JUDGMENT OF THE COURT
22 June 1993 *

In Case C-333/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the French Conseil d'Etat for a preliminary ruling in the proceedings pending before that court between

Sofitam SA (formerly Satam SA)

and

Ministre chargé du Budget,

on the interpretation of Article 19 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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 COURT,

composed of: O. Due, President, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida and F. Grévisse, Judges,

Advocate General: W. Van Gerven,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Satam SA (now Sofitam SA), by Philippe Derouin, of the Paris Bar,

* Language of the case: French.

— the French Government, by Philippe Pouzoulet, Assistant Director in the Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by Géraud de Bergues, Principal Deputy Secretary for Foreign Affairs, acting as Deputy Agent,

— the Netherlands Government, by T. P. Hofstre, Acting Secretary General at the Ministry of Foreign Affairs, acting as Agent,

— the Greek Government, by Vasileios Kontolaimos, Assistant Legal Adviser at the Legal Council of State, acting as Agent,

— the Commission of the European Communities, by Henri Étienne, Principal Legal Adviser, and Johannes F. Bull, Legal Adviser, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Satam SA, the French Government, represented by Catherine de Salins, Secretary for Foreign Affairs, acting as Agent, the Greek Government, represented by Vasileios Kontolaimos, Assistant Legal Adviser, assisted by Marias Basdeki, Legal Agent, acting as Agents, and the Commission at the hearing on 9 December 1992,

after hearing the Opinion of the Advocate General at the sitting on 20 January 1993,

gives the following

Judgment

1 By judgment of 13 December 1991, received at the Court on 20 December 1991, the French Conseil d'Etat (Council of State) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 19 of the Sixth Council Directive 77/388/EEC of 17 May 1971 on the harmonization 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 That question was raised in proceedings between Satam SA (now called Sofitam but hereinafter referred to as 'Satam'), established at Asnières (France), and the Ministre chargé du Budget (Minister for Budgetary Affairs), following a reassessment of the value added tax ('VAT') claimed from Satam as a result of a reduction in its deduction entitlement.

3 Satam, a holding company, deducted, from the VAT which it was liable to pay, the whole of the VAT charged on the goods and services which it had acquired during the same tax period. Having established that the revenue received by Satam included, on the one hand, various proceeds subject to VAT and, on the other hand, dividends not subject to VAT, the French tax authority took the view that under the General Tax Code Satam should have deducted VAT on goods and services acquired by it only up to the percentage resulting from the ratio between the amount of its taxable receipts and the annual amount of its total receipts, including the dividends which it had received. The tax authority therefore claimed from Satam additional VAT resulting from the reduction in its deduction entitlement.

4 Satam objected to that claim and maintained that the dividends were not to be included in the deductible proportion and that, if they were to be included, the provisions of the General Tax Code were incompatible with Article 19 of the Sixth Directive, which they are assumed to transpose into national law.

5 Article 19(1) provides as follows:

'1. The proportion deductible under the first subparagraph of Article 17(5) shall be made up of a fraction having:

— as numerator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions in respect of which value added tax is deductible under Article 17(2) and (3),

— as denominator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible ...'.

6 Before the Conseil d'Etat, Satam argued that the total annual amount to be included in the denominator in accordance with Article 19 included only sums received by the taxable person in respect of the performance of transactions subject to VAT or expressly exempt from VAT, to the exclusion of income such as dividends, which did not relate to any activity giving rise to turnover and did not fall within the scope of VAT.

7 After pointing out that Satam had not involved itself in the management of the undertakings in which it had holdings, the Conseil d'Etat took the view that the proceedings raised problems of interpretation of Community law and decided to seek a preliminary ruling from the Court of Justice on:

'Whether, in the light of its terms, Article 19 of the Sixth Directive must be interpreted to the effect that share dividends received by an undertaking which is not subject to value added tax in respect of all its transactions must be excluded from the denominator of the fraction used to calculate the deductible proportion or whether, in the light of the purpose and scheme of the system of deduction established by the directive and in particular by the combined provisions of Article 17 and 19, the latter article is, on the contrary, to be interpreted to the effect that the dividends in question must, as income which is exempt from value added tax, be included in the denominator'.

8 Reference is made to the Report for the Hearing for a fuller account of the applicable rules and the written observations to the Court, which are referred to below only in so far as is necessary for the reasoning of the Court.

9 In order to answer the national court's question, it is necessary to consider the relevant characteristics and aims of the VAT system with particular reference to the deduction scheme and the concept of taxable person.

10 It is settled case-law (see, *inter alia*, Case 50/87 *Commission* v *France* [1988] ECR 4797, paragraph 15) that the deduction system is meant to relieve the trader entirely of the burden of VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures that all economic activities, whatever their purpose or results, provided they are themselves subject to VAT, are taxed in a wholly neutral way.

11 It follows from the deduction system, as laid down in Articles 17 to 20 of the Sixth Directive, that the right to deduct must be applied in such a way that its scope corresponds as far as possible to the sphere of the taxable person's business activity (see Case 165/86 *Intiem* v *Staatssecretaris van Financiën* [1988] ECR 1471, paragraphs 13 and 14).

12 The Court has held that a holding company whose sole purpose is to acquire holdings in other undertakings, without involving itself directly or indirectly in the management of those undertakings, without prejudice to its rights as a shareholder, does not have the status of taxable person and has no right to deduct tax under Article 17 of the Sixth Directive (see Case C-60/90 *Polysar Investments Netherlands* v *Inspecteur der Invoerrechten* [1991] ECR I-3111, paragraph 17). That conclusion was based, *inter alia*, on the finding that the mere acquisition of financial holdings in other companies did not constitute an economic activity within the meaning of the Sixth Directive.

13 Since the receipt of dividends is not the consideration for any economic activity within the meaning of the Sixth Directive, it does not fall within the scope of VAT. Consequently, dividends resulting from holdings fall outside the deduction entitlement.

14 Consequently, dividends must be excluded from the calculation of the deductible proportion referred to in Articles 17 and 19 of the Sixth Directive, if the objective of wholly neutral taxation ensured by the common system of VAT is not to be jeopardized.

15 In the light of those considerations, the answer to the question referred to the Court must be that Article 19(1) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization 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 meaning that share dividends received by an undertaking which is not subject to VAT in respect of the whole of its transactions are to be excluded from the denominator of the fraction used to calculate the deductible proportion.

Costs

16 The costs incurred by the French, Netherlands and Greek Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT

in answer to the question referred to it by the Conseil d'Etat, by judgment of 13 December 1991, hereby rules:

Article 19(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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 meaning that share dividends received by an undertaking which is

not subject to VAT in respect of the whole of its transactions are to be excluded from the denominator of the fraction used to calculate the deductible proportion.

Due Zuleeg Murray

Mancini Schockweiler Moitinho de Almeida Grévisse

Delivered in open court in Luxembourg on 22 June 1993.

J.-G. Giraud O. Due

Registrar President