Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

18 July 2013*

(Value added tax — Directive 2006/112/EC — Articles 168(a) and 176 — Right to deduction — Expenditure related to the purchase of goods and the supply of services for staff — Staff supplied to the taxable persons claiming the right to deduction but employed by another taxable person)

In Case C-124/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad-Plovdiv (Bulgaria), made by decision of 24 February 2012, received at the Court on 7 March 2012, in the proceedings

AES-3C Maritza East 1 EOOD

v

Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, Plovdiv,

THE COURT (Sixth Chamber),

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

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 10 April 2013,

after considering the observations submitted on behalf of:

— AES-3C Maritza East 1 EOOD, by S. Garbolino, E. Evtimov and Y. Mateeva, advokati,

— the Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, Plovdiv, by V. Apostolov, acting as Agent,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Bulgarian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 168(a) and 176 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between AES-3C Maritza East 1 EOOD ('AES'), a company governed by Bulgarian law, and the Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, Plovdiv (Director of the Appeals and Enforcement Management Directorate, Plovdiv, at the Central Administration of the National Revenue Agency; 'the Direktor'), concerning the right to deduction of input value added tax ('VAT') paid on the purchase of various goods and services for employees who are supplied to AES by another company.

Legal context

European Union law

3 Article 168 of Directive 2006/112 provides:

'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;

…'

4 Article 176 of that directive provides:

'The Council [of the European Union], acting unanimously on a proposal from the [European] Commission, shall determine the expenditure in respect of which VAT shall not be deductible. VAT shall in no circumstances be deductible in respect of expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Pending the entry into force of the provisions referred to in the first paragraph, Member States may retain all the exclusions provided for under their national laws at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.'

Bulgarian law

5 Under Article 69(1) of the Law on value added tax (Zakon za danak varhu dobavenata stoynost, DV No 63, 4 August 2006; 'the ZDDS'), in force with effect from the date of entry into force of the Act concerning the conditions of accession of the Republic of Bulgaria to the European Union and the adjustments to the Treaties on which the European Union is founded (OJ 2005 L 157, p. 203):

'(1) Where the goods and services are used for the purposes of taxable supplies carried out by a registered taxable person, that person is entitled to deduct:

1. the tax on the goods and services which the supplier, where that supplier is also a registered taxable person in accordance with this legislation, has supplied to him or is obliged to supply to him;

…’

6 Article 70(1) and (3) of the ZDDS provides, in particular:

‘(1) Even where the requirements of Article 69 or Article 74 are satisfied, the right of deduction does not apply where:

...

2. the goods or services are intended to be supplied free of charge or for activities other than the economic activity of the taxable person;

...

(3) Article 1(2) shall not apply to:

1. … the provision free of charge by the employer to employees, including those employed as managers, of special, working and representative clothing and uniforms and personal protective equipment to meet the needs of his economic activity;

2. the provision free of charge by the employer to employees, including those employed as managers, of transport from their home to their workplace and back, to meet the needs of his economic activity;

...

7. the travelling and accommodation expenses of the taxpayer’s officials on business trips;

…’

7 In the version applicable prior to the accession of the Republic of Bulgaria to the European Union (DV No 153, 23 December 1998), the ZDDS provided, in Article 64(1):

‘(1) A recipient of goods or services or an importer shall have the right to deduct input tax if the following conditions are satisfied:

...

5. the goods or services received as a result of importation or a taxable transaction have been, are or will be used for taxable transactions;

...’

8 Article 65(1) of that version of the ZDDS provided:

‘(1) Even where the requirements of Article 69 or Article 74 are satisfied, the right of deduction does not apply where:

1. the goods or service are intended for representative purposes;

2. a motor cycle or car is acquired in which the seats, excluding the driver’s seat, number no more than five except in cases where the taxpayer carries on his principal activity using them;

3. (supplemented by DV No 100 of 2005) the goods or service are intended for the maintenance, repair, enhancement and operation of motor cycles or cars under paragraph 2;

4. the goods or service are used for tax-exempt transactions within the meaning of Article 33;

5. the goods are commandeered for the benefit of the State or the building is destroyed due to unlawful construction.'

9 In accordance with Article 1(1) of the Supplementary provisions of the Labour Code (Kodeks na truda, DV No 26, 1 April 1986, and No 27, 4 April 1986), in the version applicable at the material time, 'employer', for the purposes of that code, 'means any natural person, legal person or entity dependent thereon, together with any other organisationally and economically separate entity (an undertaking, establishment, organisation, cooperative, firm, venue, household, company or the like) which independently engages staff in the context of an employment relationship, including staff engaged for the purposes of performing home or tele-work and their provision for performance of work within an undertaking using hire staff'.

10 The Law on health and safety at work (Zakon za zdravoslovni i bezopasni uslovia na trud, DV No 124, 23 December 1997), provides, in Article 1 of its Supplementary provisions, that the term 'employer' means any party conforming to the definition in Article 1(1) of the Supplementary provisions of the Labour Code and any party who engages staff and bears entire responsibility for the undertaking, cooperative or organisation.

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

11 AES owns and operates a power station situated outside the populated area in the municipality of Galabovo.

12 AES does not have a workforce of its own to operate that power station and so needs to hire staff to work full-time under a contract for the provision of staff concluded with AES Maritsa Iztok I Sarvisis EOOD ('AES Services'). Under that contract AES Services recruits and employs the personnel needed for AES's economic activity. The contracts of employment for the staff employed are concluded by AES Services, which also pays the staff the remuneration agreed in those contracts.

13 The staff in question is accordingly provided to AES. Under the contract between AES and AES Services, the former pays the latter remuneration for its services in making personnel available. That remuneration includes the pay and social insurance contributions for the staff concerned. Work clothing and personal protective gear for staff and their transportation from the power station to their homes and back again are provided for AES. The expenses relating to those goods and services are not included in the remuneration paid to AES Services. If staff should make business trips their travelling expenses and overnight accommodation costs are also paid by AES directly.

14 Between August 2008 and September 2010, AES was in receipt of services from third parties to do with transportation, work clothing and personal protective gear as well as services in connection with business trips made by staff.

15 It is apparent from the decision for reference that, since the persons working at the power station live in built-up areas which are not served by public transport, AES decided to provide a transport service itself according to a timetable laid down in accordance with the shifts worked by staff.

16 Furthermore, the referring court points out that, under the provisions of the Labour Code and the Law on health and safety at work, AES is required to provide work clothing and protective gear to the staff working at the power station.

17 The revenue administration rejected the right to deduct value added tax in the sum of Bulgarian Leva (BGN) 218 377 on the acquisition of transportation services, work clothing and personal protective gear by AES and on expenses paid for business trips on the grounds that the goods and services received were intended for supplies free of charge to staff of AES Services. That administration did not allow the application of the exceptions to this restriction on the right to deduct VAT provided for in Article 70(3)(1), (2) and (7) of the ZDDS as AES could not be regarded as the employer of the staff under Bulgarian law. Their employer for the purposes of the Labour Code was AES Services.

18 Since the administrative appeal brought against that tax notice was dismissed by the Direktor, AES appealed to the referring court.

19 Before that court, AES has argued that it is the 'economic' employer of the staff, as it derives the benefit from their work and bears the associated costs since it pays remuneration to AES Services. Furthermore, AES has the status of employer for the purposes of the Law on health and safety at work and is obliged to provide the work clothing and to ensure the safety of the staff. The Direktor has reiterated the position which follows from the adjusted tax notice.

20 The referring court takes the view that the Court's judgment in Case C-258/95 *Fillibeck* [1997] ECR I-5577 does not provide the answer to the questions of interpretation raised by the dispute in the main proceedings since the transport services at issue in the case which gave rise to that judgment were not provided to staff supplied by a taxable person other than that claiming the right to a deduction, but to the staff of the latter taxable person.

21 That court also notes that, in the version in force until the Republic of Bulgaria acceded to the European Union, the ZDDS did not contain any limit on the right to deduct VAT such as that provided in Article 70(1)(2) of the Law on value added tax now in force. In the version in force until 1 January 2007, Article 65 of the ZDDS contained an exhaustive list of limits on the right to deduct VAT and did not include any limitation linked to an intention to supply goods or services free of charge.

22 In those circumstances, the Administrativen sad-Plovdiv stayed proceedings pending a preliminary ruling from the Court on the following questions:

'(1) Is a provision such as that in Article 70(1)(2) [of the ZDDS] according to which a taxable person does not have a right to deduct value added tax on transport services, work clothing and protective gear received and on business travel expenses incurred because those goods and services are provided free of charge to natural persons, namely employees working for the taxable person's benefit, compatible with Articles 168(a) and 176 of [Directive 2006/112/EC], if the following circumstances are taken into account:

(a) the taxable person has not concluded any contracts of employment with the employees but engages them on the basis of a contractual relationship relating to the 'provision of staff' with another taxable person who is the employer of the personnel;

(b) the transport services received are used to transport employees from certain collection points in various places to their place of work and back and there is no organised public transport available for staff to get to and around the place of work;

(c) the provision of work clothing and protective gear is required under the Labour Code and the Law on health and safety at work;

(d) the deduction of VAT would not be in dispute in relation to the transport services, work clothing, protective gear and business travel expenses if those goods and services had been provided by the employer of the staff; in the present case, however, the respective

acquisitions were made by a taxable person who is not the employer but, on the basis of a contract for the provision of staff, draws the benefit of the work and bears the costs associated therewith?

(2) Does Article 176 of Directive 2006/112 empower a Member State, on acceding to the European Union, to introduce a limitation on the exercise of the right to deduct input tax such as that under Article 70(1)(2) of the ZDDS – namely that 'the goods or services are intended to be supplied free of charge' – if the legislation in force up to the date of accession did not expressly provide for such a limitation?

(3) If the previous question should be answered in the affirmative, does it follow that goods and services received are intended to be 'supplied free of charge' if they are purchased for the purposes of economic activity but, because of their nature, in order for them to be used they have to be provided to the staff working in the taxable person's undertaking?'

Consideration of the questions referred

The first question

23 As a preliminary point, it must be borne in mind that, according to the referring court, the costs incurred by AES in acquiring the goods and services referred to in the question referred can, in principle, be regarded as part of the general costs connected with all the economic activities of AES and that the problem concerning their deductibility arises only because, unlike the situation at issue in the case which gave rise to the judgment in *Fillibeck*, the taxable person claiming the right to a deduction is not, under Bulgarian law, the employer of the persons working on its site but merely their 'economic employer'.

24 In those circumstances, the question put by the referring court must be understood as seeking, in essence, to know whether Articles 168(a) and 176 of Directive 2006/112 must be interpreted as precluding national legislation under which a taxable person which incurs costs for transport services, work clothing, protective gear and business trips for staff working for that taxable person does not have the right to a deduction of the VAT relating to those costs on the ground that that staff is provided to it by another entity and accordingly cannot be regarded, for the purposes of that legislation, as members of the taxable person's staff, despite the fact that those costs can be regarded as creating a direct and immediate link with the general costs connected with all the economic activities of that taxable person.

25 With a view to answering that question, it should be recalled, firstly, that the right of deduction provided for in Article 168(a) of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. The right to deduct must be exercised immediately in respect of all the taxes charged on transactions relating to inputs (see, in particular, Case C-29/08 *SKF* [2009] ECR I-10413, paragraph 55).

26 The deduction system 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 thus ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see, inter alia, *SKF*, paragraph 56 and the case-law cited).

27 In accordance with settled case-law, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to the right to deduct is necessary, in principle, before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement. The right to deduct VAT charged on the acquisition of

input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct (*SKF*, paragraph 57 and the case-law cited).

28 A taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole (see, inter alia, *SKF*, paragraph 58 and the case-law cited).

29 It is, moreover, clear from the case-law of the Court that 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) is to be interpreted as meaning that transport provided for employees free of charge by the employer between their homes and the workplace in a company vehicle serves, in principle, the employees private purposes and thus serves purposes other than those of the business. However, this does not apply to cases where, having regard to certain circumstances, such as the difficulty of finding other suitable means of transport and changes in the place of work, the requirements of the business make it necessary for the employer to provide transport for employees, in which case the supply of those transport services is not effected for purposes other than those of the business (see, to that effect, *Fillibeck*, paragraph 34).

30 Secondly, it is necessary to examine whether the fact that a taxable person is not regarded by the national legislation as being the employer of the persons who work in its undertaking is likely to call into question the existence of a direct and immediate link between the input costs incurred for the work of those persons and the general costs connected with the taxable person's economic activities as a whole.

31 In that regard, it must first be noted that Article 168(a) of Directive 2006/112 makes the right to a deduction subject only to the condition that the goods and services be used for the requirements of the taxed operations of the taxable person who claims it. In accordance with the case-law cited in paragraphs 25 to 29 of the present judgment, the link which must exist is purely economic.

32 In the main proceedings, as has been pointed out in paragraph 23 of the present judgment, it is established that the costs at issue can be regarded as having an economic link with all the economic activities of AES.

33 Next it must be borne in mind that the Court has already held that the fact that personal benefit may be derived by employees from such transport must be regarded as being of only secondary importance compared to the needs of the business (see, to that effect, *Fillibeck*, paragraph 30).

34 The answer to the question whether the supply, free of charge, of goods or services to persons working for the taxable person is carried out for the needs of the business does not depend on the nature of the existing legal relation between the taxable person and those persons.

35 Furthermore, as is apparent from paragraph 26 of this judgment, the common system of VAT, by the deduction system, ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT.

36 It would run counter to the principle of neutrality of VAT to make a taxable person bear the VAT on expenses, such as those at issue in the main proceedings, in respect of which it is established, as is apparent from the order for reference, that they have been incurred for the needs of an economic

activity itself subject to VAT, on the ground that the taxable person is not the employer, for the purposes of the national legislation, of the persons working for its undertaking and for whose work those expenses have been incurred.

37 Finally, it must be noted that the interpretation that, in a situation such as that at issue in the main proceedings, the taxable person can be entitled, pursuant to Articles 168(a) and 176 of Directive 2006/112, to the right to a deduction in respect of the expenses incurred for the needs of its business also more closely meets the objectives of the VAT system of ensuring legal certainty and a correct and coherent application of the provisions of that directive (see, to that effect, Case C-108/99 *Cantor Fitzgerald International* [2001] ECR I-7257, paragraph 33).

38 By dissociating the right to a deduction of the input VAT paid in respect of expenses incurred for the needs of the economic activity of a taxable person from the legal relation which links the taxable person to the persons working for its undertaking – and for whose work those expenses were incurred – that interpretation simplifies the application of the provisions of the Sixth Directive and contributes to ensuring accurate and reliable collection of VAT (see, to that effect, Case C-421/10 *Stoppelkamp* [2011] ECR I-9309, paragraph 34, and Case C-218/10 *ADV Allround* [2012] ECR, paragraph 31).

39 Having regard to those considerations, the answer to the first question is that Articles 168(a) and 176 of Directive 2006/112 must be interpreted as precluding national legislation under which a taxable person which incurs costs for transport services, work clothing, protective gear and business trips for staff working for that taxable person does not have the right to a deduction of the VAT relating to those costs on the ground that that staff is provided to it by another entity and accordingly cannot be regarded, for the purposes of that legislation, as members of the taxable person's staff, despite the fact that those costs can be regarded as having a direct and immediate link with the general costs connected with all the economic activities of that taxable person.

The second question

40 By that question, the referring court asks, in essence, whether the second paragraph of Article 176 of Directive 2006/112 is to be interpreted as precluding a Member State, upon its accession to the European Union, from introducing a limitation on the right to a deduction under a national legislative provision which provides for the exclusion from the right to a deduction of goods and services intended to be supplied free of charge or for activities outside the scope of the taxable person's economic activity, when such an exclusion was not provided for in the national legislation in force until the date of that accession.

41 In order to answer that question, it must first be noted that the interpretation of the national legislation in order to determine its content at the date of accession of a new Member State to the European Union and to establish whether the effect of that legislation was to extend, after that accession, the scope of existing exclusions is in principle within the jurisdiction of the national court (see, to that effect, Case C-414/07 *Magoora* [2008] ECR I-10921, paragraph 32).

42 Next, it must be observed that, in proceedings under Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. However, in order to give the national court a useful answer, the Court may, in a spirit of cooperation with national courts, provide it with all the guidance that it deems necessary (see, to that effect, *Magoora*, paragraph 33).

43 In that regard, it must be pointed out that the second paragraph of Article 176 of Directive 2006/112 contains a 'standstill' clause, which provides for the retention by States acceding to the European Union, of national exclusions from the right to deduct VAT which were applicable before the date of

their accession (see, to that effect, Joined Cases C-177/99 and C-181/99 *Ampafrance and Sanofi* [2000] ECR I-7013, paragraph 5). None the less, the 'standstill' clause, provided for in the second paragraph of Article 176 of Directive 2006/112, is not intended to allow a new Member State to amend its domestic legislation on its accession to the European Union in a way which diverts that legislation from the objectives of that directive (*Magoora*, paragraph 39).

44 The objective of that provision is therefore to allow the Member States, pending the establishment by the Council of the Community system of exclusions from the right to deduct VAT, to maintain any rules of national law excluding the right to deduct which were actually applied by their public authorities at the date of entry into force of Directive 2006/112 (see, to that effect, *Magoora*, paragraph 35).

45 However, it must be recalled, according to the settled case-law of the Court, that national legislation does not constitute a derogation permitted by the second paragraph of Article 176 of Directive 2006/112 if its effect is to increase, after the entry into force of that directive, the extent of existing exclusions actually applied, thus diverging from the objective of that directive (see, to that effect, *Magoora*, paragraphs 37 and 38).

46 In those conditions, the repealing, on the date of accession of the Republic of Bulgaria to the European Union, of internal provisions and their replacement, on the same date, by other internal provisions does not permit, as such, the presumption that the Member State concerned disregarded the second paragraph of Article 176 of Directive 2006/112 provided, however, that that replacement did not lead to an increase, from that date, in the extent of earlier national exclusions.

47 In the main proceedings, it is, therefore, as pointed out in paragraph 41 of this judgment, for the referring court, which alone has jurisdiction to interpret its national law, to assess whether the amendments made, on the accession of the Republic of Bulgaria to the European Union, to the national law in question had the effect of increasing, as compared with the earlier national provisions, the scope of the limitations on the right to a deduction of input VAT paid in respect of the acquisition of goods and services which can be regarded as having a direct and immediate link with the general costs connected with the economic activities of a taxable person as a whole.

48 However, it must be noted in that regard that, according to the request for a preliminary ruling itself, the amendment made to the ZDDS when the Republic of Bulgaria acceded to the European Union had the effect of extending the scope of the limitations as compared with the situation existing before that accession, since none of the limitations in the exhaustive list contained in the ZDDS in force before that accession were connected with the destination of supplies or services free of charge which, having regard to the case-law referred to in paragraph 44 of the present judgment, is contrary to the second paragraph of Article 176 of Directive 2006/112.

49 The fact that the Court has held, in paragraph 72 of its judgment in Case C-118/11 *Eon Aset Menidjmunt* [2012] ECR, that Article 70(1) of the ZDDS does not restrict the right to deduct within the meaning of Article 176 of Directive 2006/112 is not, as such, capable of calling this finding into question.

50 Firstly, the Court stated, in paragraph 73 of that judgment, that a Member State cannot refuse to allow taxable persons who have chosen to treat capital goods used both for business and private purposes as business assets to deduct immediately and in full the input VAT payable on the acquisition of those goods, which they are entitled to do in accordance with the settled case-law of the Court.

51 Secondly, as is apparent from paragraphs 45 and 46 of the present judgment, account must also be taken of the actual application of the national provisions on exclusions from the right to a deduction of VAT and the effects which follow for the taxable persons.

52 As follows from paragraph 39 of the present judgment, Directive 2006/112 must be interpreted as precluding national legislation, such as that referred to in the first question, which has the effect of depriving a taxable person from the right to a deduction of input VAT paid in respect of costs which can be regarded as having a direct and immediate link with the general costs connected with all the economic activities of that taxable person.

53 It is for the referring court to interpret domestic law, so far as possible, in the light of the wording and the purpose of Directive 2006/112 with a view to achieving the results sought by the latter, favouring the interpretation of the national rules which is the most consistent with that purpose in order thereby to achieve an outcome compatible with the provisions of the directive (see, to that effect, Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 124), setting aside, if necessary, any provision of national law which may conflict with that law (see, to that effect, Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 77).

54 Having regard to all those considerations, the answer to the second question is that the second paragraph of Article 176 of Directive 2006/112 is to be interpreted as precluding a Member State, on its accession to the European Union, from introducing a limitation on the right to a deduction under a national legislative provision which provides for the exclusion from the right to a deduction of goods and services intended to be supplied free of charge or for activities outside the scope of the taxable person's economic activity, when such an exclusion was not provided for in the national legislation in force until the date of that accession.

It is for the referring court to interpret the provisions of domestic law at issue in the main proceedings, so far as possible, in accordance with European Union law. Where such an interpretation proves impossible, the referring court is required to set aside those provisions on the ground that they are incompatible with the second paragraph of Article 176 of Directive 2006/112.

The third question

55 In view of the answer to the second question, it is unnecessary to reply to the third question.

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 (Sixth Chamber) hereby rules:

1. **Article 168(a) and the second paragraph of Article 176 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation under which a taxable person which incurs costs for transport services, work clothing, protective gear and business trips for staff working for that taxable person does not have the right to a deduction of the VAT relating to those costs on the ground that that staff is provided to it by another entity and accordingly cannot be regarded, for the purposes of that legislation, as members of the taxable person's staff, despite the fact that those costs can be regarded as having a direct and immediate link with the general costs connected with all the economic activities of that taxable person.**

2. **The second paragraph of Article 176 of Directive 2006/112 is to be interpreted as precluding a Member State, on its accession to the European Union, from introducing a limitation on the right to a deduction under a national legislative provision which provides for the**

exclusion from the right to a deduction of goods and services intended to be supplied free of charge or for activities outside the scope of the taxable person's economic activity, when such an exclusion was not provided for in the national legislation in force until the date of that accession.

3. **It is for the referring court to interpret the provisions of domestic law at issue in the main proceedings, so far as possible, in accordance with European Union law. Where such an interpretation proves impossible, the referring court is required to set aside those provisions on the ground that they are incompatible with the second paragraph of Article 176 of Directive 2006/112.**

[Signatures]