Provisional text

JUDGMENT OF THE COURT (Second Chamber)

12 September 2024 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 187 – Adjustment of deductions – Extended adjustment period for immovable property acquired as capital goods – Concept of ‘capital goods’ – Article 190 – Option for Member States to treat as capital goods services with characteristics similar to those normally associated with those goods – Building extension and renovation works – Possibility under national law of treating such works as the construction or acquisition of immovable property – Restrictions – Direct effect of Article 190 – Margin of discretion)

In Case C?243/23 [Drebers], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Gent (Court of Appeal, Ghent, Belgium), made by decision of 28 June 2022, received at the Court on 18 April 2023, in the proceedings

Belgische Staat/Federale Overheidsdienst Financiën

v

L BV,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, F. Biltgen, N. Wahl, J. Passer and M. L. Arastey Sahún, Judges,

Advocate General: A.M. Collins,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 13 March 2024,

after considering the observations submitted on behalf of:

– L BV, by H. Casier and S. Gnedasi, advocaten,

– the Belgian Government, by S. Baeyens, P. Cottin and C. Pochet, acting as Agents,

– the European Commission, by A. Armenia, M. Björkland, and C. Zois, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 187 and 189 of

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; ‘the VAT Directive’).

2 The request has been made in proceedings between the Belgische Staat/Federale Overheidsdienst Financiën (Belgian State/Federal Public Finance Service) (‘the tax authority’) and L BV concerning the adjustment period applicable to the deductions of the value added tax (VAT) paid in relation to work carried out on a building used by L BV for its economic activity.

Legal context

European Union law

The Sixth Directive

3 Article 20(2) and (4) of the 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), as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18) and by Council Directive 2006/69/EC of 24 July 2006 (OJ 2006 L 221, p. 9) (‘the Sixth Directive’), which was repealed and replaced by the VAT Directive, stated:

‘2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one-fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

…

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

…

4. For the purposes of applying [paragraph 2], Member States may:

– define the concept of capital goods,

…

Member States may also apply [paragraph 2] to services which have characteristics similar to those normally attributed to capital goods.’

4 Article 1(4) of Directive 95/7 amended the third subparagraph of Article 20(2) of the Sixth Directive. The fifth recital of Directive 95/7 reads as follows:

‘Whereas it is appropriate that the period serving as a basis for calculating the adjustments provided for by Article 20(2) of the [Sixth] Directive should be extended up to 20 years by Member States for immovable property acquired as capital goods, bearing in mind the duration of their economic life’.

5 Article 1(6) of Directive 2006/69 added a second subparagraph to Article 20(4) of the Sixth Directive. Recital 5 of Directive 2006/69 stated:

‘It should be emphasised that certain services with the nature of capital items may be included in

the scheme which allows the adjustment of deductions for capital items over the lifetime of the asset, according to its actual use.'

The VAT Directive

6 Article 2(1) of the VAT Directive reads as follows:

'The following transactions shall be subject to VAT:

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

…

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

…'

7 Article 12 of that directive states:

'1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:

(a) the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;

…

2. For the purposes of paragraph 1(a), "building" shall mean any structure fixed to or in the ground.

Member States may lay down the detailed rules for applying the criterion referred to in paragraph 1(a) to conversions of buildings and may determine what is meant by "the land on which a building stands".

…'

8 Article 14(1) of that directive provides:

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

9 Under Article 24(1) of the VAT Directive:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods.'

10 Article 135(1) of that directive provides:

'Member States shall exempt the following transactions:

…

(j) the supply of a building or parts thereof, and of the land on which it stands, other than the supply referred to in point (a) of Article 12(1);

…’

11 Article 168 of that directive is worded 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;

…’

12 Article 184 of the VAT Directive states:

‘The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.’

13 Article 185(1) of that directive provides:

‘Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.’

14 Under Article 187 of that directive:

‘1. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

…

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

2. The annual adjustment shall be made only in respect of one-fifth of the VAT charged on the capital goods, or, if the adjustment period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired, manufactured or, where applicable, used for the first time.’

15 Article 189 of that directive provides:

‘For the purposes of applying Articles 187 and 188, Member States may take the following measures:

(a) define the concept of capital goods;

…’

16 Article 190 of the VAT Directive states:

‘For the purposes of Articles 187, 188, 189 and 191, Member States may regard as capital goods those services which have characteristics similar to those normally attributed to capital goods.’

Belgian law

17 Article 1(9)(1) of the wet tot invoering van het Wetboek van de belasting over de toegevoegde waarde (Law establishing the Value Added Tax Code) of 3 July 1969 (*Belgisch Staatsblad*, 17 July 1969, p. 7046), in the version applicable to the dispute in the main proceedings (‘the VAT Code’), is worded as follows:

‘For the purposes of that Code, the following definitions shall apply:

1° building or parts of a building means any structure fixed to or in the ground’.

18 Article 48(2) of the VAT Code provides:

‘In the case of capital goods and services which have characteristics similar to those normally attributed to capital goods, the deduction of taxes which were charged on them shall be subject to adjustment for a period of five years. The adjustment shall be effected each year up to one fifth of the amount of those taxes, where there are variations in the factors which were taken into account in calculating the deductible taxes.

However, for the tax charged on immovable property acquired as capital goods as determined by the King, the adjustment period shall be 15 years and the adjustment shall take place each year up to one fifteenth of the amount of that tax.’

19 Article 49 of that code states that the King is to lay down the conditions for the application of Articles 45 to 48 of that code.

20 Article 9 of the Koninklijk besluit nr. 3 met betrekking tot de aftrekregeling voor de toepassing van de belasting over de toegevoegde waarde (Royal Decree No 3 on deductions for the application of value added tax) of 10 December 1969 (*Belgisch Staatsblad*, 12 December 1969, p. 12006), in the version applicable to the dispute in the main proceedings (‘Royal Decree No 3’), provides:

‘1. For taxes charged on capital goods, the initial deduction effected by the taxable person shall be subject to adjustment for a period of five years which begins to run on 1 January of the year in which the right to deduct arose.

However, for taxes charged on immovable property acquired as capital goods, that period shall be extended to 15 years.

Taxes charged on immovable property acquired as capital goods shall mean taxes charged on:

1° transactions which seek or contribute to the construction of goods referred to in Article 1(9)(1) of the [VAT Code];

2° the acquisition of goods referred to in Article 1(9) of the [VAT Code];

3° the acquisition of a right in rem within the meaning of Article 9(2)(2) of the [VAT Code] relating to goods referred to in Article 1(9) of the [VAT Code].

…’

21 Point 2 of the first subparagraph of Article 21bis(1) of Royal Decree No 3 provides that a taxable person who carries on an exempt activity without the right of deduction and who becomes, in respect of the same activity, a taxable person who carries on transactions in respect of which VAT is deductible may exercise its right of deduction by way of adjustment in respect of, inter alia, the capital goods remaining at the time of that change, provided that those goods are still usable and the period laid down in Article 48(2) of the VAT Code has not expired.

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

22 L BV is a law firm. For the purposes of that economic activity, L BV has an immovable property, which is also used for residential purposes by its owner.

23 Between 2007 and 2015, significant works were carried out on that building, as a result of which it now consists of a main building and a renovated adjoining building as well as a newly built basement, glass annex and lift shaft. The various spaces are connected to one another by corridors on the ground floor and on the first floor, the lift shaft also enabling all floors of the main and adjoining buildings to be accessed. In mid-2015, the works were fully completed and the building was again put into service.

24 A single ‘cadastral income’ was allocated to the entire building, amounting, before the works were started, to EUR 2 456 and, after the works had been carried out, to EUR 3 850. 40% of the converted building was intended for private use and 60% for professional use.

25 On 1 January 2014, the Kingdom of Belgium abolished the VAT exemption previously applicable to the exercise of the profession of lawyer, so that L BV has since been registered as a taxable person for VAT purposes.

26 L BV subsequently adjusted the VAT deductions by deducting part of the VAT which it had paid on the costs of the works concerned and which it had not been able to deduct when its activity was exempt, since as it took the view that the adjustment period applicable to those works was still ongoing.

27 On that basis, L BV relied on the premiss that those works constituted immovable property acquired as capital goods subject to an extended adjustment period of 15 years, and not to the normal adjustment period of 5 years applicable to capital goods other than immovable property.

28 On 28 August and 1 December 2015, the tax authority carried out an unannounced tax inspection at L BV’s registered office in relation to the period from 1 January 2014 to 30 September 2015. Following that inspection, that tax authority, while acknowledging that L BV had, in principle, the right to adjust the VAT deductions for the construction works concerned, concluded that those works had not resulted in the construction of a new building, but had merely given rise to the improvement and renovation of the existing building, with the result that the adjustment period of five years had to be applied.

29 Taking the view, accordingly, that the adjustment of deductions relating to that work carried out by L BV should be corrected, the tax authority notified L BV, on 25 October 2017, of an order requiring it to pay an amount of VAT relating to those deductions.

30 The rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent (Court of First Instance, East Flanders, Ghent Division, Belgium), ruling on an action brought by L BV, held, by judgment of 10 March 2020, that the entirety of the glass annex and the lift shaft constructed by that company

and the adjoining building renovated by that company had to be regarded as newly constructed parts of a building, constituting immovable property acquired as capital goods, with the result that, according to that court, L BV was entitled to deduct 60% of the VAT relating to those works.

31 The tax authority brought an appeal against that judgment before the hof van beroep te Gent (Court of Appeal, Ghent, Belgium), the referring court. L BV lodged a cross-appeal.

32 That court considers, first, that the tax authority's appeal is well founded in so far as the lift shaft and the two constructions at the rear of the main building cannot each be regarded as a 'part of a building' within the meaning of Article 1(9)(1) of the VAT Code.

33 It states, however, secondly, as regards L BV's cross-appeal, that, under Belgian law, where works are carried out on an existing building, the extended adjustment period of 15 years is applied in respect of the VAT charged on those works only if, after they have been carried out, there is a 'new construction' for VAT purposes. Thus, that period of 15 years is not applicable to construction works which do not entail a conversion involving, in fact, the construction of a 'new' building for VAT purposes, even if, having regard to their nature and their significance, those works confer on the building on which they were carried out a duration of economic life as long as that of new buildings.

34 The referring court questions, as L BV does, whether that scheme is compatible with the VAT Directive, and in particular with Articles 187 and 189 thereof.

35 First, that scheme does not, in essence, fall within the concept of 'immovable property acquired as capital goods' other than the construction of a building or part of a building, whereas Articles 187 or 189 of the VAT Directive, for their part, lay down no restriction whatsoever as to the meaning of that concept. Nor do those articles refer, moreover, to the concept of 'supply, before first occupation, of a building or parts of a building', in Article 12(1)(a) of that directive, that latter provision serving only to explain the conditions under which the transfer of a property may be subject to VAT. There is therefore no justification for transposing the concept of 'immovable property acquired as capital goods' so strictly into national law as the Belgian legislature has done.

36 Secondly, where buildings undergo significant conversions which give them a useful economic life as long as that of new buildings, as is shown in the present case by the fact that the works at issue are depreciated over a period of 33 years, they are comparable to new buildings and they should be treated in the same way as new buildings for VAT purposes, and so in accordance with the principle of fiscal neutrality as a specific expression of the principle of equal treatment. In that context, it could be argued that the concept of 'immovable property acquired as capital goods' must apply to all property for which the duration of the economic life is considerably longer than the normal adjustment period of five years.

37 If that were the case, the referring court accepts that L BV may rely on the VAT Directive in order to preclude national legislation that is contrary to the VAT Directive and the principles underlying it.

38 In those circumstances, the hof van beroep te Brussel (Court of Appeal, Ghent) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Articles 187 and 189 of [the VAT Directive] preclude legislation such as that at issue in the main proceedings (namely Article 48(2) and Article 49 WBTW, read in conjunction with Article 9 [of Royal Decree No 3], relating to the deduction facility for the application of value added tax), according to which the extended adjustment period (of 15 years) in the case of the renovation of

an existing building is applied only if, after completion of the works, on the basis of the criteria under national law, there is a “new building” within the meaning of Article 12 of the aforementioned Directive, whereas the useful economic life of a substantially renovated building (which, however, on the basis of the administrative criteria under national law does not qualify as a ‘new building’ within the meaning of the aforementioned Article 12) is identical to the useful economic life of a new building, which is considerably longer than the period of [5] years referred to in the aforementioned Article 187, which is shown, inter alia, by the fact that the works carried out are depreciated over a period of 33 years, which is also the period over which new buildings are depreciated?

(2) Does Article 187 of [the VAT Directive] have direct effect, so that a taxable person who has carried out works on a building without those works leading to the renovated building being classified as a “new building” within the meaning of Article 12 of that directive on the basis of criteria under national law, but where those works have a useful economic life which is identical to that of such new buildings to which a 15-year adjustment period does apply, may rely on the application of the 15-year adjustment period?’

Consideration of the questions referred

The first question

39 As a preliminary point, it should be observed that the first question concerns the adjustment period, within the meaning of Article 187(1) of the VAT Directive, that should be applied to the deduction of the VAT paid by L BV in relation to the supply of the construction works at issue, namely, either the period of 5 years laid down in that provision for capital goods in general or the longer period, of up to 20 years, which the Member States may, under that provision, apply in the case of immovable property acquired as capital goods, and which, in Belgium, was fixed, pursuant to Article 48(2) of the VAT Code and Article 9(1) of Royal Decree No 3, at 15 years.

40 It is apparent from the documents before the Court and from the information provided by the Belgian Government at the hearing, first, that the construction works at issue in the main proceedings were subject to VAT as a supply of services within the meaning of Article 2(1)(c) of the VAT Directive, read in conjunction with Article 24 thereof, and not as supplies of goods.

41 Secondly, in order to apply to those works the adjustment period of five years laid down in the first subparagraph of Article 187(1) of that directive, the tax authority made use of the option, now conferred on the Member States by Article 190 of that directive and implemented in Belgian law by the first subparagraph of Article 48(2) of the VAT Code, to treat as capital goods those services which have characteristics similar to those normally attributed to capital goods.

42 Thus, in order to provide the referring court with a useful answer to the first question, account must also be taken of Article 190 of the VAT Directive.

43 In those circumstances, it must be considered that, by its first question, the referring court asks, in essence, whether Articles 187, 189 and 190 of the VAT Directive must be interpreted as precluding national legislation on the adjustment of deductions of VAT under which the extended adjustment period laid down in accordance with Article 187 for immovable property acquired as capital goods is applicable to construction works only where they are of such significance that they result in a conversion of the property, within the meaning of Article 12(2) of that directive, and is not applicable to construction works, subject to VAT as a supply of services within the meaning of that directive, which, without resulting in such a conversion, involve a significant extension and/or a substantial renovation of the building and the duration of the economic life of which corresponds to that of a new building.

44 In order to answer that question, it should be borne in mind, in the first place, that, according to settled case-law, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation (judgment of 25 July 2018, *Gmina Ryjewo*, C?140/17, EU:C:2018:595, paragraph 28 and the case-law cited).

45 The deduction rules are intended to relieve the taxable person entirely of the burden of the VAT payable or paid in the course of all its economic activities. The common system of VAT therefore ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that those activities are themselves, in principle, subject to VAT (judgment of 25 July 2018, *Gmina Ryjewo*, C?140/17, EU:C:2018:595, paragraph 29 and the case-law cited).

46 Similarly, the adjustment mechanism provided for by the VAT Directive, which forms an integral part of that system of deductions, is intended to enhance the precision of deductions so as to ensure fiscal neutrality, so that transactions effected at an earlier stage continue to give rise to the right of deduction only to the extent that they are used to make supplies subject to VAT (judgment of 9 July 2020, *Finanzamt Bad Neuenahr-Ahrweiler*, C?374/19, EU:C:2020:546, paragraph 20).

47 In that regard, Articles 184 and 185 of the VAT Directive set out in general the conditions under which the national tax authority must require initially deducted VAT to be adjusted, whereas Articles 187 to 192 of that directive provide for certain detailed rules for the adjustment of deductions of VAT applicable in the specific case of capital goods (see, to that effect, judgment of 17 September 2020, *Stichting Schoonzicht*, C?791/18, EU:C:2020:731, paragraphs 27 and 29 and the case-law cited).

48 Accordingly, the first subparagraph of Article 187(1) of the VAT Directive provides, in the case of those capital goods, that the adjustment of deductions is to be made for a period of five years, including that in which the capital goods were acquired or manufactured.

49 Such an adjustment period makes it possible to avoid inaccuracies in the calculation of deductions and unjustified advantages or disadvantages for a taxable person where, inter alia, changes in the factors initially taken into consideration to determine the amount of deductions occur after the declaration has been made. According to settled case-law, the likelihood of such changes is particularly significant in the case of capital goods, which are often used over a number of years, during which the purposes to which they are put may alter, the cost of acquiring them being depreciated accordingly over several financial years (see, to that effect, judgment of 16 June 2016, *Mateusiak*, C?229/15, EU:C:2016:454, paragraphs 30 and the case-law cited).

50 In that context, Article 187 of Directive 2006/112 is applicable in cases of adjustment of deductions in which capital goods the use of which is not eligible for deduction are then put to a

use which is so eligible (judgment of 25 July 2018, *Gmina Ryjewo*, C?140/17, EU:C:2018:595, paragraph 31).

51 As regards, more specifically, immovable property acquired as capital goods, the third subparagraph of Article 187(1) of the VAT Directive authorises the Member States to extend the adjustment period up to 20 years.

52 That provision corresponds, in essence, to that of the third subparagraph of Article 20(2) of the Sixth Directive, which was replaced by the VAT Directive. As is apparent from the fifth recital to Directive 95/7, by which that provision had been amended to extend the maximum adjustment period for immovable property acquired as capital goods – previously 10 years – to 20 years, such an extended period was adopted 'bearing in mind the duration of [the] economic life' of that property.

53 It follows that the possibility for the Member States to fix, for immovable property acquired as capital goods, an extended adjustment period, is consistent with the same logic as that underlying the detailed adjustment rules applicable to capital goods in general, namely that seeking to enhance the precision of deductions, while adapting those detailed rules to the particular characteristics of immovable property acquired as capital goods, which concern inter alia the duration of their economic life, which is much longer than that of other capital goods.

54 In the second place, as to whether construction works, such as those at issue in the main proceedings, are capable of falling within the concept of 'immovable property acquired as capital goods' within the meaning of the third subparagraph of Article 187(1) of the VAT Directive, and consequently being subject to the extended adjustment period that may be laid down in national law for such property, it must be recalled, as stated in paragraph 40 above, that the construction works at issue in the main proceedings were subject to VAT as a supply of services within the meaning of Article 2(1)(c) of that directive, and not as a supply of goods, within the meaning of Article 2(1)(a) of that directive.

55 Accordingly, although, it cannot be ruled out that, in principle, the performance of such work may be analysed, where appropriate, as constituting a supply of goods, within the meaning of Article 2(1)(a) of the VAT Directive, that is not the case with regard to the facts of the dispute in the main proceedings.

56 It follows that those works cannot, as such, fall within the concept of 'immovable property acquired as capital goods', in Article 187(1) of the VAT Directive, since they constitute services and not goods, irrespective of the way in which capital goods have, as the case may be, been defined in national law in accordance with Article 189(a) of that directive.

57 In those circumstances, the detailed rules for adjustment laid down in Article 187(1) of the VAT Directive, which relate to capital goods, are not, in themselves, applicable to the adjustment of the deduction of the VAT paid in relation to the performance of those works.

58 That assessment is not called into question by the fact, referred to at the hearing by the European Commission, that the construction works at issue in the main proceedings physically altered an immovable property, namely the old building as it was before the start of the works, or incorporated into it other tangible elements capable of being regarded once incorporated, as forming part of an immovable property.

59 That said, it should be noted, in the third place, that, in accordance with Article 190 of the VAT Directive, the Member States may, for the purposes, inter alia, of Article 187 of that directive, regard as capital goods those services which have characteristics similar to those normally

attributed to capital goods.

60 As has been stated in paragraph 41 above, it is precisely by making use of that option, as implemented in Belgian law, that the tax authority, in the present case, treated the construction works at issue in the same way as capital goods, within the meaning of the first subparagraph of Article 187(1) of the VAT Directive.

61 In those circumstances, it is necessary, first, to determine whether Article 190 of the VAT Directive allows the Member States to treat certain services not only as capital goods but also as immovable property acquired as capital goods.

62 In that regard, the wording of Article 190 of the VAT Directive, which refers in a general and non-restrictive manner to the concept of 'capital goods', without, therefore, excluding immovable property acquired as capital goods, permits, a priori, the view to be taken that such is the case.

63 Where the Member State concerned has decided, pursuant to the third subparagraph of Article 187(1) of that directive, to accord specific treatment, within the general category of capital goods, to that of immovable property acquired as capital goods, in order to apply an extended adjustment period to that category, those goods, while thus being treated differently from capital goods other than immovable property, nevertheless continues to fall within the general category of capital goods.

64 The interpretation in paragraph 62 above is supported by the aim pursued by Article 190 of the VAT Directive, as can be seen from recital 5 of Directive 2006/69, which gave rise to the third subparagraph of Article 20(4) of the Sixth Directive, a provision which is reproduced, in essence, in Article 190 of the VAT Directive.

65 According to recital 5, the grant of the option provided for in those two provisions is intended to permit the inclusion of 'certain services with the nature of capital items … in the scheme which allows the adjustment of deductions for capital items over the lifetime of the asset, according to its actual use.'

66 It follows that the aim of that option consists in enabling the Member States to treat, for the purposes of the adjustment mechanism, certain services in the same way as capital goods in so far as those services – having regard in particular to the duration of the economic life of their effects and to the concomitant possibility of a change in the actual use of the goods concerned – are similar to those capital goods.

67 Given that, within the general category of capital goods referred to in paragraph 63 above, immovable property acquired as capital goods are characterised by the much longer duration of their economic life, as noted in paragraph 53 above, it would be inconsistent, in the light of that aim, if, when exercising the option provided for in Article 190 of the VAT Directive, the Member States could not in turn differentiate the services concerned according to the duration of the economic life of their effects and, where appropriate, treat them as immovable property acquired as capital goods, provided that the Member State concerned has adopted a longer adjustment period for deductions for that category of goods pursuant to the third subparagraph of Article 187(1) of the VAT Directive.

68 By contrast, an interpretation of Article 190 of the VAT Directive as meaning that that article enables the Member States to treat, for the purposes of the adjustment mechanism for deductions, certain services, as the case may be, as capital goods or immovable property acquired as capital goods, makes it possible to enhance the precision of the deductions of VAT paid in relation to those services according to the duration of the economic life of their effects, as do the detailed

rules laid down, for that purpose, in respect of capital goods, referred to in paragraphs 46, 49 and 53 above.

69 Secondly, although the Member States are indeed free to implement or not implement the option, thus delimited, conferred on them by Article 190 of the VAT Directive and, moreover, they enjoy a margin of discretion, if they decide to do implement that option, as regards the similarity of the characteristics of the services and goods concerned, the fact remains that, when exercising that discretion, the Member States must comply with EU law and, in particular, with the aim of that article and, in particular, the principle of fiscal neutrality (see, by analogy, judgment of 17 September 2020, *Stichting Schoonzicht*, C?791/18, EU:C:2020:731, paragraph 49).

70 In that context, in the light of the aim of Article 190 of the VAT Directive, as set out in paragraph 66 above, the Member States cannot disregard, when implementing that provision, the duration of the economic life of the effects of the services that are to be treated as capital goods, given that, for the reasons set out in paragraph 67 above, the similarity of the characteristics of the services and goods concerned for the purposes of the adjustment mechanism for deductions depends, inter alia, on the duration of their economic life. The service in question may, from the point of view of the duration of the economic life of its effects, prove to be closer to immovable property acquired as capital goods than to capital goods other than immovable property.

71 As regards the principle of fiscal neutrality, which was intended by the EU legislature to reflect, in matters relating to VAT, the general principle of equal treatment, the Court has held that that principle precludes, first, treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes and, secondly, economic operators who carry out the same activities from being treated differently as far as the levying of VAT is concerned (judgments of 29 October 2009, *SKF*, C?29/08, EU:C:2009:665, paragraph 67 and the case-law cited, and of 30 June 2022, *Direc?ia General? Regional? a Finan?elor Publice Bucure?ti – Administra?ia Sector 1 a Finan?elor Publice*, C?146/21, EU:C:2022:512, paragraph 45 and the case-law cited).

72 Accordingly, in implementing Article 190 of the VAT Directive, Member States must ensure that, for VAT purposes, a taxable person who has enjoyed certain services is not treated differently to another taxable person who, engaged in the same economic activity, has purchased goods whose economic characteristics are essentially equivalent to the economic characteristics of those services.

73 In the present case, it will be for the referring court to assess whether the national legislation at issue in the main proceedings complies with the conditions set out in paragraphs 69 to 72 above.

74 That being said, in order to provide the referring court with a useful answer, it should be noted, as the referring court itself has also pointed out, that it appears to be common ground that, assessed as a whole, the construction works at issue in the main proceedings, which took place over several years, led to a significant renovation of the building concerned and also extended it by adding, inter alia, a glass annex and a lift shaft. The significance of that work appears, furthermore, to be supported by the figures provided by L BV, according to which they had a total cost of approximately EUR 1 937 104.

75 In addition, it appears to be established that the effects of those construction works, having regard in particular to their significance, have an economic life identical in duration to that of a new building.

76 In the light of those factors, the same work appears, for the purposes of the adjustment mechanism for deductions, to be much more similar to immovable property acquired as capital goods than to capital goods other than immovable property.

77 In view of that similarity, treating those works nevertheless as capital goods other than immovable property and thus applying to them the adjustment period of five years, reserved for that category of goods, is liable to lead to a different tax treatment of a taxable person who, like L BV, has invested in a significant extension and substantial renovation works in an existing building and paid the VAT due on those works, to which the adjustment period of five years would apply, as compared with a similar taxable person who has invested in the construction of a new building, to which an extended adjustment period is applicable, even though, in view of their economic characteristics, those investments are similar, or even functionally identical.

78 By contrast, the fact that the construction works concerned do not constitute a conversion of a building within the meaning of Article 12(2) of the VAT Directive, read in conjunction with Article 135(1)(j) of that directive, is irrelevant in that context, since the purpose of those provisions differs from that of Article 190 of that directive.

79 The purpose of the first provisions consists in identifying, having regard to their added value, the immovable property transactions liable to be taxed as a supply of a new (immovable) property which are therefore subject to VAT on that basis (see, to that effect, judgments of 16 November 2017, *Kozuba Premium Selection*, C?308/16, EU:C:2017:869, paragraphs 32 and 55, and of 9 March 2023, *État belge and Promo 54*, C?239/22, EU:C:2023:181, paragraph 23), whereas the purpose of Article 190 of that directive, which forms part of the adjustment mechanism applicable to capital goods, consists in setting out the detailed rules according to which the deductions of the VAT paid in relation to services similar to such goods must be adjusted.

80 In those circumstances, national legislation such as that at issue in the main proceedings is liable to be contrary to Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality.

81 In the light of all of the foregoing, the answer to the first question is that Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, must be interpreted as meaning that it precludes national legislation on the adjustment of deductions of VAT under which the extended adjustment period laid down in accordance with that Article 187 for immovable property acquired as capital goods does not apply to construction works, subject to VAT as a supply of services within the meaning of that directive, which involve a significant extension and/or substantial renovation of the building concerned by that work and the effects of which have a duration of economic life which corresponds to that of a new building.

The second question

82 By its second question, the referring court seeks to ascertain, in essence, whether Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, must be interpreted as having direct effect with the result that the taxable person may rely on it before the national court against the competent tax authority in order to have the extended adjustment period laid down for immovable property acquired as capital goods applied to the construction works which were carried out for that taxable person, subject to VAT as a supply of services within the meaning of that directive, where that authority has refused to apply that period by relying on national legislation such as that referred to in the first question.

83 It should be recalled, in the first place, that, in the event that the referring court were to consider that the tax authority's refusal to apply the extended adjustment period to the construction works at issue in the main proceedings is contrary to Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, the question of the direct effect of the first of those articles would arise only if no compatible interpretation of the legislation on which that refusal is based proved possible, as L BV and the Commission rightly pointed out (see, to that effect, judgment of 24 January 2012, *Dominguez*, C?282/10, EU:C:2012:33, paragraphs 23 and 32 and the case-law cited).

84 In that regard, in applying national law, national courts called upon to interpret that law are required to consider the whole body of rules of law and to apply methods of interpretation that are recognised by those rules in order to interpret it, so far as possible, in the light of the wording and the aim of the directive concerned in order to achieve the result sought by the directive and consequently to comply with the third paragraph of Article 288 TFEU (see, to that effect, judgment of 7 August 2018, *Smith*, C?122/17, EU:C:2018:631, paragraph 39 and the case-law cited).

85 However, the Court has held that the principle of interpreting national law in conformity with EU law has certain limits. Thus, the obligation on a national court to refer to EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law that is *contra legem* (see, to that effect, judgment of 7 August 2018, *Smith*, C?122/17, EU:C:2018:631, paragraph 40 and the case-law cited).

86 Thus, in the second place, in the event that the referring court considers that it is unable to interpret national law in conformity with EU law, it is necessary to examine whether Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, is capable of having direct effect, such that L BV may rely on that provision against the tax authority in order to have the extended adjustment period – which, in Belgium, was fixed, under Article 48(2) of the VAT Code and Article 9(1) of Royal Decree No 3, at 15 years – applied to the construction works at issue in the main proceedings.

87 It follows from settled case-law that, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against a Member State where that State has failed to implement the directive in national law by the end of the period prescribed, or where it has failed to implement the directive correctly (judgment of 14 May 2024, *Stachev*, C?15/24 PPU, EU:C:2024:399, paragraph 51 and the case-law cited).

88 Such provisions may thus be relied on by individuals against, inter alia, all the organs of the administration of that State (see, to that effect, judgment of 10 October 2017, *Farrell*, C?413/15, EU:C:2017:745, paragraph 33 and the case-law cited).

89 As regards, in that context, the unconditional nature of Article 190 of the VAT Directive, it is true that that provision merely confers on the Member States an option which they are free to implement or not, and that the implementation of that option, in so far as it concerns the possibility of treating services as immovable property acquired as capital goods, is, moreover, subject to the prior implementation by the Member State concerned of the option provided for in the third subparagraph of Article 187(1) of that directive to distinguish such goods from capital goods as a whole.

90 However, the freedom of choice granted to the Member States as to whether or not to implement an option such as that provided for in Article 190 of the VAT Directive does not prevent

the national court from reviewing whether a Member State which has taken the decision to implement that option has complied with the conditions governing that implementation and, in particular, has remained within the limits of its margin of discretion (see, to that effect, judgment of 1 February 1977, *Verbond van Nederlandse Ondernemingen*, 51/76, EU:C:1977:12, paragraphs 27 and 29).

91 Furthermore, where, as in the present case, a Member State has decided to exercise the option provided for in the third subparagraph of Article 187(1) of the VAT Directive and has thus fully exhausted the discretion available to it in that regard, there is no longer any obstacle to the judicial review referred to in the preceding paragraph.

92 It is therefore necessary, in circumstances such as those at issue in the main proceedings, to review whether, in the light of the analysis set out in paragraphs 70 to 72 above, the Member State concerned which has also exercised the option provided for in Article 190 of the VAT Directive has, in so doing, complied with its obligation to remain within the limits of the margin of discretion which it enjoys in that regard, as that margin results from the content of that provision, read in conjunction with Article 187(1) of that directive and in the light of the principle of fiscal neutrality.

93 Similarly, so far as concerns the sufficiently precise nature of Article 190 of the VAT Directive, read in conjunction with Article 187(1) thereof and in the light of the principle of fiscal neutrality, the fact, referred to in the preceding paragraph and also pointed out in paragraph 69 above, that the Member States enjoy a margin of discretion when implementing those provisions, does not preclude judicial review in order to verify whether the Member State concerned has exceeded that margin of discretion (see, to that effect, judgments of 24 October 1996, *Kraaijeveld and Others*, C?72/95, EU:C:1996:404, paragraph 59, and of 28 November 2013, *MDDP*, C?319/12, EU:C:2013:778, paragraph 51).

94 Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, is sufficiently precise to allow such judicial review, as also appears, moreover, from the answer given to the first question.

95 In those circumstances, Article 190 of the VAT Directive is capable of having direct effect, so that that article, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, may be relied on directly by a taxable person in the situation referred to in paragraph 88 above.

96 Accordingly, where the referring court, relying on such direct effect, finds that the Member State has exceeded its discretion by failing to regard certain construction works, subject to VAT as supplies of services, as immovable property acquired as capital goods, the taxable person may rely directly on Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, before that court in order to have those works regarded as such goods and to have the extended adjustment period laid down in national law applied to them, pursuant to the third subparagraph of Article 187(1) of that directive (see, by analogy, judgments of 28 November 2013, *MDDP*, C?319/12, EU:C:2013:778, paragraph 52, and of 15 April 2021, *Administration de l'Enregistrement, des Domaines et de la TVA*, C?846/19, EU:C:2021:277, paragraph 81).

97 In the light of the foregoing, the answer to the second question is that Article 190 of the VAT Directive, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality, must be interpreted as meaning that it has direct effect with the result that the taxable person may rely on it before the national court against the competent tax authority in order to have the extended adjustment period laid down for immovable property acquired as capital

goods applied to the construction works which were carried out for that taxable person, subject to VAT as a supply of services within the meaning of that directive, where that authority has refused to apply the extended adjustment period to those goods by relying on national legislation such as that referred to in the first question.

Costs

98 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

1. **Article 190 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality**

must be interpreted as meaning that it precludes national legislation on the adjustment of deductions of value added tax (VAT) under which the extended adjustment period laid down in accordance with that Article 187 for immovable property acquired as capital goods does not apply to construction works, subject to VAT as a supply of services within the meaning of that directive, which involve a significant extension and/or substantial renovation of the building concerned by that work and the effects of which have a duration of an economic life which corresponds to that of a new building.

2. **Article 190 of Directive 2006/112, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality**

must be interpreted as meaning that it has direct effect with the result that the taxable person may rely on it before the national court against the competent tax authority in order to have the extended adjustment period laid down for immovable property acquired as capital goods applied to the construction works which were carried out for that taxable person, subject to VAT as a supply of services within the meaning of that directive, where that authority has refused to apply the extended adjustment period to those goods by relying on national legislation such as that referred to in the first question.

[Signatures]

* Language of the case: Dutch.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.