Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

12 September 2013*

(Value added tax — Sixth Directive 77/388/EEC — Articles 17 and 19 — Deduction of input tax paid — Use of goods and services for both taxable and exempt transactions — Proportional deduction — Calculation of the proportion — Branches established in other Member States and in third States — Not taking their turnover into account)

In Case C-388/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 11 July 2011, received at the Court on 22 July 2011, in the proceedings

Le Crédit Lyonnais

v

Ministre du Budget, des Comptes publics et de la Réforme de l'État,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, M. Ilešič, J.-J. Kasel (Rapporteur) and M. Berger, Judges,

Advocate General: P. Cruz Villalón,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 27 September 2012,

after considering the observations submitted on behalf of:

— Le Crédit Lyonnais, by C. Aldebert, E. Ashworth and C. Reinbold, avocats,

— the French Government, by G. de Bergues and J.-S. Pilczer, acting as Agents,

— the Cypriot Government, by E. Symeonidou, acting as Agent,

— the United Kingdom Government, by L. Seeboruth and A. Robinson, acting as Agents, and by R. Hill, Barrister,

— the European Commission, by C. Soulay and L. Lozano Palacios, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2013,

* Language of the case: French.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 17(2), (3) and (5) and Article 19(1) 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; 'the Sixth Directive').

2 The request has been made in proceedings between Le Crédit Lyonnais ('LCL'), a bank with its principal establishment in France, and the French State, concerning the calculation of the deductible proportion of value added tax ('VAT') applicable to LCL for the period from 1 January 1988 to 31 December 1990.

Legal context

European Union legislation

3 Article 2 of the Sixth Directive provides:

'The following shall 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;

...'.

4 Article 4(1) and (2) of the Sixth 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 9(1) of the Sixth Directive is worded as follows:

'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.'

6 Article 13B of the Sixth Directive states:

'Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

...

(d) The following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it;

2. the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

4. transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items; "collectors items' shall be taken to mean gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

5. transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding:

— documents establishing title to goods,

— the rights or securities referred to in Article 5(3);

6. management of special investment funds as defined by Member States;

…'

7 Article 17 of the Sixth Directive provides:

'1. The right to deduct shall arise at the time the deductible tax becomes chargeable.

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) [VAT] due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) [VAT] due or paid in respect of imported goods;

(c) [VAT] due under Articles 5(7)(a) and 6(3).

3. Member States shall also grant every taxable person the right to a deduction or refund of the [VAT] 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 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;

(b) transactions which are exempt under Article 14(1)(i) and under Articles 15 and 16(1)(B), (C) and (D), and paragraph 2;

(c) any of the transactions exempted under Article 13B(a) and (d), paragraphs 1 to 5, when the customer is established outside the Community or when these transactions are directly linked with goods intended to be exported to a country outside the Community.

…

5. As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which [VAT] is deductible, and for transactions in respect of which [VAT] is not deductible, only such proportion of the [VAT] shall be deductible as is attributable to the former transactions.

This proportion shall be determined, in accordance with Article 19, for all the transactions carried out by the taxable person.

However, Member States may:

(a) authorise the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) compel the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

(c) authorise or compel the taxable person to make the deduction on the basis of the use made of all or part of the goods and services;

(d) authorise or compel the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph, in respect of all goods and services used for all transactions referred to therein;

(e) provide that, where the [VAT] which is not deductible by the taxable person is insignificant, it shall be treated as nil.

…’

8 Article 19(1) and (2) of the Sixth Directive provides:

‘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 [VAT], of turnover per year attributable to transactions in respect of which [VAT] is deductible under Article 17(2) and (3);

— as denominator, the total amount, exclusive of [VAT], of turnover per year attributable to transactions included in the numerator and to transactions in respect of which [VAT] is not deductible. The Member States may also include in the denominator the amount of subsidies, other than those specified in Article 11A(1)(a).

The proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next unit.

2. By way of derogation from the provisions of paragraph 1, there shall be excluded from the calculation of the deductible proportion, amounts of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business. Amounts of turnover attributable to transactions specified in Article 13B(d), in so far as these are incidental transactions, and to

incidental real estate and financial transactions shall also be excluded. Where Member States exercise the option provided under Article 20(5) not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.'

French legislation

9 Article 271 of the Code général des impôts (French General Tax Code), in the version applicable at the time of the facts in the main proceedings (hereafter 'the CGI'), provided:

'4. The right to deduct shall arise, subject to the same conditions as if [VAT] were payable, in respect of:

...

(b) banking and financial services enjoying exemption under Article 261C(1)(a) to (e), where they are rendered to persons domiciled or established outside the European Economic Community or relate to exports of goods intended for countries other than Member States of the Community.'

10 Under Article 212 of Annex II to the CGI:

'Taxable persons who do not carry out exclusively transactions in respect of which [VAT] is deductible are authorised to deduct a fraction of the [VAT] charged on goods constituting fixed assets equal to the amount of that tax multiplied by the ratio between the annual amount of receipts attributable to transactions in respect of which [VAT] is deductible and the annual amount of receipts attributable to all transactions carried out ...'.

11 Article 213 of Annex II to the CGI provided:

'Where a taxable person engages in sectors of business which are not subject to identical provisions as regards [VAT], those sectors shall be the subject of separate accounts for application of the right to deduct.

Every building or group of buildings or part of a building containing social housing for rent, the supply of which is itself taxable under the last subparagraph of Article 257(7)(1)(c) of the [CGI], constitutes a sector of business.

The amount of the tax deductible in respect of assets common to the various sectors of business shall be determined by application of the ratio provided for in Article 212.'

12 Article 219 of Annex II to the CGI was worded as follows:

'Taxable persons who do not exclusively carry out transactions giving rise to deduction shall be authorised to deduct the [VAT] charged on those same goods and services within the limits set out below:

(a) where those goods and services contribute solely to transactions giving rise to a right of deduction, the tax charged on them shall be deductible;

(b) where they contribute solely to transactions not giving rise to a right of deduction, the tax charged on them shall not be deductible;

(c) where their use leads concurrently to the carrying out of transactions of which some give rise to a right of deduction and others do not, a fraction of the tax charged on them shall be deductible. That fraction shall be determined under the conditions laid down in Articles 212 to 214.'

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

13 LCL is a bank which has its principal establishment in France and branches in EU Member States and in third States.

14 Following an examination of the accounts of LCL for the period from 1 January 1988 to 31 December 1989, and two adjustment notices, the tax administration assessed LCL for arrears, inter alia, of VAT in respect of that period. Those arrears result from that administration's refusal to take account, unlike LCL in its declarations, of the interest on loans granted by LCL's principal establishment to its branches established outside France, in the numerator and the denominator of the deductible proportion laid down for VAT by Article 212 of Annex II to the CGI.

15 On 20 July 1994, LCL lodged its first objection to the declaration of those arrears, claiming that the amount of the interest in question could be taken into account in calculating the deductible proportion of VAT. In a second objection of 31 December 1996, it asked for a refund of the sums which it considered it had overpaid for the periods in question and of those which it had paid, in 1990 and in 1991, in respect of the period from 1 January to 31 December 1990, maintaining that, while the amount of interest invoiced by the principal establishment to the branches could not be taken into account on the ground that its principal establishment, together with its foreign branches, all formed part of one and the same entity, the income from the transactions which the branches carry out with third parties should be regarded as their own income and be taken into account in calculating the deductible proportion applied to it.

16 Since those complaints were rejected by the tax administration, LCL appealed to the tribunal administratif de Paris (Administrative Court, Paris) (France) which, by judgment of 5 October 2004, dismissed that appeal. Its appeal against that judgment also having been dismissed, LCL appealed on a point of law to the French Conseil d'État (Council of State).

17 In support of its appeal, LCL claims that, in order to determine the deductible proportion of expenses of its principal establishment for VAT purposes, the income of its branches established in other EU Member States and in third States should be taken into account, in so far as those branches must, following the judgment in Case C-210/04 *FCE Bank* [2006] ECR I-2803, be regarded as constituting with that principal establishment, in so far as concerns the relations between them, a single taxable person.

18 It maintains that by holding, first, that branches established in an EU Member State are themselves subject to VAT and take account, in determining their own deductible proportions, of the abovementioned income, which cannot therefore give rise to a further right of deduction in favour of the principal establishment, and, second, that branches established outside the EU, which are entitled either not to be subject to VAT, or to be subject to other rules, constitute 'distinct sectors of business' for the purposes of exercising the right to deduct, the cour d'administrative d'appel de Paris (Administrative Court of Appeal, Paris) adopted an interpretation which is incompatible with the Community principle of neutrality of the common system of VAT.

19 In those circumstances, the Conseil d'État decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Having regard to the rules on the territorial scope of [VAT], can Article 17(2) and (5) and Article 19 of the Sixth Directive … be interpreted as meaning that, for calculation of the deductible proportion for which they provide, the principal establishment of a company established in a Member State must take account of the income of each of its branches established in another Member State and, correspondingly, those branches must take account of the totality of the income falling within the scope of [VAT] of the company?

(2) Must the same solution be adopted for branches established outside the EU, particularly in the light of the right to deduct provided for by Article 17(3)(a) and (c), in relation to the banking and financial operations referred to in Article 13B(d)(1) to (5), which are carried out for the benefit of customers established outside the [EU]?

(3) Might the answer to the first and second questions above vary from one Member State to another, depending on the options made available by the last subparagraph of Article 17(5), particularly with regard to the establishment of different sectors of business?

(4) If the answer to either the first or the second questions above is in the affirmative, is it, first, appropriate to limit the application of a deductible proportion of that kind to calculation of rights to deduct [VAT] that has been charged on expenses incurred by the principal establishment for the benefit of foreign branches and, second, must income achieved abroad be taken into account in accordance with the rules applicable in the State of the branch or in the State of the principal establishment?'

Consideration of the questions referred

The first question

20 As a preliminary point, it should be noted that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the question referred to it (see, inter alia, *FCE Bank*, paragraph 21).

21 In that regard, it should be observed that, by its first question, the referring court seeks to ascertain how, first, the deductible proportion of VAT of the principal establishment of a company established in France and, second, the deductible proportion of the branches of that company established outside that Member State should be determined. In so far as the dispute in the main proceedings relates only to the determination of the deductible proportion applicable to the principal establishment of the company subject to taxation, no useful purpose would be served by ruling in detail on the calculation of the deductible proportions applicable to the branches of that company established outside that Member State.

22 Therefore, the first question must be understood as seeking, in essence, to ascertain whether Articles 17(2) and (5) and 19(1) of the Sixth Directive must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may take into account the turnover of its branches established in other Member States.

23 In order to answer that question, it should be borne in mind that, in determining the scope of a provision of EU law, its wording, context and objectives must all be taken into account (see, inter alia, Case C-174/08 *NCC Construction Danmark* [2009] ECR I-10567, paragraph 23 and case-law cited).

24 In that regard, it must be concluded that the wording of Article 17(2) and (5) and of Article 19(1) of the Sixth Directive does not, as such, make it possible to hold that, for the purposes of the determination of the deductible proportion of the VAT applicable to a company, the principal establishment of which is situated in a Member State, that company may take into account the turnover of its branches established in other Member States.

25 With regard to the context of those provisions and their objectives, Articles 17 and 19 of the Sixth Directive are part of Title XI thereof, which deals with the deduction system.

26 The right to deduct, provided for in Article 17 et seq. of the Sixth Directive, is an integral part of the VAT scheme and, in principle, may not be limited (Case C-243/03 *Commission* v *France* [2005] ECR I-8411, paragraph 28 and case-law cited, and Case C-488/07 *Royal Bank of Scotland* [2008] ECR I-10409, paragraph 14).

27 The deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject, in principle, to VAT (see *Royal Bank of Scotland*, paragraph 15 and case-law cited).

28 In particular, Article 17(5) of the Sixth Directive lays down the rules applicable to the right to deduct VAT where the VAT relates to goods or services used by the taxable person 'both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible'. In such a case, the first subparagraph of Article 17(5) of the Sixth Directive provides that only such proportion of the VAT is deductible as is attributable to the former taxable transactions (*Royal Bank of Scotland*, paragraph 17).

29 Under the second subparagraph of Article 17(5) of the Sixth Directive, the right to deduct is quantified according to a proportion fixed in accordance with Article 19 of that directive (*Royal Bank of Scotland*, paragraph 18).

30 It must be held that, in so far as the calculation of the deductible proportion constitutes an element of the deduction system, the manner in which that calculation must be carried out falls, along with that deduction system, within the scope of the national VAT legislation to which an activity or transaction must be linked for tax purposes.

31 It is for the Member States' tax authorities to lay down, as the third subparagraph of Article 17(5) of the Sixth Directive allows them to do, the method for determining the right to deduct, permitting them to provide for determination of a separate proportion for each sector of business or deduction on the basis of the use made of all or part of the goods and services for a specific activity, or they may even exclude the right of deduction in certain circumstances (see, to that effect, *Royal Bank of Scotland*, paragraph 19).

32 The finding in paragraph 31 above is moreover confirmed by the fact that the method of repayment of VAT, by deduction or by refund, depends solely on the place where the taxable person is established (see, to that effect, judgment of 16 July 2009 in Case C-244/08 *Commission* v *Italy*, paragraphs 25 and 33).

33 In addition, it must be observed that the concept of the 'place of establishment' covers not only the taxable person's principal establishment, but also the fixed establishments within the meaning of the Sixth Directive which that person may have in other Member States. Thus, a company which has its principal establishment in one Member State and a fixed establishment in another Member State must be considered, by virtue of that fact, as being established in the last-mentioned Member State for the activities carried out there and can no longer claim a refund of the VAT within the meaning of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11), and of the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ 1986 L 326, p. 40), which is paid there. It is for that fixed establishment to seek, from the tax authorities of that State, deduction of VAT in respect of the acquisitions made there (*Commission* v *Italy*, paragraphs 33 and 35).

34 Since the Court has held that the fixed establishment, within the meaning of the Sixth Directive, situated in a Member State and the principal establishment situated in another Member State constitute a single taxable person subject to VAT (*Commission* v *Italy*, paragraph 38), it follows that a taxpayer is subject, in addition to the system which applies in the State of its principal establishment, to as many national systems of deduction as there are Member States in which it has fixed establishments.

35 Since the methods of calculation of the proportion constitute a fundamental element of the deduction system, account cannot be taken, in calculating the proportion applicable to the principal establishment of a taxpayer established in a Member State, of the turnover of all of the taxable person's fixed establishments in the other Member States, without seriously jeopardising both the rational allocation of the spheres of application of national legislation in VAT matters and the rationale of the aforesaid proportion.

36 That interpretation of Article 17(2) and (5) and of Article 19(1) of the Sixth Directive is, moreover, in conformity with the objective of those provisions.

37 With regard to the principle of neutrality of VAT, which must be put into effect by the deduction system, it must be held that, as the Advocate General stated in points 67 to 69 of his Opinion, it is not proved that allowing a taxable person to calculate the deductible proportion applicable to its principal establishment in a certain Member States by taking into account the turnover of its fixed establishments in the other Member States can guarantee, in all cases, better observance of that principle than a system which provides that a taxable person must, in every Member State in which he can be regarded as having a fixed establishment within the meaning of the Sixth Directive, determine a separate deductible amount.

38 Second, as correctly argued by the United Kingdom of Great Britain and Northern Ireland, such a method of determining the deductible proportion applicable to a taxable person's principal establishment would serve to increase, in relation to all the acquisitions which that taxable person carried out in the Member State in which its principal establishment is situated, the proportion of VAT which that principal establishment may deduct, even though some of those acquisitions have no connection with the activities of the fixed establishments outside that State. Thus, the amount of the applicable deductible proportion would be distorted.

39 Finally, such a method of establishing the deductible proportion is liable to impair the effectiveness of Articles 5(7)(a) and 6(3) of the Sixth Directive which grant Member States certain discretion while mitigating the effects of their choices in relation to taxation policy.

40 In the light of all those considerations, the answer to the first question is that Article 17(2) and (5) and Article 19(1) of the Sixth Directive must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in other Member States.

The second question

41 By its second question, the referring court asks, in substance, whether, in the light of Article 17(3)(a) and (c) of the Sixth Directive, a company, the principal establishment of which is situated in a Member State, may take into account, in order to determine the deductible proportion of the VAT applicable to it, the turnover of its branches established in third States.

42 In that regard, it should be noted that, as follows from paragraphs 30 to 33 above, the deduction system is based on the principle of territoriality of the applicable national provisions and that, where a taxable person has a fixed establishment in a State other than that in which it has set up its principal establishment, the economic activities which it carries out in that State are regarded, for the purposes of application of the provisions of the Sixth Directive, as being exercised from that fixed establishment.

43 No support can be drawn from either the preamble to the Sixth Directive or its substantive provisions for a finding that the fact that a taxable person has a fixed establishment outside the EU can affect the deduction system to which that taxable person is subject in the Member State in which its principal establishment is situated.

44 It follows, as found by the Advocate General in point 81 of his Opinion, that, in a situation such as that at issue in the main proceedings, it cannot reasonably be argued that the services provided by fixed establishments outside the EU to customers also established in third States must be regarded as supplied by the principal establishment itself.

45 That finding is not called into question by the argument that a company which has its principal establishment in a Member State and a branch in a third State must, for VAT purposes, be taxed in the same way as a company, also established in a Member State, which provides the same services without recourse to such a branch or which has, for that purpose, a subsidiary in that third State. Those different possibilities reflect situations which are clearly different and cannot therefore be treated in the same way by the tax system.

46 In that regard, furthermore, 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 (Case C-277/09 *RBS Deutschland Holdings* [2010] ECR I-13805, paragraph 53).

47 Thus, a trader's choice between exempt transactions and taxable transactions may be based on a range of factors, including on tax considerations relating to the neutral system of VAT (see Case C-108/99 *Cantor Fitzgerald International* [2001] ECR I-7257, paragraph 33).

48 In addition, as is apparent from the case-law of the Court, 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, inter alia, Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 73, and *RBS Deutschland Holdings*, paragraph 54).

49 The answer to the second question is therefore that Article 17(3)(a) and (c) and Article 19(1) of the Sixth Directive must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in third States.

The third question

50 By its third question, the referring court asks, in essence, whether the third subparagraph of Article 17(5) of the Sixth Directive must be interpreted as permitting a Member State to adopt a rule for the calculation of the deductible proportion per sector of business of a company subject to tax which authorises that company to take into account the turnover of a branch established in another Member State or in a third State.

51 In order to answer that question, it should be borne in mind that, reading Article 17(5) and 19(1) of the Sixth Directive in conjunction, the latter provision refers only to the proportion deductible under the first subparagraph of Article 17(5) of the directive, and therefore lays down a detailed rule for calculating the proportion referred to in the first of those two provisions only and, by extension, for the deduction to be made pursuant to point (d) of the third subparagraph of Article 17(5) of that directive (see, to that effect, *Royal Bank of Scotland*, paragraph 22, and Case C-511/10 *BLC Baumarkt* [2012] ECR, paragraph 21).

52 The Court has also held that, in the absence of indications in the Sixth Directive, it is for the Member States to establish, within the limits of compliance with EU law and the principles on which the common system of VAT is based, methods and rules governing the calculation of the deductible proportion of input VAT. In exercising that power, those States are obliged to take account of the purpose and general system of that directive (see, inter alia, *BLC Baumarkt*, paragraph 22 and case-law cited).

53 However, it must be held that the reference in the third subparagraph of Article 17(5) of the Sixth Directive to 'sectors of business' cannot be interpreted as referring to geographic areas.

54 As is apparent from Article 4(1) and (2) of the Sixth Directive, the term 'activities' refers, in the context of the Sixth Directive, to different forms of economic activities such as the activities of producers, traders and persons supplying services.

55 It follows that a Member State cannot, on the basis of the provisions of the third subparagraph of Article 17(5) of the Sixth Directive, permit a taxable person established on its territory to take into account, when determining the deductible proportion which is applicable to a sector of its economic activity, the turnover of a fixed establishment which is established outside that Member State.

56 Therefore, the answer to the third question is that the third subparagraph of Article 17(5) of the Sixth Directive must be interpreted as not permitting a Member State to adopt a rule for the calculation of the deductible proportion per sector of business of a company subject to tax which authorises that company to take into account the turnover of a branch established in another Member State or in a third State.

The fourth question

57 In the light of the answers to the first and second questions, it is not necessary to answer the fourth question.

Costs

58 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 (First Chamber) hereby rules:

1. **Article 17(2) and (5) and Article 19(1) 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, must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in other Member States.**

2. **Article 17(3)(a) and (c) and Article 19(1) of the Sixth Directive 77/388 must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in third States.**

3. **The third subparagraph of Article 17(5) of the Sixth Directive 77/388 must be interpreted as not permitting a Member State to adopt a rule for the calculation of the deductible proportion per sector of business of a company subject to tax which authorises that company to take into account the turnover of a branch established in another Member State or in a third State.**

[Signatures]