Scandic Gåsabäck* [2005] ECR I-743, paragraph 23).

47 As the Danish Government argued in the written observations which it submitted to the Court, in a situation where a taxable person which has been able to deduct VAT on the purchase of goods used for its business applies those goods from its business for its own private use or that of its staff, that person becomes a final consumer of those goods and must be treated accordingly. From that point of view, Article 6(2)(a) of the Sixth Directive prevents the taxable person from escaping payment of VAT when it applies those goods for its own private use and from thus enjoying advantages to which it is not entitled by comparison with an ordinary consumer who buys the goods and pays VAT on them (see, to that effect, Case C-20/91 *de Jong* [1992] ECR I-2847, paragraph 15; *Enkler*, paragraph 33; Case C-415/98 *Bakcsi* [2001] ECR I-1831, paragraph 42; *Fischer and Brandenstein*, paragraph 56; and *Hotel Scandic Gåsabäck*, paragraph 23).

48 Similarly, Article 6(2)(b) of the Sixth Directive prevents a taxable person or members of its staff from obtaining, free of tax, services provided by the taxable person for which a private individual would have had to pay VAT (*Hotel Scandic Gåsabäck*, paragraph 23).

49 It is apparent from the order for reference that, pursuant to the administrative practice in force from November 1978 until 1999, the provision, free of charge, of canteen meals to business contacts and staff in connection with work meetings was regarded as having taken place for consideration corresponding to the cost price of the provision of the

services offered. Therefore, those services could not be considered to be 'applied for private use', since application for private use occurs only where no consideration is paid for the goods or the provision of services (see *Hotel Scandic Gåsabäck*, paragraphs 22 to 24).

50 Given that the Landsskatteret disallowed that practice in 1999, the provision, free of charge, of company canteen meals may, contrary to what Danfoss claims, be considered to be a transaction for which no consideration is actually received and may, consequently, be classified as an application for private use. However, the provision of those meals can be subject to VAT under Article 6(2) of the Sixth Directive only if it is for 'purposes other than those of the business'.

51 It is for that reason appropriate to examine, first, whether the provision, free of charge, of company canteen meals to business contacts in connection with work meetings constitutes a provision of services by the taxable person for purposes other than those of its business.

52 In this respect, it must be recalled that Danfoss is a company that produces and markets, on an international basis, industrial automation products for use, in particular, in the regulation of refrigeration and heating systems. AstraZeneca, for its part, is a pharmaceutical company which seeks primarily to distribute its pharmaceutical products on the Danish market.

53 It is apparent from the order for reference and the observations submitted to the Court by the parties in the main proceedings that Danfoss and AstraZeneca provide meals free

of charge to their business contacts only in connection with meetings that take place on company premises. AstraZeneca invites doctors and other health professionals in order to pass on, in that context, knowledge relating to epidemiological fields and the positioning and use of its pharmaceutical products. Furthermore, the meals at issue are provided to participants in the canteen if that is dictated by the time at which the meeting is held or its duration — which may sometimes be whole days.

54 Such circumstances suggest that the meals at issue are provided for purposes that are not other than those of the business.

55 However, it is true that it can be difficult to monitor effectively whether meals provided by company canteens are provided for business-related or other purposes, especially where those meals are provided in the course of the normal operation of those canteens. Therefore, if objective information shows — and this is something which the national court must establish — that the meals in question have been provided for strictly business-related purposes, the provision of those meals will not come within the scope of Article 6(2) of the Sixth Directive.

56 Second, it is necessary to examine whether the provision of meals free of charge by company canteens to staff of those companies in connection with work meetings is to be classified as a supply of services by the taxable person for the private use of its staff or, more generally, for purposes other than those of its business.

57 It is not contested that, normally, it is the employee who chooses not only what he eats, but also exactly when and, indeed, where he takes his meals. The employer has no say in making those choices, and the employee's only obligation is to be back at his workplace at the agreed times and to carry out his normal work there. Therefore, as the

Commission submitted in the course of the hearing, the provision of meals to staff is generally for private use and falls within the scope of the personal choice of each member of staff, with which the employer does not interfere. It follows that, under normal circumstances, the supply of services in the form of the provision of meals free of charge to staff is for the staff's own private use within the meaning of Article 6(2) of the Sixth Directive.

58 In certain circumstances, however, the requirements of the business may make it necessary for the employer itself to provide meals (see, by analogy to transport provided by the employer to bring employees to their place of work, *Fillibeck*, paragraphs 29 and 30).

59 On the one hand, Danfoss explained, without being contradicted by the Danish Government, that the meals at issue — which represent less than 1% of the meals served to staff, the remainder being provided for consideration — are offered solely in the context of meetings held at the company's headquarters for employees from several countries. As Danfoss submitted at the hearing, the company's interest in providing meals and beverages to its employees in the particular context of company meetings lies in the fact that it allows the company to organise those meals in a manner that is both practical and efficient, by exercising control over where, when and with whom those working lunches take place.

60 It must be acknowledged that, for the employer, ensuring the provision of meals to its employees allows it, in particular, to limit the reasons for which meetings are interrupted. Therefore, the fact that the employer alone is in a position to guarantee that meetings will run smoothly and without interruptions might oblige it to ensure that meals are provided for participating employees.

61 On the other hand, as Danfoss explained at the hearing, the meals at issue consist of sandwiches and cold platters, served in the meeting room in particular circumstances. It is clear from those explanations that employees have no choice as to where, when and what they eat, the employer itself being responsible for those choices.

62 In such particular circumstances, the provision of meals to employees by the employer is not for the private use of the employees and is not for purposes other than those of the business. The personal advantage which employees derive from such provision appears to be merely accessory to the requirements of the business.

63 The specific manner in which the business is organised thus shows that supplies of services consisting of meals provided free of charge to staff are not for purposes other than those of the business.

64 It is, however, for the national court to establish whether, in the light of the indications provided by the Court, the particular characteristics of the main proceedings before it make it necessary, having regard to the requirements of the companies in question, for the employer to provide meals free of charge to business contacts and to staff in connection with work meetings held on company premises.

65 In the light of the foregoing, the answer to the fourth and fifth questions must be that Article 6(2) of the Sixth Directive must be interpreted in such a way that, on the one hand, it does not cover the provision, free of charge, of meals in company canteens to business contacts in the course of meetings held on the company premises where objective evidence indicates — this being a matter for the referring court to determine — that those meals are provided for strictly business-related purposes. On

the other hand, Article 6(2) applies in principle to the provision, free of charge, of meals by a company to its staff on its premises, unless — this likewise being a matter for the referring court to determine — the needs of the company, such as the need to ensure that work meetings are run smoothly and without interruptions, require the employer to ensure that meals are provided.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the actions 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 (Fourth Chamber) hereby rules:

1. **The second subparagraph of Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as precluding a Member State from applying, after the entry into force of the Sixth Directive, an exclusion from the right to deduct input value added tax on expenditure in respect of meals provided by company canteens free of charge to business contacts and staff in the course of work meetings, where, at the moment when the Sixth Directive entered into force, that exclusion was not actually applied to that expenditure because of an administrative practice of taxing services provided by company canteens at cost price, that is to say, the price of the raw**

materials plus the cost of wages for preparation and sale of the food and drinks and the administration of the canteens, in return for the right to deduct input value added tax in full.

2. **Article 6(2) of Sixth Directive 77/388 must be interpreted in such a way that, on the one hand, it does not cover the provision, free of charge, of meals in company canteens to business contacts in the course of meetings held on the company premises where objective evidence indicates — this being a matter for the referring court to determine — that those meals are provided for strictly business-related purposes. On the other hand, Article 6(2) applies in principle to the provision, free of charge, of meals by a company to its staff on its premises, unless — this likewise being a matter for the referring court to determine — the needs of the company, such as the need to ensure that work meetings are run smoothly and without interruptions, require the employer to ensure that meals are provided.**

[Signatures]