Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

10 November 2016*

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 2(1)(c) — Concept of 'supply of services for consideration' — Supply of a horse by a taxable person to the organiser of horse races — Assessment of the consideration — Right to deduct expenses linked to the preparation of the taxable person's horses for the races — General costs linked to the overall economic activity — Annex III, point 14 — Reduced rate of VAT applicable to the use of sporting facilities — Applicability to the operation of racing stables — Transaction consisting of a single supply or several independent supplies)

In Case C-432/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 23 July 2015, received at the Court on 7 August 2015, in the proceedings,

Odvolací finanční ředitelství,

v

Pavlína Baštová

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, C. Vajda, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Czech Government, by M. Smolek, J. Vláčil and T. Müller, acting as Agents,

— the European Commission, by Z. Malůšková and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 June 2016,

gives the following

* Language of the case: Czech.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1)(c) and Article 98 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') and of point 14 of Annex III thereto.

2 The request has been made in proceedings between the Odvolací finanční ředitelství (Appellate Tax Directorate, Czech Republic) and Ms Pavlína Baštová regarding the imposition of value added tax (VAT) on her operation of racing stables.

Legal context

EU law

3 The second subparagraph of Article 1(2) of the VAT Directive provides as follows:

'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.'

4 Article 2(1)(c) of the VAT Directive provides as follows:

'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;

…'

5 Under Article 9(1) of the VAT Directive:

'"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.'

6 Article 73 of the VAT Directive states as follows:

'In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.'

7 Under Article 98(1) and (2) of the VAT Directive:

'1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

…’

8 Article 167 of the VAT Directive states as follows:

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

9 Article 168 of the VAT Directive provides as follows:

‘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;’

…’

10 Article 173(1) of the VAT Directive is worded as follows:

‘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.

The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.’

11 The list of supplies of goods and services to which the reduced rates referred to in Article 98 of the VAT Directive may be applied is set out in Annex III to that directive. Point 14 of that annex refers to the ‘use of sporting facilities’.

Czech law

12 Article 47(4) of Law No 235/2004 on value added tax (zákon č. 235/2004 Sb. o dani z přidané hodnoty) states as follows:

‘Services shall be subject to the standard rate of tax, unless this law provides otherwise. In the case of the services mentioned in Annex 2, a reduced rate of tax shall apply.’

13 Annex No 2 to that law contains a list of services subject to the reduced rate of tax, including, inter alia, the ‘use of covered and uncovered sports facilities for sports activities’.

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

14 Ms Baštová is a taxable person for VAT purposes by virtue of an economic activity consisting in the operation of horse racing stables with a capacity of 25 places, in which she breeds and trains her own horses and those of other owners which have been entrusted to her to be prepared for races. In

addition to the racehorses, Ms Baštová had in her stables two horses which she used for agrotourism and training young horses, and breeding mares and foals, from which she hoped to derive future income from participation in races or from sales.

15 In connection with that activity, Ms Baštová earns two types of income, which constitute the subject matter of the main proceedings in the present case. The first type consists of prizes obtained by her own horses for being placed in races and the trainer's share of prizes won in races by the horses of other third parties. The second type of income results from the operation of racing stables and consists in payments made by horse owners for training their horses for races, and payments made for stabling and feeding the horses.

16 In her tax declaration for the fourth quarter of 2010, Ms Baštová claimed the right to full deduction of the input VAT in respect of the following supplies and costs: entrance fees and declaration fees for races, fees for the assistance of auxiliaries during races, the procurement of consumables for horses, their feed and equipment for the riders, veterinary services and purchase of medicines for the horses, consumption of electricity in the stables, consumption of fuel oil for the vehicles, the purchase of a harvester for the production of hay and forage and of tractor equipment and consultancy services in connection with the running of the stables. Those input supplies concerned both Ms Baštová's horses and those of other owners.

17 In addition, in the same tax declaration Ms Baštová also declared output VAT at the reduced rate of 10% on the service of 'operation of racing stables' which she supplied to the other horse owners.

18 In its tax assessment of 26 September 2011, the Finanční úřad v Ostrově (Tax Office, Ostrov) did not accept Ms Baštová's claim for full deduction of the VAT on the ground that she had used part of the taxable input transactions for the purposes of participation of the horses in races, which, in the view of the Ostrov Tax Office, did not constitute a taxable transaction giving rise to a right to deduct VAT. In addition, those authorities did not approve the application of the reduced rate of VAT to the service of 'operation of racing stables'.

19 Seised on appeal by Ms Baštová, the Finanční ředitelství v Plzni (Tax Directorate, Plzeň, Czech Republic) varied the decision of the Ostrov Tax Office by a decision of 6 June 2012, finding that Ms Baštová had the right to deduct the VAT for the sale of her own horses, the supply of publicity services and agrotourism. That directorate also granted her the right to deduct the VAT charged on the percentages, received in her capacity as a trainer, of the prizes received as a reward for places for other owners' horses in races. However, like the Ostrov Tax Office, the Plzeň Tax Directorate did not grant Ms Baštová the right to deduct the VAT paid in respect of the input transactions for her own horses which had participated in races.

20 Inasmuch as, during the tax period concerned, only some of the activities carried out by Ms Baštová were eligible for a VAT deduction, the Plzeň Tax Directorate found that she was entitled to only a partial deduction. The Plzeň Tax Directorate also confirmed the tax assessment of the Ostrov Tax Office, finding that the service of 'operation of racing stables' should be subject to VAT at the standard rate.

21 Ms Baštová brought an appeal against that decision before the Krajský soud v Plzni (Plzeň Regional Court, Czech Republic) which, by a judgment of 6 November 2013, found, inter alia, that, so far as the prizes received for a horse being placed in a race are concerned, the owner of a horse provides the race organiser with a service for consideration and that this therefore constitutes a taxable transaction. Therefore Ms Baštová's right to deduct VAT should not have been reduced.

22 The Appellate Tax Directorate lodged an appeal on a point of law before the referring court.

23 The referring court considers, first, that in order to determine whether Ms Baštová was entitled to the full VAT deduction, it is essential to ascertain whether the provision of a horse by its owner to the organiser of a race is to be regarded as a service for consideration, within the meaning of Article 2(1)(c) of the VAT Directive. If not, the question arises of whether that circumstance in itself is a ground for reducing the deduction of VAT paid as input tax or whether the costs pertaining to the services concerned are part of the general costs of the taxable person's economic activity. Should the Court reply that the fact of preparing horses for races and the horses' participation in the races is a component of Ms Baštová's overall economic activity, it is still necessary to decide how to treat the sum which the horse owner receives by way of a prize depending on whether the horse is placed in a race. The referring court seeks, in particular, to ascertain whether that sum must be included in the taxable amount for output VAT or whether it constitutes income which does not affect the taxable amount for output VAT at all.

24 Secondly, the referring court raises the issue of whether VAT at the standard rate must be applied to the service of 'operation of racing stables' in its entirety, or whether that service falls within the concept of 'use of sporting facilities' to which a reduced rate of VAT may be applied under point 14 of Annex III to the VAT Directive. In that context, it must be ascertained whether the services relating to the operation of racing stables, inter alia training the horses, the use of sporting facilities, stabling, feeding and other care of the horses, must be regarded as a single transaction for VAT purposes sharing the same tax treatment. Taking the view that those services undoubtedly constitute a single whole, the referring court seeks on the other hand to determine the criteria on the basis of which it could ascertain whether the components of a supply are of equal status, or whether they are supplies in the relationship of a principal and an ancillary service.

25 In those circumstances the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) (a) Is the supply of a horse by its owner (who is a taxable person) to the organiser of a race for the purpose of the horse's running in a race a supply of services for consideration within the meaning of Article 2(1)(c) of [the VAT Directive] and thus a transaction subject to VAT?

(b) If the answer is in the affirmative, must the prize money obtained in the race (which not every horse taking part in the race obtains, however), or the acquisition of the service consisting in the opportunity for the horse to run in the race which the organiser of the race provides to the owner of the horse, or some other consideration, be regarded as the consideration?

(c) If the answer is in the negative, is that circumstance in itself a ground for reducing the deduction of input VAT on the taxable supplies acquired and used for the preparation of the breeder/trainer's own horses for races, or must the running of a horse in a race be regarded as a component of the economic activity of a person who operates in the field of breeding and training his own and other owners' racehorses, and the expense of breeding his own horses and running them in races be included in the overheads associated with that person's economic activity? If the answer to that part of the question is in the affirmative, must prize money be included in the taxable amount and output VAT accounted for, or is this income which does not affect the taxable amount for VAT at all?

(2) (a) If for VAT purposes it is necessary to regard several part services as a single transaction, what are the criteria for determining their mutual relationship, that is, for determining whether they are supplies of equal status with each other or supplies in the relationship of a principal and an ancillary service? Does any hierarchy exist between those criteria as regards their ranking and weight?

(b) Must Article 98 of [the VAT Directive] in conjunction with Annex III to that directive be interpreted as precluding the classification of a service under the reduced rate if it is composed of two part supplies which must be regarded for VAT purposes as a single supply and those supplies are of equal status with each other, and one of them may not in itself be classified in any of the categories set out in Annex III to [the VAT Directive]?

(c) If the answer to Question 2b is in the affirmative, does the combination of the part service of the right to use sports facilities and the part service of a trainer of racehorses, in circumstances such as those of the present proceedings, preclude the classification of that service as a whole under the reduced rate of VAT mentioned in point 14 of Annex III to [the VAT Directive]?

(d) If the application of the reduced rate of tax is not excluded on the basis of the answer to Question 2c, what influence on the classification under the relevant rate of VAT does the fact have that the taxable person provides, in addition to the service of the use of sports facilities and the service of a trainer, also stabling, feeding and other care of a horse? Must all those part supplies be regarded for VAT purposes as a single whole sharing the same tax treatment?'

Consideration of the questions referred

Question 1(a) and (b)

26 By Question 1(a) and (b), the referring court asks, in essence, whether Article 2(1)(c) of the VAT Directive must be interpreted to the effect that the supply of a horse by its owner, who is a taxable person for VAT purposes, to the organiser of a horse race for the purpose of the horse's participation in that race constitutes a supply of services for consideration within the meaning of that provision. In particular, that court raises the issue of whether the prize obtained by the horse on account of being placed in the race or the acquisition of the service consisting in the opportunity for the horse to participate in that race constitute consideration for such a supply of services.

27 It must first be recalled that, pursuant to Article 2(1)(c) of the VAT Directive, which defines the scope of VAT, 'the supply of services for consideration' is subject to VAT.

28 According to the Court's settled case-law, the possibility of classifying a supply of services as a 'transaction for consideration' requires only that there be a direct link between that supply and the consideration actually received by the taxable person. Such a direct link is established if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the payment received by the provider of the service constituting the value actually given in return for the service supplied to the recipient (see, inter alia, judgments of 3 March 1994, *Tolsma*, C-16/93, EU:C:1994:80, paragraphs 13 and 14, and of 29 October 2015, *Saudaçor*, C-174/14, EU:C:2015:733, paragraph 32).

29 Next, it is apparent from the Court's case-law that the uncertain nature of the provision of any payment is such as to break the direct link between the service provided to the recipient and any payment which may be received (see, by analogy, judgments of 3 March 1994, *Tolsma*, C-16/93, EU:C:1994:80, paragraph 19, and of 27 September 2001, *Cibo Participations*, C-16/00, EU:C:2001:495, paragraph 43).

30 In view of the nature of the analysis to be carried out, and as the Court has already held, it is for the national court to classify the activities at issue in the main proceedings in the light of the criteria adopted by the Court (see judgment of 29 October 2015, *Saudaçor*, C-174/14, EU:C:2015:733, paragraph 33 and the case-law cited).

31 Lastly, as the Advocate General observed in point 32 of his Opinion, sporting activities and, in particular, participation in sports competitions may involve the provision of a number of separate, but closely related, services (see, to that effect, judgment of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraph 56).

32 It is apparent from the order for reference that, by allowing horse owners to have their horses participate in a horse race, the race organiser provides a service which gives rise to the payment, by the horse owners, of entrance fees and declaration fees.

33 On the other hand, the issue has arisen of whether the 'supply' of a horse by its owner, who is a taxable person for VAT purposes, to the organiser of a horse race also constitutes a supply of services for consideration, the consideration for which could consist of any prize obtained by the horse in the race or by the service provided by the race organiser, consisting in allowing the horse to participate in the race, or by another form of payment.

34 According to the information in the file before the Court, that 'supply' of a horse corresponds in fact to the participation of a horse in a horse race, for which the horse owner pays, as is apparent from paragraph 32 above, entrance and declaration fees.

35 In this connection, it must first be noted that, in principle, the service provided by the horse race organiser, consisting in enabling the owner of a horse to have his horse participate in the horse race, cannot be regarded as effective consideration for the supply of a horse by the owner to the race organiser. That service is remunerated by the payment, by the horse owner, of entrance and declaration fees reflecting the value actually given in return for the horse's participation in the race. Furthermore, although the horse owner could possibly derive a benefit from that participation as a result of the increase in the value of the horse in the event that it is placed or the publicity gained by the horse from its participation, that benefit is difficult to quantify and uncertain, since it essentially depends on the result of the race. That benefit cannot therefore be taken into consideration for the purposes of determining the value actually given in return for the supply of the horse in accordance with the case-law referred to in paragraph 28 above.

36 Secondly, where the supply of a horse for the purposes of its participation in a race does not give rise to any payment awarded for participation or any other direct remuneration, and where only the owners of horses which are placed in the race receive a prize, the supply of a horse cannot be regarded as giving rise to effective consideration.

37 In such a case, on one hand, it is not the supply of the horse by its owner to the race organiser which, as such, gives rise to the award of prize money, but the achievement of a certain result at the end of the race, namely the placing of the horse. Even if the race organiser were to have committed himself to awarding such a prize, of a fixed amount known in advance, the fact remains that the award of the prize is thus subject to a specific performance and to a degree of uncertainty. According to the case-law recalled in paragraph 28 above, that uncertainty precludes the existence of a direct link between the supply of a horse and obtaining a prize.

38 The opposite approach, on the other hand, which consists in treating any prize awarded as the effective consideration for the supply of the horse by its owner to the race organiser would be tantamount to rendering the classification of that supply as a taxable transaction subject to the result achieved by the horse at the end of the race, contrary to the Court's settled case-law according to which the term 'supply of services' is objective in nature and applies without regard to the purpose or results of the transactions concerned (see judgment of 20 June 2013, *Newey*, C-653/11, EU:C:2013:409, paragraph 41 and the case-law cited).

39 Thirdly, however, in a situation where the mere participation of the horse in a race nevertheless gives rise to direct consideration by virtue of a payment awarded by the race organiser for participation in the race, irrespective of whether or not the horse in question is placed in the race, the supply of that horse by its owner may be qualified as a 'supply of services' for consideration within the meaning of Article 2(1)(c) of the VAT Directive. In that situation, as the Advocate General observed in point 35 of his Opinion, the payment made by the race organiser to the horse owner constitutes direct consideration for the service rendered by the latter to the former in agreeing to let his horse participate in the event.

40 Having regard to the foregoing considerations, the answer to Question 1(a) and (b) is that Article 2(1)(c) of the VAT Directive must be interpreted to the effect that the supply of a horse by its owner, who is a taxable person for VAT purposes, to the organiser of a horse race for the purpose of the horse's participation in that race does not constitute a supply of services for consideration within the meaning of that provision where it does not give rise to a payment awarded for participation or any other direct remuneration and where only the owners of horses which are placed in the race receive a prize, even if that prize is determined in advance. On the other hand, such a supply of a horse for the purposes of its participation in the race constitutes a supply of services for consideration where it gives rise to the payment, by the organiser, of remuneration irrespective of whether or not the horse in question is placed in the race.

Question 1(c)

41 By Question 1(c), the referring court asks, in essence, whether, if the supply of a horse by its owner, who is a taxable person for VAT purposes, to a horse race organiser does not constitute a supply of services for consideration within the meaning of Article 2(1)(c) of the VAT Directive, that directive must be interpreted to the effect that a taxable person, who breeds and trains his own race horses as well as those of other owners, nevertheless has a right to deduct input VAT on the transactions relating to the preparation for horse races of his own horses and the participation of his own horses in those races on the ground that the costs pertaining to those transactions are part of the general costs linked to that person's economic activity. The referring court also asks whether such a right leads to the inclusion of any prize won by the taxable person by reason of the placing of one of his horses in a horse race in the taxable amount for VAT purposes.

42 It must be recalled that the rules governing deduction introduced by the VAT Directive are meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see, in particular, judgment of 14 February 1985, *Rompelman*, 268/83, EU:C:1985:74, paragraph 19, and of 8 February 2007, *Investrand*, C-435/05, EU:C:2007:87, paragraph 22).

43 In this connection, the existence of a direct and immediate link between a particular input transaction and one or more output transactions giving rise to the 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 (see judgments of 8 June 2000, *Midland Bank*, C-98/98, EU:C:2000:300, paragraph 24, and of 21 February 2013, *Becker*, C-104/12, EU:C:2013:99, paragraph 19). The right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them is part of the cost components of the taxable output transactions giving rise to the right to deduct (judgments of 8 June 2000, *Midland Bank*, C-98/98, EU:C:2000:300, paragraph 30, and of 21 February 2013, *Becker*, C-104/12, EU:C:2013:99, paragraph 19).

44 It is, however, also accepted that a taxable person has a right to deduct even where there is no direct and immediate link between a particular input transaction and one or more output transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do, in effect, have a direct and immediate link with the taxable person's overall economic activity (see, to that effect, judgments of 8 June 2000, *Midland Bank*, C-98/98, EU:C:2000:300, paragraph 31, and of 21 February 2013, *Becker*, C-104/12, EU:C:2013:99, paragraph 20).

45 Moreover, the fact that the existence of the direct and immediate link between a supply of services and the overall taxable economic activity must be determined in the light of the objective content of that supply of services does not preclude the exclusive reason for the transaction at issue from also being taken into account, since that reason must be considered as a criterion for determining the objective content. Where it is clear that a transaction has not been performed for the purposes of the taxable activities of a taxable person, that transaction cannot be regarded as having a direct and immediate link with those activities within the meaning of the Court's case-law, even if that transaction would, in the light of its objective content, be subject to VAT (judgment of 21 February 2013, *Becker*, C-104/12, EU:C:2013:99, paragraph 29).

46 In the context of the assessment of the criterion of a direct and immediate link with the taxable person's overall economic activity, which the tax authorities and national courts must carry out, they should consider all the circumstances surrounding the transactions at issue (see, to that effect, judgment of 8 June 2000, *Midland Bank*, C-98/98, EU:C:2000:300, paragraph 25) and take account only of the transactions which are objectively linked to the taxable person's taxable activity (judgment of 21 February 2013, *Becker*, C-104/12, EU:C:2013:99, paragraph 22).

47 It is apparent from the order for reference that Ms Baštová's economic activity consists in the operation of racing stables, in which, inter alia, she breeds and trains her own horses and those of third parties. She submits that her horses are intended for sale and/or play a role in training or agrotourism and that they also participate in horse races.

48 Admittedly, the breeding and training of horses belonging to a person operating racing stables and the participation of those horses in races may, as such, have a link with such an economic activity. However, in the light of the case-law cited in paragraph 44 above, that finding does not suffice as a ground for a right to deduct VAT, which requires there to be a direct and immediate link between the costs incurred on account of each of the transactions linked to the preparation of the horses and their participation in the races, on one hand, and that overall economic activity, on the other hand.

49 In order to assess whether such a link exists, it is for the referring court to ascertain, in particular, whether the horses belonging to the person operating the racing stables are actually intended for sale or whether their participation in races is, from an objective point of view, a means of promoting the economic activity of operating those stables. If that is the case, the costs incurred in the preparation of the horses for the races, and the horses' participation in those races, have a direct and immediate link with the overall economic activity consisting in the operation of such stables. First, it is common ground that the sale price of a race horse depends on the state of its preparation for races and its experience, or any reputation it may have obtained by participating in races. Secondly, the success of his horses in races may enable the operator of stables to build a reputation, or gain publicity or added visibility such as to influence the price of his services for training the horses of other owners, this being a matter for the referring court to determine.

50 On the other hand, the fact that the transactions linked to the preparation of the horses belonging to the operator of the stables for races and their participation in those races would enable him to improve and develop the training methods, feed and care given to the horses, and thus the services

provided to other owners, is irrelevant for the purposes of that assessment. Such a fact merely reflects an indirect link between those transactions and the economic activity at issue in the main proceedings, set out in paragraph 47 above.

51 Furthermore, if the transactions linked to the preparation for races of the horses belonging to the operator of the stables and the participation of those horses in races are intended to promote the private interests of that operator, those transactions cannot be regarded as having a direct and immediate link with the overall economic activity consisting in the operation of such stables.

52 It follows that, in accordance with Articles 167 and 168(a) of the VAT Directive, a person in a situation such as that of Ms Baštová has a right to full deduction of the VAT charged on the expenses incurred for the preparation of his horses for races and the horses' participation in those races where those horses are actually intended for sale or where that participation is, from an objective point of view, a means of promoting the economic activity of the stables which he operates. On the other hand, there is no right to deduction of the VAT charged on expenses incurred for the preparation of the taxable person's horses for races and their participation in races if those horses are not actually intended for sale, if that participation is not, from an objective point of view, a means of promoting the economic activity of the stables which he operates and if those expenses are not used for any other of the taxable person's activities relating to his economic activity, this being a matter for the referring court to determine.

53 It is not disputed that a taxable person who effects both transactions in respect of which VAT is deductible and transactions in respect of which it is not may, under the first subparagraph of Article 173(1) of the Sixth Directive, deduct only that proportion of the VAT which is attributable to the former transactions (see, to that effect, judgments of 22 February 2001, *Abbey National*, C-408/98, EU:C:2001:110, paragraph 37, and of 26 May 2005, *Kretztechnik*, C-465/03, EU:C:2005:320, paragraph 37).

54 Lastly, it must be stated that the conclusions reached in the assessment referred to in paragraphs 44 to 52 above have no effect on the issue, which is a separate one, of the inclusion of any prize which may be awarded to a horse owner who is a taxable person for VAT purposes in the taxable amount, this being a matter which depends on the characterisation of that prize as 'consideration for the supply of services'. It is apparent from Article 73 of the VAT Directive that, in respect of the supply of services such as those at issue in the main proceedings, the taxable amount includes 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. It is apparent from the considerations in paragraphs 36 to 38 above that any prize won by a horse belonging to the taxable person cannot be characterised as effective consideration for the supply of the horse by its owner to a horse race organiser.

55 In the light of all of the foregoing considerations, the answer to Question 1(c) is that:

— The VAT Directive must be interpreted to the effect that a taxable person, who breeds and trains his own race horses and those of other owners, has the right to deduct input VAT on the transactions relating to the preparation for horse races of his own horses and the participation of his own horses in races, on the ground that the costs pertaining to those transactions are part of the general costs linked to his economic activity, provided that the costs incurred in each of those transactions have a direct and immediate link with that overall activity. That may be the case if the costs thus incurred pertain to race horses actually intended for sale or if the participation of those horses in races is, from an objective point of view, a means of promoting the economic activity, this being a matter for the referring court to determine.

— In a situation where such a right to deduct exists, any prize won by the taxable person on account of the placing of one of his horses in a race is not to be included in the taxable amount for VAT purposes.

Question 2

56 By Question 2, the referring court asks, in essence, whether Article 98 of the VAT Directive, read in conjunction with point 14 of Annex III to that directive, must be interpreted to the effect that the reduced rate of VAT may be applied to a single composite supply of services, composed of several components relating, inter alia, to the training of horses, the use of sporting facilities and the stabling, feeding and other care provided to the horses.

57 In the first place, it is necessary to state the scope of Article 98 of the VAT Directive and of point 14 of Annex III thereto.

58 In that regard, it follows from Article 98 of the VAT Directive that the application of either one or two reduced rates is an option accorded to the Member States as an exception to the principle that the standard rate applies. Furthermore, according to that provision, the reduced rates of VAT may be applied only to the supplies of goods and services specified in Annex III to that directive.

59 As regards the interpretation of that annex, it must first be recalled that provisions which are in the nature of exceptions to a principle must be interpreted strictly (see, to that effect, judgments of 12 December 1995, *Oude Luttikhuis and Others*, EU:C:1995:434, paragraph 23, and of 17 June 2010, *Commission* v *France*, C-492/08, EU:C:2010:348, paragraph 35).

60 Secondly, the concepts used in Annex III to the VAT Directive must be interpreted in accordance with the normal sense of the terms at issue (judgment of 4 June 2015, *Commission* v *Poland*, C-678/13, not published, EU:C:2015:358, paragraph 46).

61 In the present case, it follows from the terms of point 14 of Annex III to the VAT Directive that that directive authorises the Member States to apply a reduced rate of VAT to 'the use of sporting facilities'.

62 It is apparent from the term the 'use of' that the application of a reduced rate is possible if the use is by a third party and not by the taxable person using the sporting facilities concerned for his own needs.

63 The concept of the 'use of sporting facilities' is connected with services linked to the practice of sport or physical education, which must, so far as is possible, be considered as a whole (see, to that effect, judgments of 18 January 2001, *Stockholm Lindöpark*, C-150/99, EU:C:2001:34, paragraph 26, and of 22 January 2015, *Régie communale autonome du stade Luc Varenne*, C-55/14, EU:C:2015:29, paragraph 25).

64 As the Advocate General observed in points 56 to 59 of his Opinion, the possibility of applying a reduced rate of VAT to the use of sporting facilities is essentially intended to promote the practice of sports activities and to render them more accessible to individuals.

65 Consequently, the concept of the 'use of sporting facilities' must be understood as covering the right to use facilities for the practice of sport or physical education, and their use for those purposes.

66 It follows that, while supplies of services linked to the use of facilities necessary for practising equestrian sports may fall within the scope of point 14 of Annex III to the VAT Directive, that cannot be the case for supplies linked to the use of facilities for the passive stay of horses in stables, their feeding or the care provided to them, or the rest areas or storage.

67 It is for the referring court to assess whether the component of the supply of services at issue in the main proceedings which consists of the use of sporting facilities, as interpreted in the light of the contracts concluded between Ms Baštová and the horse owners, corresponds to that definition. Where there is no overlap between that component as interpreted in the light of those contracts and the 'use of sporting facilities' within the meaning of point 14 of Annex III to the VAT Directive, that supply cannot, on any view, be subject to the reduced rate of VAT under point 14.

68 In the second place, should the referring court find after that assessment that the reduced rate of VAT is applicable to that component consisting in the use of sporting facilities, it must, in order to answer the question referred, be recalled that, for VAT purposes, every supply must normally be regarded as distinct and independent, as follows from the second subparagraph of Article 1(2) of the VAT Directive (see, to that effect, judgments of 27 October 2005 in *Levob Verzekeringen and OV Bank*, C-41/04, EU:C:2005:649, paragraph 20, and of 27 September 2012, *Field Fisher Waterhouse*, C-392/11, EU:C:2012:597, paragraph 14).

69 Nevertheless, it is apparent from the Court's case-law 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 (see judgment of 2 December 2010, *Everything Everywhere*, C-276/09, EU:C:2010:730, paragraph 23 and the case-law cited).

70 A transaction is a single supply where, in particular, two or more components or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (judgments of 27 October 2005, *Levob Verzekeringen and OV Bank*, C-41/04, EU:C:2005:649, paragraph 22, and of 29 March 2007, *Aktiebolaget NN*, C-111/05, EU:C:2007:195, paragraph 23).

71 Such is also the case where one or more components are to be regarded as constituting the principal service, while one or more components are to be regarded, by contrast, as one or more ancillary services which share the tax treatment of the principal service. In particular, a service is regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (judgments of 25 February 1999, *CPP*, C-349/96, EU:C:1999:93, paragraph 30, and of 21 February 2008, *Part Service*, C-425/06, EU:C:2008:108, paragraph 52).

72 If it is not possible to determine, among the components of which the single composite supply consists, a main component and one or several ancillary components, the components of which that supply consists must be regarded as of equal status.

73 In the context of the cooperation established by Article 267 TFEU, it is for the national court to determine whether that is the case, having regard, in the context of an overall assessment, to the qualitative importance, and not simply the quantitative importance, of the relevant components. The Court may nevertheless provide it with all the guidance as to the interpretation of EU law which may be of assistance (see, to that effect, judgments of 27 October 2005, *Levob Verzekeringen et OV Bank*, C-41/04, EU:C:2005:649, paragraph 23, and of 17 January 2013, *BGŻ Leasing*, C-224/11, EU:C:2013:15, paragraph 33).

74 In the present case, the referring court has stated clearly that the supply of services at issue, as it appears from the contracts concluded between Ms Baštová and the horse owners and which consists of three components (training the horses, the use of sporting facilities and the stabling, feeding and other care of the horses), constitutes a single composite supply of services. That conclusion applies where the contracting parties are in fact seeking a combination of the three components to that

supply, where the use of the sporting facilities is objectively necessary to train the race horses and where the supplies linked to the stabling, feeding and care of the horses are primarily intended to accompany and assist their training and the use of sports facilities.

75 Thus, subject to determination by the referring court, the information contained in the order for reference appears essentially to indicate that the training services and use of the sporting facilities constitute two components of that composite supply which are, in the light of its purpose, of equal status, whereas the supplies linked to the stabling, feeding and care of the horses are of an ancillary nature in relation to those two components. In so far as only the use of the sporting facilities falls within the scope of the reduced rate provided for in Article 98 of the VAT Directive, read in conjunction with point 14 of Annex III thereto, that reduced rate cannot be applied to the single composite supply at issue in the main proceedings (see, by analogy, judgment of 19 July 2012, *Deutsche Bank*, C-44/11, EU:C:2012:484, paragraphs 41 to 43).

76 If, on the other hand, the referring court were to conclude, on the basis of the facts at issue in the main proceedings and having regard in particular to the contracts concluded between Ms Baštová and the horse owners, that the training of the horses constituted the main component of the single composite supply, the same conclusion would apply and it still would not be possible, pursuant to Article 98 of the VAT Directive, read in conjunction with point 14 of Annex III thereto, to apply the reduced rate of VAT to that supply.

77 In the light of the foregoing considerations, the answer to Question 2 is that Article 98 of the VAT Directive, read in conjunction with point 14 of Annex III thereto, must be interpreted to the effect that the reduced rate of VAT may not be applied to a single composite supply of services, made up of several components relating, inter alia, to the training of horses, the use of sporting facilities and the stabling, feeding and other care provided to the horses where the use of the sporting facilities, within the meaning of point 14 of Annex III to that directive, and the training of the horses constitute two components of that composite supply having equal status or where the training of the horses constitutes the main component of that supply, this being a matter for the referring court to assess.

Costs

78 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 (Fourth Chamber) hereby rules:

1. **Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted to the effect that the supply of a horse by its owner, who is a taxable person for value added tax purposes, to the organiser of a horse race for the purpose of the horse's participation in that race does not constitute a supply of services for consideration within the meaning of that provision where it does not give rise to a payment awarded for participation or any other direct remuneration and where only the owners of horses which are placed in the race receive a prize, even if that prize is determined in advance. On the other hand, such a supply of a horse for the purposes of its participation in the race constitutes a supply of services for consideration where it gives rise to the payment, by the organiser, of remuneration irrespective of whether or not the horse in question is placed in the race.**

2. **Directive 2006/112 must be interpreted to the effect that a taxable person, who breeds and trains his own race horses and those of other owners, has the right to deduct input value added tax on the transactions relating to the preparation for horse races of his own horses**

and the participation of his own horses in races, on the ground that the costs pertaining to those transactions are part of the general costs linked to his economic activity, provided that the costs incurred in each of those transactions have a direct and immediate link with that overall activity. That may be the case if the costs thus incurred pertain to race horses actually intended for sale or if the participation of those horses in races is, from an objective point of view, a means of promoting the economic activity, this being a matter for the referring court to determine.

In a situation where such a right to deduct exists, any prize won by the taxable person on account of the placing of one of his horses in a race is not to be included in the taxable amount for value added tax purposes.

3. **Article 98 of the Directive 2006/112, read in conjunction with point 14 of Annex III thereto, must be interpreted to the effect that the reduced rate of value added tax may not be applied to a single composite supply of services, made up of several components relating, inter alia, to the training of horses, the use of sporting facilities and the stabling, feeding and other care provided to the horses where the use of the sporting facilities, within the meaning of point 14 of Annex III to that directive, and the training of the horses constitute two components of that composite supply having equal status or where the training of the horses constitutes the main component of that supply, this being a matter for the referring court to assess.**

[Signatures]