Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

24 February 2022 *

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Article 2(1)(c) – Applicability *ratione temporis* – Supplies subject to VAT – Supplies of services for consideration – Criteria – Intra-group relationship – Supplies consisting in repairing or replacing components of wind turbines under warranty and preparing non-compliance reports – Debit notes issued by the supplier of services with no reference to VAT – Deduction by the supplier of the VAT charged on the goods and services for which it has been invoiced by its subcontractors in respect of those supplies)

In Case C-605/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal), made by decision of 1 July 2020, received at the Court on 17 November 2020, in the proceedings

Suzlon Wind Energy Portugal – Energia Eólica Unipessoal Lda

v

Autoridade Tributária e Aduaneira,

THE COURT (Seventh Chamber),

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

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having considered the observations submitted on behalf of:

– Suzlon Wind Energy Portugal – Energia Eólica Unipessoal Lda, by L. Scolari and R. Reigada Pereira, advogados,

– the Portuguese Government, by L. Inez Fernandes, P. Barros da Costa and R. Campos Laires, acting as Agents,

* * Language of the case: Portuguese.

– the European Commission, by L. Lozano Palacios and I. Melo Sampaio, acting as Agents,

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

gives the following

Judgment

1 The present request for a preliminary ruling concerns, in essence, the interpretation of Article 2(1)(c) 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 Suzlon Wind Energy Portugal – Energia Eólica Unipessoal Lda ('Suzlon Wind Energy Portugal') and the Autoridade Tributária e Aduaneira (Tax and Customs Authority, Portugal), concerning the issue of whether repair services provided during a warranty period for the benefit of a company, established in a third State, which indirectly holds a 100% interest in the capital of the applicant in the main proceedings, are subject to value added tax (VAT).

The legal framework

European Union law

Sixth Directive 77/388/EEC

3 Article 2(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) provided:

'The following shall be subject to [VAT]: … the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such'.

Directive 2006/112

4 Recital 66 of Directive 2006/112 states as follows:

'The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose into national law the provisions which are unchanged arises under the earlier Directives.'

5 Article 2(1)(c) of Directive 2006/112 reads as follows:

'The following transactions shall be subject to VAT:

…

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

6 Under Article 24(1) of the directive, 'supply of services' means any transaction which does not constitute a supply of goods.

7 Article 28 of the directive states:

'Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.'

8 Article 411(1) of the directive is worded as follows:

'Directive 67/227/EEC and [Sixth Directive 77/388] are repealed, without prejudice to the obligations of the Member States concerning the time limits, listed in Annex XI, Part B, for the transposition into national law and the implementation of those Directives.'

9 Article 413 of Directive 2006/112 provides:

'This directive shall enter into force on 1 January 2007.'

Portuguese law

The VAT Code

10 Article 4 of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code), in the version resulting from Decreto-Lei 102/2008 (Decree-Law No 102/2008) of 20 June 2008 (*Diário da República*, Series 1, No 118, of 20 June 2008; 'the VAT Code'), is headed 'Concept of supply of services' and provides:

'1. Transactions effected for consideration which are not supplies, inter-community acquisitions or imports of goods shall be regarded as supplies of services.

2. The following shall also be regarded as supplies of services for consideration:

…

(c) the supply of goods made or assembled to order using materials supplied by the client for that purpose, whether or not some of the goods used were supplied by the contractor.

…

4. Where the supply of services is effected by an agent acting in its own name, the agent is consecutively the recipient and the supplier of the service.'

The Circular of 4 May 1989

11 Ofício-Circulado da Direção de Serviços do IVA n. 49424 (VAT Services Directorate Circular No 49424), of 4 May 1989 ('the Circular of 4 May 1989'), reads as follows:

'1. Repairs effected during the warranty period are regarded as exempt from VAT, carried out free of charge, given that they are regarded as implicitly included in the sale price of the goods covered by the warranty, and cannot therefore be treated as transactions effected for consideration, as they would be in other circumstances, having regard to Article 3(3)(f) and Article 4(2)(b) of the VAT Code.

However, whenever such services (whether or not involving the use of materials) are invoiced, they are indisputably transactions effected for consideration and are therefore taxable under the VAT Code in the usual manner.

2. In those circumstances, whenever such repairs are invoiced, or in other words whenever a debit is raised against a third party (be it the customer, the distributor or the manufacturer), VAT must be paid, and the same applies where, instead of a debit being raised by the repairer or distributor, a credit is raised by the distributor or manufacturer.

…'

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

12 Suzlon Wind Energy Portugal is a company operating in the energy sector, and the wind energy sector in particular. Its business activity is manufacturing, assembly, operation, sales, installation, development, machining, commissioning and maintenance, as well as supply of services. It is registered for VAT in Portugal. The company is a wholly owned subsidiary of Suzlon Wind Energy A/S, a company established in Denmark ('Suzlon Wind Energy Denmark').

13 On 17 June 2006, Suzlon Energy Limited, a company established under Indian law ('Suzlon Energy India'), entered into a terms and conditions of sale agreement with Suzlon Wind Energy Denmark, its wholly owned subsidiary, for wind turbines and ancillary equipment ('the 2006 agreement').

14 The 2006 agreement governed the conditions for delivery of wind turbine projects and the supply of ancillary equipment as between the supplier, Suzlon Energy India, and the purchaser, Suzlon Wind Energy Denmark, and also as between Suzlon Wind Energy Denmark and its subsidiaries, in accordance with clause 1 of that agreement. Under clause 11 of the agreement, the supplier guaranteed all components produced against manufacturing defects for a period of two years from the date of the transaction. The supplier thus agreed to cover the cost of the components, of repairs, and of shipping of the defective components, with the purchaser retaining responsibility for the cost of labour involved in their replacement. In relation to components manufactured by third parties, the supplier was to provide copies of the supply contracts to the purchaser in order for the purchaser to contact the suppliers directly and invoke the applicable warranty, with the associated costs to be borne by the purchaser.

15 In 2007 and 2008, Suzlon Wind Energy Portugal purchased 21 three-blade wind turbines directly from Suzlon Energy India, at a total price of EUR 3 879 000, for wind farms in Portugal. The wind farms are owned by third-party undertakings.

16 Beginning in September 2007, cracks appeared in some blades which were still under warranty, necessitating the repair or replacement of those blades.

17 On 25 January 2008, Suzlon Wind Energy Portugal and Suzlon Energy India entered into an agreement for the supply of services, under the description 'Services Agreement' ('the 2008 agreement') for the repair or replacement of the 63 defective blades. That agreement stated that Suzlon Wind Energy Portugal had the capacity to establish a wind turbine and ancillary equipment repair unit in Portugal, and that the replacement blades would be shipped from India to Portugal.

18 Under the terms of the agreement, Suzlon Energy India undertook to provide logistical support to Suzlon Wind Energy Portugal and to assist it to repair or replace the blades. Suzlon Wind Energy Portugal was to make repair facilities available to Suzlon Energy India and to provide services relating to the storage and handling of the blades. It was also to acquire, on behalf of Suzlon Energy India, all equipment and materials required for the repair of the defective blades, and to organise internal transport of the replacement blades. Last, it was, at its own expense, to provide Suzlon Energy India with any information or assistance reasonably required by the latter.

19 The 2008 agreement described the relationship between Suzlon Energy India and Suzlon Wind Energy Portugal as a customer-supplier relationship, with Suzlon Energy India acting on its own behalf and not in the interests of Suzlon Wind Energy Portugal.

20 Between September 2007 and March 2009, Suzlon Wind Energy Portugal replaced or repaired the defective blades, as along with various other turbine components. It acquired the necessary materials from, and subcontracted certain services to, third parties, which issued invoices for the sales and the supplies of services in question. Its bookkeeping records show that it deducted the VAT on all of those transactions.

21 On 27 February 2009, Suzlon Wind Energy Portugal issued debit note No 39/2008, made out to Suzlon Energy India, in an amount of EUR 2 909 643. In relation to part of that total, an amount of EUR 2 232 373, the note stated 'Non Conformity Report until end March [2008]/Detailed list of [Non Conformity Reports] attached'.

22 On 31 March 2009, Suzlon Wind Energy Portugal issued a second debit note, numbered 44/2008, again made out to Suzlon Energy India. This was in an amount of EUR 3 263 454.84 and stated 'Portugal Blade Retrofit until March 2009/a) Blade Retrofit Costs until March 2009/b) TCI (technical change instruction) costs (non Project Related)'.

23 On the same day, it issued a third debit note, made out to the same company and numbered 50/2008, in the sum of EUR 1 913 533.68. That debit note stated 'Non Conformity Report from April [2008] until end March [2009]/Detailed list of [Non Conformity Reports] attached'.

24 None of the three debit notes ('the debit notes at issue') included VAT or stated any reason for exemption. Furthermore, no VAT was paid.

25 On 31 May 2012, in the course of a VAT inspection relating to 2009, the Serviços de Inspecção Tributária da Direcção de Finanças de Lisboa (Tax Inspection Service of the Finance Directorate, Lisbon, Portugal) gave notice to Suzlon Wind Energy Portugal of a VAT adjustment corresponding, almost entirely, to the VAT omitted from the debit notes at issue. The assessment notice giving effect to that adjustment was in the sum of EUR 1 666 710.02, including

interest. According to the information given in the tax inspection service's report, if VAT had been charged on the transactions giving rise to the debit notes at issue, it would have amounted to EUR 1 481 872.31.

26 Suzlon Wind Energy Portugal brought an action against the assessment notice. By judgment of 30 June 2017, the Tribunal Tributário de Lisboa (Finance Court, Lisbon, Portugal) dismissed that action.

27 Suzlon Wind Energy Portugal brought an appeal against that judgment before the referring court. It submits that simply passing on to the supplier, in this case Suzlon Energy India, during the warranty period, the costs incurred in repairing or replacing the goods it had purchased, does not generate income. The debit notes at issue do not represent consideration for a service provided by the supplier, but reimbursement of costs which it incurred in carrying out work for which the supplier was responsible, as it arose from the supplier's warranty obligations in respect of the goods sold. It is not a case of a supply of services for consideration, merely one of cashflows which do not generate any added value and thus are not subject to VAT.

28 The tax and customs authority takes the view, for its part, that the transactions covered by the debit notes at issue correspond to an actual supply by Suzlon Wind Energy Portugal of a service performed in Portugal, pursuant to the 2008 agreement, in respect of which that company accounted for all the goods delivered and services supplied by its subcontractors, and deducted the corresponding VAT. It therefore contends that VAT ought to have been charged on those services, at the standard rate. The tax and customs authority observes, in particular, that it is apparent from the wording of the debit notes at issue that they related to non-conformity reports produced throughout the project. It also submits that the Circular of 4 May 1989 – which concerns services provided by the customer to the supplier during a warranty period and is applicable in the present case – provides that VAT must be paid on services such as those covered by the debit notes at issue.

29 In those circumstances the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is an interpretation to the effect that repairs carried out during the "warranty period" are regarded as exempt transactions only where they are made free of charge and in so far as they are tacitly included in the sale price of the product covered by the warranty, with the result that supplies of services which are made during the warranty period (whether or not they involve the use of materials) and which form the subject of invoices are to be regarded as subject to VAT, on the ground that they must necessarily be classified as supplies of services for consideration, compliant with EU law?

(2) Must the issuing of a debit note to a supplier of wind turbine components with a view to obtaining reimbursement of the costs which the purchaser of those products has incurred during the warranty period in replacing components (new imports of products from the supplier to which VAT was applied and which gave rise to a right to deduct input tax) and repairing them (by purchasing from third parties services on which VAT was charged), in the context of the supply to third parties of services in connection with the installation of a wind farm by that purchaser (a member of the same group [of companies] as the vendor,

which is established in a third country), be classified as a mere transaction for passing on costs and, as such, exempt from VAT, or as a supply of services for consideration which must give rise to a charge to tax?'

Admissibility of the request for a preliminary ruling

30 Without formally asserting that the request for a preliminary ruling is inadmissible, the Portuguese Government expresses doubt as to whether that request is in conformity with Article 94 of the Rules of Procedure of the Court of Justice.

31 In that regard, it should be observed that, according to settled case-law, which is now reflected in Article 94 of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court requires that the national court define the factual and legal context of its questions or, at the very least, that it explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment of 30 April 2020, *Blue Air – Airline Management Solutions*, C-584/18, EU:C:2020:324, paragraph 43 and the case-law cited).

32 In the present case, while it is true that the questions referred, set out in paragraph 29 of the present judgment, do not refer to any specific provision of EU law, or of Portuguese law, it should however be observed from the outset that in the request for a preliminary ruling, the referring court refers to Sixth Directive 77/388 and states that it 'has doubts as to the interpretation of Article 2 of [that directive]'. Furthermore, the referring court states that it has not found an unequivocal or clear answer in the other provisions of Sixth Directive 77/388 or the VAT Code. It also sets out the Portuguese tax authority's rules on repairs to goods during a warranty period, which are contained in the Circular of 4 May 1989 and can thus be regarded as a national practice (see, to that effect, judgment of 24 October 2013, *Metropol Spielstätten*, C-440/12, EU:C:2013:687, paragraph 39).

33 The referring court has therefore set out the legal background to the dispute in the main proceedings in a brief but comprehensible manner.

34 Furthermore, it is sufficiently clear from the request for a preliminary ruling that the Supremo Tribunal Administrativo (Supreme Administrative Court) is seeking clarification, in relation to the transactions covered by the debit notes at issue, of the meaning of 'supply of services for consideration', so that it can determine whether the transactions at issue are subject to VAT.

35 It should be observed that questions concerning EU law enjoy a presumption of relevance, and the Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 26 October 2017, *BB construct*, C-534/16, EU:C:2017:820, paragraph 16 and the case-law cited).

36 In the present case, the information provided by the referring court as to the relevance of the questions referred, from the point of view of ruling on the dispute in the main proceedings, is sufficient for the Court to understand the scope of those questions and provide the referring court with a useful answer.

37 Furthermore, in so far as the European Commission claims that the first question referred is made up of two parts and that the second part – which, in the Commission's view, relates to whether the value given in exchange for the repair service can be regarded as tacitly included in the sale price of the goods, where that service is provided free of charge – is inadmissible since the present case does not relate to services of that kind, it is sufficient to observe that that argument is based on a misreading of the first question referred. It is apparent from the wording of that question that the reference to transactions 'made free of charge and … tacitly included in the sale price of the product covered by the warranty' relates to a possible interpretation of Sixth Directive 77/388 which the referring court is asking the Court to examine and from which it would follow, *a contrario*, that the transactions at issue in the main proceedings are subject to VAT.

38 It must therefore be held that the request for a preliminary ruling is admissible.

Substance

Applicability ratione temporis of Directive 2006/112

39 The referring court expresses doubt as to the interpretation of Article 2 of Sixth Directive 77/388, which it regards as applicable, in the version 'in force at the time when the facts arose', to the proceedings before it.

40 It should, however, be observed that, according to the referring court, the VAT adjustment in the main proceedings arose from the debit notes at issue, which were entered in the books in 2009 and did not include VAT – consequently, no VAT was paid at that time. The relevant facts thus postdate 1 January 2007, when Directive 2006/112 entered into force and replaced Sixth Directive 77/388, as is apparent from Articles 411 and 413 of Directive 2006/112 (judgment of 12 May 2011, *Enel Maritsa Iztok 3*, C-107/10, EU:C:2011:298, paragraph 24).

41 In that regard, it may be pointed out that recital 66 of that directive states that 'the obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives' and that 'the obligation to transpose into national law the provisions which are unchanged arises under the earlier Directives' (judgment of 4 October 2017, *Federal Express Europe*, C-273/16, EU:C:2017:733, paragraph 29).

42 It follows from the table in Annex XII to Directive 2006/112 that Article 2(1) of Sixth Directive 77/388, under which a supply of services effected for consideration within the territory of the country by a taxable person acting as such was subject to VAT, corresponds to Article 2(1)(c) of Directive 2006/112.

43 In the absence of any substantive change as compared with Sixth Directive 77/388, Article 2(1)(c) of Directive 2006/112 must be regarded as already having been transposed into Portuguese law when that directive entered into force, on 1 January 2007 (see, by analogy, judgment of 4 October 2017, *Federal Express Europe*, C-273/16, EU:C:2017:733, paragraph 30). Sixth Directive 77/388 was to be transposed into Portuguese law by 1 January 1989, pursuant to the combined

provisions of Article 395 of, and Annex XXXVI, II, *in fine*, to, the Treaty concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community (OJ 1985 L 302, p. 9).

44 It follows that, in so far as the dispute in the main proceedings relates to the recovery of VAT due in respect of the year 2009, Article 2(1)(c) of Directive 2006/112 is applicable *ratione temporis* to that dispute (see, by analogy, judgment of 4 October 2017, *Federal Express Europe*, C-273/16, EU:C:2017:733, paragraph 31). Accordingly, it is the interpretation of that provision which is relevant to the questions referred (see, to that effect, judgment of 12 May 2011, *Enel Maritsa Iztok 3*, C-107/10, EU:C:2011:298, paragraph 26).

Consideration of the questions referred

45 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(1)(c) of Directive 2006/112 must be interpreted as meaning that transactions which lead to the entry of debit notes in the books of a VAT taxable person, as well as the deduction of input VAT on the supply of the goods and services which made those transactions possible, constitute a supply of services for consideration within the meaning of that provision, where they relate to goods under warranty and are presented by the taxable person as not having generated any profit for that person.

46 In that regard, it should be recalled that in order for a transaction to be subject to VAT under Article 2(1)(c) of Directive 2006/112 it is necessary, as is apparent from the wording of that provision, for five conditions to be met, namely that the transaction at issue constitutes a supply of services, that the supply is effected for consideration, that it takes place within the territory of a Member State, that it is effected by a taxable person, and that that taxable person is acting as such.

47 In the first place, it is apparent from the request for a preliminary ruling that Suzlon Wind Energy Portugal is registered for VAT in Portugal and that the transactions in question were effected within the territory of that Member State; two of the conditions referred to in the preceding paragraph thus already appear to be met.

48 In the second place, it should be stated that the condition that the taxable person must act as such, which should now be examined, requires a determination of whether that person carried out the transactions at issue in his or her capacity as a taxable person, or in other words, first, whether that person carried out those transactions not in a private capacity (judgment of 4 October 1995, *Armbrecht*, C-291/92, EU:C:1995:304, paragraphs 16 to 18), but in the course of that person's taxable activity (judgment of 12 January 2006, *Optigen and Others*, C-354/03, C-355/03 and C-484/03, EU:C:2006:16, paragraph 42), and second, whether the transactions are truly to be regarded, in law, as having been carried out by that person. In the present case, that requires a determination, in relation to the transactions covered by the debit notes at issue, of whether Suzlon Wind Energy Portugal acted in its own name as a taxable person, or in the name and on behalf of Suzlon Energy India.

49 In that regard it will be for the referring court to examine the contractual and accounting framework for the debit notes at issue in order, in particular, to establish whether there was a suspense account as referred to in point (c) of the first paragraph of Article 79 of Directive 2006/112 (see, to that effect, judgment of 1 June 2006, *De Danske Bilimportører*, C-98/05, EU:C:2006:363, paragraph 25).

50 From a contractual point of view, it should be noted that it is apparent from the request for a preliminary ruling that the 2006 agreement lays down the terms of the warranty on the conformity and functioning of the goods supplied, between the supplier, Suzlon Energy India, and the purchaser, Suzlon Wind Energy Denmark, with that agreement extending to subsidiaries of the latter company, such as Suzlon Wind Energy Portugal. In the present case, it appears, subject to the checks which are for the referring court to carry out, that Suzlon Wind Energy Portugal, having imported the defective goods directly from Suzlon Energy India, had the benefit of the warranty provided for by the 2006 agreement.

51 It should also be pointed out that, subject to verification by the referring court, the warranty provided by Suzlon Wind Energy Portugal to its customers is not at issue. There is no suggestion in the information before the Court that the end customers have the benefit of a direct warranty from Suzlon Energy India.

52 The passages from the 2008 agreement which are reproduced in the request for a preliminary ruling explicitly state that the repair and replacement services which are the subject matter of that agreement are supplied by a service provider, Suzlon Wind Energy Portugal, to a customer, Suzlon Energy India.

53 From an accounting point of view, it should be noted that a VAT taxable person must be able to demonstrate that the transactions entered in its accounts actually took place and provide evidence of the nature of those transactions. In that regard, the description given to such transactions may be taken into consideration by the national tax authorities, together with all other relevant circumstances, in order to determine whether a transaction is taxable. In the present case, the request for a preliminary ruling refers to the wording of the debit notes at issue, from which it is apparent that a series of 'Non Conformity Reports' and 'Retrofits' were issued and carried out by Suzlon Wind Energy Portugal for Suzlon Energy India.

54 Suzlon Wind Energy Portugal has also stated that it chose to deal with the relevant repairs and replacements in Portugal. The referring court states that, in doing so, Suzlon Wind Energy Portugal used suppliers of goods and services. The invoices issued on that basis were all drawn up in the name of Suzlon Wind Energy Portugal, not that of Suzlon Energy India. Suzlon Wind Energy Portugal deducted the VAT that had been applied to those invoices, which must therefore be regarded as input VAT on the transactions recorded through the debit notes at issue.

55 Furthermore, it appears to be established – though it will be for the referring court to ascertain – that the sums relating to the repair and replacement works were not entered by Suzlon Wind Energy Portugal in a suspense account, as must be the case with a view to the immediate reallocation of such sums.

56 It must therefore be held, in the light of the information provided by the referring court and subject to the checks which are for that court to carry out, that a taxable person acting as Suzlon Wind Energy Portugal appears to have done must be regarded as a taxable person acting as such.

57 In the third place, the transaction in question must be a supply of services.

58 Under Article 24 of Directive 2006/112, any transaction which does not constitute a supply of goods is a supply of services. In order to determine the proper classification of the transaction at issue, all the circumstances in which that transaction takes place must be taken into account (judgment of 17 January 2013, *BGŻ Leasing*, C-224/11, EU:C:2013:15, paragraph 32). In that

context, it has been held that the relevant contractual terms constitute a factor to be taken into consideration when the supplier and the recipient in a 'supply of services' transaction within the meaning of that directive have to be identified (judgment of 2 May 2019, *Budimex*, C-224/18, EU:C:2019:347, paragraph 28 and the case-law cited).

59 In that regard, it is apparent from the information before the Court that the 2008 agreement, which describes itself as an agreement for the supply of services, and the debit notes at issue referring to the non-conformity and retrofit reports, make it clear that Suzlon Wind Energy Portugal is a service provider and Suzlon Energy India its customer.

60 It should be added that transactions such as those at issue in the main proceedings cannot be regarded as equivalent to a return of defective equipment to the supplier for repair or replacement since, in the present case, it was the purchaser of the goods in question that was given responsibility, by the supplier, for carrying out a certain number of services by way of implementation of the warranty given by that supplier.

61 In the fourth place, the supply of services must be effected for consideration.

62 It should be recalled, first of all, that a supply of services is carried out for consideration, within the meaning of Article 2(1)(c) of Directive 2006/112, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration for an identifiable service supplied to the recipient. This is the case if there is a direct link between the service supplied and the consideration received (judgment of 16 September 2021, *Balgarska natsionalna televizia*, C-21/20, EU:C:2021:743, paragraph 31 and the case-law cited).

63 Without prejudice to the assessment of those various matters to be carried out by the referring court, it may be stated, simply by reading the request for a preliminary ruling, that (i) the legal relationship which gave rise to the debit notes at issue was constituted by the 2008 agreement, (ii) those debit notes appear to represent the service provider's remuneration, and (iii) the services supplied by Suzlon Wind Energy Portugal to Suzlon Energy India – including, in particular, the assistance provided in relation to the repair or replacement of the defective blades – match the definition of an 'identifiable service supplied to the recipient'.

64 Next, the fact that the value given in exchange for that supply of services took the form of debit notes does not prevent that value being regarded as consideration within the meaning of Article 2(1)(c) of Directive 2006/112. The Court has already had occasion to observe that it is irrelevant, for the purposes of determining whether a supply of services is effected for consideration, that the remuneration does not take the form of a payment of a commission or specific fees (judgment of 22 October 2015, *Hedqvist*, C-264/14, EU:C:2015:718, paragraph 29 and the case-law cited).

65 Lastly, as to that fact – supposing it to be established – that Suzlon Wind Energy Portugal passed on the cost of replacement or repair of the defective blades, without any margin or surcharge, it must be borne in mind that the fact that the price paid for an economic transaction is higher or lower than the cost price is irrelevant to the question whether a transaction is to be regarded as a 'transaction effected for consideration', that concept requiring only that there be a direct link between the supply of goods or the provision of services and the consideration actually received by the taxable person (judgment of 12 May 2016, *Gemeente Borsele and Staatssecretaris van Financiën*, C-520/14, EU:C:2016:334, paragraph 26).

66 It follows from the foregoing that transactions of the kind described by the referring court meet the criteria for a supply of services for consideration laid down in Article 2(1)(c) of Directive 2006/112.

67 It should be added that the existence of a warranty relating to the goods supplied would only affect the classification of the transaction as a supply of services for consideration if it affected one of the conditions referred to in that provision. That would be the case, for example, if the service provider had acted in the name and on behalf of another party, simply entering the sums relating to the goods acquired and the works of replacement or repair at issue in a suspense account for the purposes of point (c) of the first paragraph of Article 79 of Directive 2006/112, not deducting input VAT, and stating the name of the company on behalf of which the goods were acquired, and the works carried out, on the orders and invoices.

68 In any event, a situation in which non-conformity reports are produced over a period of several months, in relation to goods under warranty, and refitting works are carried out to those goods, is different from one in which defective goods under warranty are purely and simply replaced.

69 Having regard to the foregoing considerations, the answer to be given to the referring court is that Article 2(1)(c) of Directive 2006/112 must be interpreted as meaning that transactions forming part of a contractual framework which identifies a supplier of services, the purchaser of those services and the nature of the services in question, duly accounted for by the taxable person, bearing a heading that confirms their nature as services and having given rise to remuneration received by the supplier constituting the actual value of those services in the form of debit notes, form a supply of services for consideration within the meaning of that provision, notwithstanding, first, any absence of profit for the taxable person and, second, the existence of a warranty relating to the goods in respect of which those services were provided.

Costs

70 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 (Seventh Chamber) hereby rules:

Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

must be interpreted as meaning that transactions forming part of a contractual framework which identifies a supplier of services, the purchaser of those services and the nature of the services in question, duly accounted for by the taxable person, bearing a heading that confirms their nature as services and having given rise to remuneration received by the supplier constituting the actual value of those services in the form of debit notes, form a supply of services for consideration within the meaning of that provision, notwithstanding, first, any absence of profit for the taxable person and, second, the existence of a warranty relating to the goods in respect of which those services were provided.

[Signatures]