Case C-277/09

The Commissioners for Her Majesty's Revenue and Customs

v

RBS Deutschland Holdings GmbH

(Reference for a preliminary ruling from the Court of Session (Scotland) (First Division, Inner House))

(Sixth VAT Directive – Right to deduction – Purchase of vehicles and use for leasing transactions – Differences between the tax regimes of two Member States – Prohibition of abusive practices)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax*

(Council Directive 77/388, Art. 17(3)(a))

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax – Exclusions from the right of deduction*

(Council Directive 77/388, Art. 17(3)(a))

1. Article 17(3)(a) of Sixth Directive 77/388, on the harmonisation of the laws of the Member States relating to turnover taxes, must be interpreted as meaning that a Member State may not refuse to allow a taxable person to deduct input value added tax paid on the acquisition of goods in that Member State, when those goods have been used for the purposes of leasing transactions carried out in another Member State, solely on the ground that the output transactions have not given rise to the payment of value added tax in the second Member State.

Under Article 17(3)(a), the right to deduct input value added tax for certain transactions in respect of other output transactions carried out in another Member State depends on whether that right to deduct exists when all those transactions are carried out within the territory of the same Member State. Consequently, the fact that a Member State has not collected output value added tax because of the manner in which it has categorised a commercial transaction cannot deny a taxable person the right to deduct input value added tax paid in another Member State.

(see paras 32, 42, 46, operative part 1)

2. The principle of prohibiting abusive practices does not preclude the right to deduct value added tax – recognised in Article 17(3)(a) of Sixth Directive 77/388, on the harmonisation of the laws of the Member States relating to turnover taxes – in circumstances in which a company established in one Member State elects to have its subsidiary, established in another Member State, carry out transactions for the leasing of goods to a third company established in the first Member State, in order to avoid a situation in which value added tax is payable on the sums paid as consideration for those transactions, the transactions having been categorised in the first Member State as supplies of rental services carried out in the second Member State, and in that second Member State as supplies of goods carried out in the first Member State.

Taxable persons are generally free to choose the organisational structures and the form of transactions they consider to be most appropriate for their economic activities and for the purposes of limiting their tax burdens. A trader's choice between exempt transactions and taxable transactions may be based on a range of factors, including tax considerations relating to the neutral system of value added tax. Where it is possible for the taxable person to choose from among a number of transactions, he may choose to structure his business in such a way as to limit his tax liability.

(see paras 53-55, operative part 2)

JUDGMENT OF THE COURT (Third Chamber)

22 December 2010 (*)

(Sixth VAT Directive – Right to deduction – Purchase of vehicles and use for leasing transactions – Differences between the tax regimes of two Member States – Prohibition of abusive practices)

In Case C?277/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Court of Session (Scotland) (First Division, Inner House) (United Kingdom), made by decision of 10 July 2009, received at the Court on 21 July 2009, in the proceedings

The Commissioners for Her Majesty's Revenue and Customs

v

RBS Deutschland Holdings GmbH,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Švabý, R. Silva de Lapuerta (Rapporteur), E. Juhász and J. Malenovský, Judges,

Advocate General: J. Mazák,

Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2010,

after considering the observations submitted on behalf of:

– RBS Deutschland Holdings GmbH, by C. Tyre, QC, and J.-F. Ng, Barrister,

– the United Kingdom Government, by L. Seeboruth, acting as Agent, and R. Hill, Barrister,

– the Federal Republic of Germany, by B. Klein, acting as Agent,

– the Danish Government, by V. Pasternak Jørgensen and R. Holdgaard, acting as Agents,

– Ireland, by D. O'Hagan and B. Doherty, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

– the European Commission, by M. Afonso and R. Lyal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 September 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 17(3)(a) 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 directive').

2 The reference has been made in proceedings between the Commissioners for Her Majesty's Revenue and Customs ('the Commissioners') and RBS Deutschland Holdings GmbH ('RBSD') concerning the Commissioners' refusal to allow deduction of value added tax ('VAT') on the purchase of motor vehicles used for leasing transactions.

European Union law

3 Article 2 of the directive provides that the following are to be subject to VAT:

'1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.'

4 Article 4(1) and (2) of the directive provides:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining

income therefrom on a continuing basis shall also be considered an economic activity.'

5 Article 5(1) and (4)(b) of the directive provides as follows:

'1. "Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.

…

4. The following shall also be considered supplies within the meaning of paragraph 1:

…

(b) the actual handing over of goods, pursuant to a contract for the hire of goods for a certain period or for the sale of goods on deferred terms, which provides that in the normal course of events ownership shall pass at the latest upon payment of the final instalment'.

6 The first subparagraph of Article 6(1) of the directive provides:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.'

7 Article 8(1)(a) and (b) of the directive states:

'The place of supply of goods shall be deemed to be:

(a) in the case of goods dispatched or transported either by the supplier or by the person to whom they are supplied or by a third person: the place where the goods are at the time when dispatch or transport to the person to whom they are supplied begins …

(b) in the case of goods not dispatched or transported: the place where the goods are when the supply takes place.'

8 Article 9(1) of the directive provides:

'The place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.'

9 Article 17(2) and (3) of the directive provides:

'2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

…

3. Member States shall also grant to every taxable person the right to a deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

(a) transactions relating to the economic activities as referred to in Article 4(2) carried out in

another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

…'

National legislation

10 Schedule 4, paragraph 1(2) of the Value Added Tax Act 1994 ('the VAT Act'), which contains a definition of the term 'supply of goods', provides:

'If the possession of goods is transferred –

(a) under an agreement for the sale of the goods,

or

(b) under agreements which expressly contemplate that the property also will pass at some time in the future (determined by, or ascertainable from, the agreements but in any case not later than when the goods are fully paid for),

it is then in either case a supply of the goods.'

11 Pursuant to that rule, the national law deems leasing to be a supply of goods only if it is provided for under conditions where, on expiry of the contract, title to the goods leased passes to the user or to third parties. In other cases, leasing is deemed to be a supply of services under section 5(2)(b) of the VAT Act, which provides that anything which is not a supply of goods but is done 'for a consideration' is a supply of services.

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

12 RBSD is a company established in Germany carrying on business providing banking and leasing services. Since 31 March 2000, RBSD has been a member of the Royal Bank of Scotland Group. It does not have any place of establishment in the United Kingdom, but it is registered there for VAT purposes as a non-established taxable person.

13 In January 2000, Vinci plc ('Vinci'), a company incorporated in the United Kingdom, was introduced to RBSD with a view to RBSD supplying lease finance to Vinci. To that end, a number of agreements were entered into on 28 March 2001.

14 First, RBSD purchased motor cars in the United Kingdom from Vinci Fleet Services ('VFS'), a subsidiary of Vinci. VFS, which is also incorporated in the United Kingdom, had acquired those motor cars from car dealerships established in the United Kingdom.

15 Second, RBSD and VFS entered into a Put Option Agreement in respect of those cars. Under the terms of that agreement, VFS granted RBSD the right to require VFS to buy back those cars from RBSD on a given due date.

16 Third, RBSD also concluded a leasing agreement with Vinci for a term of two years, which could be extended, called the ‘Master Lease Agreement’, under which RBSD was to act as lessor and Vinci as lessee in respect of the equipment identified in the schedules to that agreement, that is to say, motor cars. On the expiry of the lease, Vinci was liable to pay to RBSD the full residual value of the cars. However, if, as was expected by the parties, RBSD sold the cars to a third person, Vinci would be entitled to or liable for the difference between the sale prices of the cars and their residual value, depending on the circumstances.

17 Between 28 March 2001 and 29 August 2002, RBSD charged rentals of GBP 335 977.49 to Vinci and charged no VAT on those transactions.

18 On 29 August 2002, RBSD assigned the agreements in question to a German subsidiary of the Royal Bank of Scotland Group, Lombard Leasing GmbH (‘LL’). LL then charged rentals of GBP 1 682 876.04 to Vinci during the period from 29 August 2002 to 27 June 2004, charging no VAT on those rentals.

19 Subsequently, and until 15 December 2004, LL exercised the put option with VFS in relation to the cars covered by the leasing agreements. VFS bought back those cars for GBP 663 158.20, and output tax totalling GBP 116 052.75 was charged to it by LL, which amount was then paid to the Commissioners.

20 The rental payments, received first by RBSD and then by LL, were not subject to VAT in the United Kingdom since, under United Kingdom law, the transactions carried out under those leasing agreements were treated as supplies of services and consequently the United Kingdom tax authorities regarded them as having been made in Germany, that is to say, where the supplier had its place of business. Nor were those payments subject to VAT in Germany since, under German law, the transactions in question were treated as supplies of goods and were therefore regarded as having been made in the United Kingdom, that is to say, the place of supply.

21 Accordingly, no VAT was collected on the rental payments at issue in the main proceedings in either the United Kingdom or Germany. However, VAT was levied in the United Kingdom on the proceeds of the sale of the cars following exercise of the put option by LL.

22 Before the United Kingdom tax authorities, RBSD sought deduction in full of the input VAT of GBP 314 056.24 charged to it by VFS when it purchased the cars from that company. RBSD maintained, inter alia, that Article 17(3)(a) of the directive entitled it to deduct the input tax paid for the acquisition of those goods. Furthermore, RBSD maintained that the conditions governing application of the doctrine of abuse of rights were not met in this case, since these were leasing transactions conducted between three independent traders operating at arm’s length.

23 The Commissioners refused to allow RBSD the VAT deduction claimed and demanded repayment of the input tax which had been credited to RBSD. The Commissioners contended that Article 17(3)(a) of the directive did not permit deduction of input VAT paid in respect of the acquisition of goods subsequently used for transactions which were not chargeable to VAT. The Commissioners pointed out, inter alia, that input tax could not be deducted or refunded if no output tax had been charged. Furthermore, it was argued, RBSD had engaged in an abusive practice because the legal arrangement which it had put in place had the essential aim of obtaining a fiscal advantage contrary to the purpose of the directive. The leasing terms were drawn up in order to enable it to exploit the differences in the ways in which the directive had been transposed in the United Kingdom and in Germany.

24 RBSD appealed to the VAT and Duties Tribunal, Edinburgh, against the Commissioners’

decision. In its decision of 24 July 2007, the Tribunal held that the principle of fiscal neutrality did not require that a VAT deduction should be refused merely because there was no corresponding liability to output VAT. The VAT and Duties Tribunal, Edinburgh, also took the view that the arrangements at issue in the main proceedings did not amount to an abusive practice.

25 The Commissioners lodged an appeal against that decision before the Court of Session (Scotland).

26 That court finds that Article 5(4)(b) of the directive has been implemented in different ways in the United Kingdom and Germany. The Court of Session (Scotland) states that, in accordance with the relevant United Kingdom law, the transactions carried out under the leasing agreements at issue in the main proceedings were treated as supplies of services. Consequently, those transactions were regarded as having been made where the supplier had established its business, that is to say, in Germany. Under German law, those agreements were treated as supplies of goods, with the result that the Member State in which the VAT must be paid corresponds to the place of supply of the goods, which is to say, in the main proceedings, the United Kingdom. Accordingly, the leases were not charged to VAT in Germany. Thus, no output tax was charged on the rental costs in either of the Member States concerned.

27 In those circumstances, the Court of Session (Scotland), after finding that the case which has been brought before it is characterised by the following facts:

– a German subsidiary of a United Kingdom bank purchased cars in the United Kingdom with a view to leasing them, with a put option, to an unconnected company in the United Kingdom and paid VAT on those purchases;

– under the relevant United Kingdom legislation, the supplies consisting of the rental of cars were treated as supplies of services made in Germany and accordingly not subject to VAT in the United Kingdom. Under German law, these supplies were treated as supplies of goods in the United Kingdom and accordingly not subject to VAT in Germany. The consequence was that no output tax was charged on those supplies in either Member State;

– the United Kingdom bank selected its German subsidiary as lessor and determined the duration of the leasing arrangements with a view to obtaining the tax advantage of no VAT being chargeable on the rental payments,

decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 17(3)(a) of the [directive] … to be interpreted as entitling the United Kingdom tax authorities to refuse to allow the German subsidiary to deduct VAT which it paid in the United Kingdom in respect of the purchase of the cars?

(2) In determining the answer to the first question, is it necessary for the national court to extend its analysis to consider the possible application of the principle of prohibiting abusive practices?

(3) If the answer to Question 2 is yes, would the deduction of input tax on the purchase of the cars be contrary to the purpose of the relevant provisions of the [directive] and thus satisfy the first requirement for an abusive practice as described in paragraph 74 of the decision of the Court in [Case C?255/02 *Halifax and Others* [2006] ECR I?1609] having regard among other principles to the principle of the neutrality of taxation?

(4) Again if the answer to Question 2 is yes, should the court consider that the essential aim of the transactions is to obtain a tax advantage, so that the second requirement for an abusive practice as described in paragraph 75 of the said decision of the Court [in *Halifax and Others*] is satisfied, in circumstances where, in a commercial transaction between parties operating at arm's length, the choice of a German subsidiary to lease the cars to a United Kingdom customer, and of the terms of the leases, are made with a view to obtaining the tax advantage of no output tax being charged on the rental payments?'

Consideration of the questions referred

First question

28 By its first question the national court wishes to know, in essence, whether Article 17(3)(a) of the directive must be interpreted as meaning that a Member State may refuse to allow a taxable person to deduct input VAT paid on the acquisition of goods in that Member State, where those goods have been used for the purposes of leasing transactions carried out in another Member State and those output transactions have not been subject to VAT in the second Member State.

29 As the national court set out in its order, the question posed can be explained by the fact that, in the main proceedings, the United Kingdom tax authorities categorised the leasing transactions carried out subsequent to the purchase of the cars as supplies of services, with the result that those transactions were treated as having been carried out where the supplier had established its business, that is to say, in Germany. However, the German tax authorities did not proceed with recovery of the related VAT as they took the view that the transactions in question ought to be regarded as a supply of goods.

30 It is common ground that, had the leasing transactions at issue in the main proceedings been carried out by a company having its place of business in the United Kingdom or by a company established in that Member State, they would have conferred entitlement to deduction of VAT, pursuant to Article 17(2)(a) of the directive, as regards the input tax paid on the purchase of the vehicles which were the subject-matter of the leasing.

31 In accordance with Article 17(3)(a) of the directive, the Member States are required to grant a taxable person the right to a deduction of VAT in so far as the input goods are used for the purposes of subsequent transactions carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the Member State concerned.

32 The right to deduct input VAT for certain transactions in respect of other output transactions carried out in another Member State therefore depends, under that provision, on whether that right to deduct exists where all of those transactions are carried out within the territory of the same Member State.

33 As is apparent from paragraphs 29 and 30 above, it must be observed that this is indeed the case in regard to the circumstances of the main proceedings. RBSD may consequently, pursuant to Article 17(3)(a) of the directive, claim a deduction of the VAT paid on the purchase of the goods subsequently used for leasing purposes.

34 However, the Governments which submitted observations to the Court contended, in essence, that the right to deduct input VAT is conditional upon output VAT having been collected. In the main proceedings, since the German tax authorities did not collect VAT when the leasing transactions were carried out, RBSD cannot purport to be entitled, in the United Kingdom, to deduct the input VAT on the purchase of the vehicles.

35 The Court has indeed held that the deduction of input VAT is linked to the collection of output VAT (see Case C-184/04 *Uudenkaupungin kaupunki* [2006] ECR I-3039, paragraph 24, and Case C-72/05 *Wollny* [2006] ECR I-8297, paragraph 20).

36 However, in the paragraphs of *Uudenkaupungin kaupunki* and *Wollny*, the Court stated that where goods or services acquired by a taxable person are used for purposes of transactions that are exempt or do not fall within the scope of VAT, no output VAT can be collected or input VAT deducted.

37 In the case in the main proceedings, however, the output leasing transactions carried out by RBSD were not exempt from VAT and came within its scope. They are therefore capable of giving rise to a right to deduct.

38 As regards the right to deduct under Article 17(2) of the directive, relating to the input VAT on the goods and services used by the taxable person for the purposes of his taxable output transactions, the Court has emphasised that the deduction mechanism is intended 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 neutrality of taxation of all economic activities, provided that those activities are themselves subject in principle to VAT (see Case C-408/98 *Abbey National* [2001] ECR I-1361, paragraph 24; Case C-435/05 *Investrand* [2007] ECR I-1315, paragraph 22; and Case C-174/08 *NCC Construction Danmark* [2009] ECR I-10567, paragraph 27).

39 In addition, the right to deduct VAT, as an integral part of the VAT scheme, is a fundamental principle underlying the common system of VAT and in principle may not be limited (see Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I?1577, paragraph 43, and Case C?74/08 *PARAT Automotive Cabrio* [2009] ECR I?3459, paragraph 15).

40 If follows that a taxable person may deduct the VAT levied on goods and services acquired for the exercise of his taxable activities (see *NCC Construction Danmark*, paragraph 39).

41 Accordingly, and in view of the facts of the main proceedings, the right to deduct VAT cannot depend on whether the output transaction has in fact given rise to the payment of VAT in the Member State concerned.

42 In so far as differences in the laws and regulations of the Member States continue to exist in this area, despite the establishment of the common system of VAT by the provisions of the directive, the fact that a Member State has not collected output VAT because of the manner in which it has categorised a commercial transaction cannot deny a taxable person the right to deduct input VAT paid in another Member State.

43 As regards the judgment in Case C-302/93 *Debouche* [1996] ECR I?4495, on which the United Kingdom tax authorities have relied in order to deny the right to deduct, it need simply be observed that, at paragraphs 12 to 14 of that judgment, the Court had regard only to the fact that the person concerned had been unable to submit a certificate issued by the authorities of the State in which he was established proving that he was a taxable person for the purposes of VAT in that

State. Such a document could not be issued because the supplies of services in question were exempt from VAT. It must therefore be held that the facts of the main proceedings in the present case, in the context of which RBSD enjoys the right to deduct under Article 17(3)(a) of the directive, differ from those in *Debouche*.

44 Although it may seem inconsistent in some respects to hold that a taxable person may deduct input VAT without paying output VAT, that cannot, however, furnish grounds for failing to apply the provisions of the directive relating to the right to deduct, such as Article 17(3)(a) thereof.

45 In the light of its wording, that provision cannot be interpreted as meaning that the tax authorities of a Member State may refuse to allow VAT to be deducted in circumstances such as those of the main proceedings.

46 Consequently, the answer to the first question is that, in circumstances such as those of the main proceedings, Article 17(3)(a) of the directive must be interpreted as meaning that a Member State cannot refuse to allow a taxable person to deduct input VAT paid on the acquisition of goods in that Member State, where those goods have been used for the purposes of leasing transactions carried out in another Member State, solely on the ground that the output transactions have not given rise to the payment of VAT in the second Member State.

The remaining questions

47 By its second, third and fourth questions, which should be examined together, the national court asks whether, in the event that Article 17(3)(a) of the directive is interpreted as not entitling the tax authorities of a Member State to refuse to allow VAT to be deducted in circumstances such as those of the main proceedings, where a company established in one Member State elects to have its subsidiary, established in another Member State, carry out transactions for the leasing of goods to a third company established in the first Member State, in order to avoid VAT being payable on the sums paid as consideration for those transactions – the transactions having been categorised in the first Member State as supplies of rental services carried out in the second Member State, and in that second Member State as supplies of goods carried out in the first Member State – the principle of prohibiting abusive practices may influence the interpretation adopted.

48 In order to answer those questions, it must, first of all, be recalled that preventing possible tax evasion, avoidance and abuse is an objective which is recognised and encouraged by the directive (see, inter alia, Joined Cases C-487/01 and C-7/02 *Gemeente Leusden and Holin Groep* [2004] ECR I-5337, paragraph 76, and *Halifax and Others*, paragraph 71).

49 At paragraphs 74 and 75 of *Halifax and Others*, the Court held, inter alia, that, in the sphere of VAT, an abusive practice can be found to exist only if, first, the transactions concerned, notwithstanding formal application of the conditions laid down by the relevant provisions of the directive and the national legislation transposing it, result in the accrual of a tax advantage the grant of which would be contrary to the purpose of the relevant provisions of the directive and, second, it is apparent from a number of objective factors that the essential aim of the transactions concerned is solely to obtain that tax advantage.

50 As regards the facts at issue in the main proceedings in the present case, it should be noted that the various transactions concerned took place between two parties which were legally unconnected. It is also common ground that those transactions were not artificial in nature and that they were carried out in the context of normal commercial operations.

51 As the national court has observed, the characteristics of the transactions at issue in the

main proceedings and the nature of the relations between the companies that carried out those transactions contain nothing to suggest an artificial arrangement that does not reflect economic reality and the sole aim of which is to obtain a tax advantage (see, to that effect, Case C-162/07 *Ampliscientifica and Amplifin* [2008] ECR I-4019, paragraph 28), since RBSD is a company established in Germany carrying on business providing banking and leasing services.

52 In those circumstances, the fact that services were supplied to a company established in one Member State by a company established in another Member State, and that the terms of the transactions carried out were chosen on the basis of factors specific to the economic operators concerned, cannot be regarded as constituting an abuse of rights. RBSD in fact provided the services at issue in the course of a genuine economic activity.

53 It is important to add that taxable persons are generally free to choose the organisational structures and the form of transactions which they consider to be most appropriate for their economic activities and for the purposes of limiting their tax burdens.

54 The Court has held that a trader's choice between exempt transactions and taxable transactions may be based on a range of factors, including tax considerations relating to the neutral system of VAT (see Case C?108/99 *Cantor Fitzgerald International* [2001] ECR I-7257, paragraph 33). In that connection, the Court has made clear that, where it is possible for the taxable person to choose from among a number of transactions, he may choose to structure his business in such a way as to limit his tax liability (see *Halifax and Others*, paragraph 73).

55 Consequently, the answer to the second, third and fourth questions is that the principle of prohibiting abusive practices does not preclude the right to deduct VAT, recognised in Article 17(3)(a) of the directive, in circumstances such as those of the main proceedings, in which a company established in one Member State elects to have its subsidiary, established in another Member State, carry out transactions for the leasing of goods to a third company established in the first Member State, in order to avoid a situation in which VAT is payable on the sums paid as consideration for those transactions, the transactions having been categorised in the first Member State as supplies of rental services carried out in the second Member State, and in that second Member State as supplies of goods carried out in the first Member State.

Costs

56 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 (Third Chamber) hereby rules:

1. **In circumstances such as those of the main proceedings, Article 17(3)(a) 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 meaning that a Member State cannot refuse to allow a taxable person to deduct input value added tax paid on the acquisition of goods in that Member State, where those goods have been used for the purposes of leasing transactions carried out in another Member State, solely on the ground that the output transactions have not given rise to the payment of value added tax in the second Member State.**

2. **The principle of prohibiting abusive practices does not preclude the right to deduct value added tax, recognised in Article 17(3)(a) of Directive 77/388, in circumstances such as those of the main proceedings, in which a company established in one Member State elects to have its subsidiary, established in another Member State, carry out transactions for the**

leasing of goods to a third company established in the first Member State, in order to avoid a situation in which value added tax is payable on the sums paid as consideration for those transactions, the transactions having been categorised in the first Member State as supplies of rental services carried out in the second Member State, and in that second Member State as supplies of goods carried out in the first Member State.

[Signatures]

* Language of the case: English.