Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

26 November 2020 *

(Reference for a preliminary ruling – National legislation providing for the adjustment of value added tax (VAT) deductions by a taxable person other than the person who initially applied the deduction – Sale by a company to individuals of a building let by that company and by the company which previously owned the building – End of liability to VAT upon the sale of the building to individuals)

In Case C-787/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), made by decision of 3 December 2018, received at the Court on 17 December 2018, in the proceedings

Skatteverket

v

Sögård Fastigheter AB,

THE COURT (Seventh Chamber),

composed of A. Kumin (Rapporteur), President of the Chamber, T. von Danwitz and P.G. Xuereb, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Skatteverket, by T. Johansson, acting as Agent,

– Sögård Fastigheter AB, by C. Rosén, managing director,

– the Finnish Government, by S. Hartikainen, acting as Agent,

* Language of the case: Swedish.

– the European Commission, by K. Simonsson, L. Lozano Palacios, E. Ljung Rasmussen and G. Tolstoy, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 19, 188 and 189 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, and corrigenda OJ 2007 L 335, p. 60, and OJ 2012 L 249, p. 15; 'the VAT Directive').

2 The request has been made in proceedings between the Skatteverket (Swedish Tax Board) and Sögård Fastigheter AB concerning the adjustment of value added tax (VAT) deductions previously applied by another taxable person.

Legal context

European Union law

3 Article 12(1)(a) of the VAT Directive provides:

'Member States may regard as a taxable person anyone who carries out, on an occasional basis …

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

4 Under the first paragraph of Article 19 of that directive, 'in the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and that the person to whom the goods are transferred is to be treated as the successor to the transferor'.

5 Article 135(1) of that directive states:

'Member States shall exempt the following transactions:

…

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

…

(l) the leasing or letting of immovable property.'

6 Article 137 of the VAT Directive reads as follows:

‘1. Member States may allow taxable persons a right of option for taxation in respect of the following transactions:

…

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

…

(d) the leasing or letting of immovable property.

2. Member States shall lay down the detailed rules governing exercise of the option under paragraph 1.

Member States may restrict the scope of that right of option.’

7 Article 168(a) of that directive 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.’

8 Article 184 of the directive reads as follows:

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

9 Under Article 185(1) of the VAT Directive:

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

10 Article 186 of that directive provides that ‘Member States shall lay down the detailed rules for applying Articles 184 and 185’.

11 Article 187 of that directive reads as follows:

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

Member States may, however, base the adjustment on a period of five full years starting from the time at which the goods are first used.

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

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

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

12 Article 188 of the VAT Directive provides:

'1. If supplied during the adjustment period, capital goods shall be treated as if they had been applied to an economic activity of the taxable person up until expiry of the adjustment period.

The economic activity shall be presumed to be fully taxed in cases where the supply of the capital goods is taxed.

The economic activity shall be presumed to be fully exempt in cases where the supply of the capital goods is exempt.

2. The adjustment provided for in paragraph 1 shall be made only once in respect of all the time covered by the adjustment period that remains to run. However, where the supply of capital goods is exempt, Member States may waive the requirement for adjustment in so far as the purchaser is a taxable person using the capital goods in question solely for transactions in respect of which VAT is deductible.'

13 Article 189 of the VAT Directive reads as follows:

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

(a) define the concept of capital goods;

(b) specify the amount of the VAT which is to be taken into consideration for adjustment;

(c) adopt any measures needed to ensure that adjustment does not give rise to any unjustified advantage;

(d) permit administrative simplifications.'

14 Article 193 of that directive states:

'VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202.'

Swedish law

Provisions on compulsory and voluntary tax liability

15 Under Paragraph 2 of Chapter 3 of the mervärdesskattelagen (1994:200) (Law 1994:200 on value added tax), in the version applicable to the facts at issue in the main proceedings ('the Law on VAT'), transactions involving the disposal or letting of immovable property are, subject to certain limitations, exempt from VAT.

16 An owner of immovable property who lets all or part of a building comprising immovable property for permanent use in connection with a taxable activity may, however, opt for liability to VAT on the letting under Paragraph 3 of Chapter 3 and Paragraph 1 of Chapter 9 of that law.

17 In the event of disposal of the immovable property, Paragraph 5 of Chapter 9 of the Law on VAT provides that voluntary tax liability passes to the purchaser with effect from the date of entry into possession and that the purchaser takes the place of the former owner in respect of all statutory rights and obligations.

18 Under Paragraph 6 of Chapter 9 of the Law on VAT, the Tax Board is to terminate voluntary tax liability in respect of letting transactions upon entry into possession if the former owner and new owner have made a joint application to that effect beforehand. Voluntary tax liability also ceases when the owner of the immoveable property changes the property use to activities other than taxable letting, when the property can no longer be let due to fire or for other reasons beyond the owner's control, or when the property has been demolished.

Provisions on VAT deductions and adjustments

19 Under Paragraph 6 of Chapter 8a of the Law on VAT, the adjustment period for immovable property acquired as capital goods is set at 10 years.

20 Paragraphs 7 and 8 of Chapter 8a of the Law on VAT provide that, in the event of disposal of capital goods, deductions of input tax are to be adjusted only once. In calculating that adjustment, the deductions to be adjusted are to be spread over the total adjustment period and the adjustment is to be made to the proportion corresponding to the remainder of that period.

21 Where the disposal of capital goods occurs in connection with the transfer of a business, the taxable purchaser of the capital goods is required to assume the seller's rights and obligations with regard to adjustment, as provided for in Paragraph 11 of Chapter 8a of the Law on VAT.

22 Under Paragraph 12 of Chapter 8a of the Law on VAT, the purchaser is to assume the rights and obligations of the seller with regard to adjustment also in the event of disposal of immovable property let under the voluntary tax liability scheme, but only if the seller and purchaser have not agreed that the seller will make an adjustment and the adjustment is not prompted by changes that occurred during the seller's period of ownership.

23 In the event of disposal of capital goods in respect of which the purchaser is required to assume the seller's rights and obligations, the seller is to draw up a separate document, in accordance with Paragraphs 15 and 17 of Chapter 8a of that law. That document must contain details, inter alia, of the input tax relating to the seller's acquisition of the capital goods or of the works of new

construction, extension or conversion; the proportion of that tax to which, after any adjustments, a deduction was made; the dates of acquisition and deduction; and any other information which may be relevant in order to calculate the purchaser's tax liability and deduction entitlement.

Provisions on business transfers

24 Paragraph 25 of Chapter 3 of the Law on VAT provided that the disposal of the assets of a business would be exempt where that disposal occurred in connection with a business transfer, provided that the purchaser was able to deduct the tax or was entitled to a tax refund. That provision had been interpreted in accordance with Article 19 of the VAT Directive by the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), which held that a business transfer does not constitute a supply of goods for VAT purposes.

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

25 Sögård Fastigheter purchased immoveable property in 2012 which it let under the voluntary tax liability scheme.

26 The previous owner of the property had also opted for liability to VAT and had deducted input tax on the cost of refurbishing the building, which it had recorded in a document.

27 At the time of the sale, the parties had not agreed that the previous owner would adjust the VAT deductions made and had not submitted a request to the Tax Board not to transfer voluntary tax liability. Sögård Fastigheter let the immovable property, thus continuing to use it to carry out taxable transactions.

28 Sögård Fastigheter sold the property in 2013 to two individuals who did not intend to use it for taxable transactions. Consequently, voluntary liability to VAT came to an end. The Tax Board subsequently requested Sögård Fastigheter to adjust the deductions of input tax applied by the previous owner and to repay the VAT relating to the adjustment period that remained to run.

29 Taking the view that it followed from the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), that it was not required to pay the VAT deducted by the previous owner, Sögård Fastigheter brought an action before the Förvaltningsrätten (Administrative Court, Sweden) seeking annulment of the Tax Board's decision.

30 The Förvaltningsrätten (Administrative Court) took the view that the situation at issue in the main proceedings differed from that giving rise to the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), in which the Court held that the provisions on VAT adjustments had to be interpreted as precluding the recovery of amounts due following the adjustment of a VAT deduction from a taxable person other than the person who applied that deduction, and dismissed the action brought by Sögård Fastigheter.

31 After the appeal lodged by Sögård Fastigheter was upheld by the Kammarrätten (Administrative Court of Appeal, Sweden), the Tax Board brought a further appeal against that court's judgment before the Högsta förvaltningsdomstolen (Supreme Administrative Court), seeking a ruling that Sögård Fastigheter was required to repay the VAT deducted by the previous owner by way of adjustment.

32 The national court enquires whether the approach taken in the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), is capable of being applied to a situation where a purchaser, immediately after acquiring immoveable property, uses that property only for transactions giving rise to a right of deduction and subsequently resells the property to a third party who does not intend to use it for such transactions.

33 The national court also states that, should the Court find that Articles 188 and 189 of the VAT Directive preclude the seller's obligation to adjust the VAT deduction being transferred to the purchaser, it will have to rule on the Tax Board's arguments and decide whether the acquisition of the immovable property by Sögård Fastigheter constitutes a transfer of a totality of assets or part thereof within the meaning of Article 19 of the VAT Directive.

34 The national court points out that the question whether the provisions on the transfer of a totality of assets or part thereof actually apply in a dispute such as that at issue in the main proceedings depends on the circumstances of that dispute and is not the subject matter of this request for a preliminary ruling. It states that it will take a decision in that respect when giving final judgment in the present dispute. However, according to that court, if the acquisition in question were to be classified as a transfer of a totality of assets or part thereof, the question would then arise as to whether requiring Sögård Fastigheter to adjust VAT deductions applied by the previous owner is compatible with Article 19 of the VAT Directive.

35 In those circumstances, the Högsta förvaltningsdomstolen (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) If a seller of a property, on the basis of the rules introduced by the Member State in accordance with Article 188(2) of the VAT Directive, has not adjusted a deduction of input tax because the purchaser intends to use the property exclusively for transactions giving rise to a right of deduction, does that then preclude, in a case where the adjustment period continues to run, the purchaser being required to adjust the deduction at a subsequent time when the purchaser in turn transfers the property to someone who does not intend to use the property for such transactions?

(2) Does it alter the answer to the first question if the first transfer referred to in that question constitutes a transfer of assets as referred to in Article 19 of the VAT Directive?'

Consideration of the questions referred

The first question

36 By its first question, the national court asks, in essence, whether the VAT Directive must be interpreted as precluding national legislation which, while providing, on the basis of Article 188(2) of that directive, that the seller of immovable property is not required to adjust a deduction of input VAT where the purchaser intends to use that property only for transactions giving rise to a right of deduction, also requires the purchaser to adjust that deduction for the remainder of the adjustment period where the purchaser in turn transfers the property to a third party who does not intend to use it for such transactions.

37 As a preliminary point, it should be recalled that Article 184 of the VAT Directive sets out the obligation to adjust the initial deduction of VAT where it is higher or lower than that to which the taxable person was entitled.

38 That provision, together with Articles 185 and 186 of the VAT Directive, constitute the scheme applicable to any entitlement of the tax authority to require a taxable person to make a VAT adjustment, including adjustment of deductions made in respect of capital goods (see, in particular, judgments of 18 October 2012, *TETS Haskovo*, C-234/11, EU:C:2012:644, paragraph 26, and of 17 September 2020, *Stichting Schoonzicht*, C-791/18, EU:C:2020:731, paragraph 33).

39 In that respect, Article 186 of the VAT Directive expressly makes Member States responsible for laying down the detailed rules for the application of Articles 184 and 185 of that directive, while Articles 187 to 192 thereof establish certain detailed rules for the adjustment of VAT deductions in respect of capital goods (see, in particular, judgments of 11 April 2018, *SEB bankas*, C-532/16, EU:C:2018:228, paragraph 27, and of 17 September 2020, *Stichting Schoonzicht*, C-791/18, EU:C:2020:731, paragraphs 28 and 29).

40 Article 188 of the VAT Directive covers the specific situation of the supply of capital goods during the adjustment period. In that case, the annual adjustment provided for in Article 187 of that directive is replaced by a single adjustment, based on the presumed use of the capital goods in question for the period still to run. Under Article 188, the deductibility of the input VAT depends on whether the supply made is or is not subject to VAT (see, to that effect, judgment of 15 December 2005, *Centralan Property*, C-63/04, EU:C:2005:773, paragraph 56).

41 In accordance with Article 188, where a taxable person disposes of capital goods during the adjustment period and the disposal in question is exempt, the capital goods are to be treated as if they had been applied to an economic activity of the taxable person up until expiry of the adjustment period and that activity is presumed to be fully exempt. That presumption results in the obligation to make a single adjustment, for the entire adjustment period that remains to run, unless a Member State has decided to exercise the option provided for in Article 188(2) of the VAT Directive to waive the requirement for adjustment.

42 Article 188(2) of that directive states that, where the supply of capital goods is exempt, Member States may waive the requirement for adjustment in so far as the purchaser is a taxable person using the capital goods in question solely for transactions in respect of which VAT is deductible.

43 It follows that the option to waive the requirement for adjustment is conditional, first, on the purchaser of the capital goods in question being a taxable person and, second, on the nature of the use of those goods, that is, they are to be used only for transactions in respect of which VAT is deductible.

44 Indeed, where the purchaser of the capital goods ceases to use those goods solely for transactions in respect of which VAT is deductible, the conditions justifying waiver of the requirement for adjustment are no longer satisfied.

45 Although Article 188 of the VAT Directive provides that Member States may waive the requirement for adjustment ‘in so far as’ the conditions referred to in paragraph 43 are satisfied, it does not lay down provisions covering the situation where those conditions are no longer met.

46 In that regard, under Article 189 of the VAT Directive, Member States may, for the purpose of applying Article 188 of that directive, adopt any measures needed to ensure that adjustment does not give rise to any unjustified advantage and may also permit administrative simplifications.

47 Those national provisions cannot, however, lead to the situation whereby the adjustment of a VAT deduction in respect of a supply of goods or of services is imposed on a taxable person other than the person who applied that deduction.

48 Although the VAT Directive contains no express indication concerning the taxable person liable for tax debts resulting from the adjustment of a VAT deduction, it cannot be inferred from this that the Member States are, in the context of the detailed rules which they are to lay down under Article 137(2) and Articles 186 and 189 of that directive, free to decide which taxpayer must pay the VAT in such a situation (see, to that effect, judgment of 10 October 2013, *Pactor Vastgoed*, C-622/11, EU:C:2013:649, paragraphs 30 and 31).

49 The designation of the person liable for the amounts due following the adjustment of a VAT deduction does not constitute a 'detailed rule' for the purpose of those provisions, but rather, as is apparent from Article 193 of that directive, a substantive rule of the common VAT system established by that directive (see, to that effect, judgment of 10 October 2013, *Pactor Vastgoed*, C-622/11, EU:C:2013:649, paragraph 32).

50 It thus follows from the case-law of the Court that Article 184 of the VAT Directive must be interpreted as meaning that, in the event of adjustment of a VAT deduction applied by a taxable person, the amounts due in that regard must be paid by that taxable person (see, to that effect, judgment of 10 October 2013, *Pactor Vastgoed*, C-622/11, EU:C:2013:649, paragraphs 36 and 37).

51 It should be borne in mind that 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 or her economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see, in particular, judgment of 6 September 2012, *Tóth*, C-324/11, EU:C:2012:549, paragraph 25 and the case-law cited).

52 Furthermore, the rules relating to the adjustment of deductions are an essential element of the system established by the VAT Directive in that they seek to ensure the accuracy of deductions and, consequently, the neutrality of the tax burden. By those rules, that directive aims to establish a close and direct relationship between the right to deduct input VAT and the use of the goods or services concerned for taxed output transactions (see, in particular, judgments of 29 November 2012, *Gran Via Moineşti*, C-257/11, EU:C:2012:759, paragraph 38 and the case-law cited, and of 10 October 2013, *Pactor Vastgoed*, C-622/11, EU:C:2013:649, paragraph 34).

53 In those circumstances, an interpretation according to which the adjustment of a VAT deduction relating to a supply of goods or of services could be imposed on a taxable person other than the person who applied that deduction would be incompatible with the objectives, recalled in paragraphs 51 and 52 of the present judgment, of the rules pursued in that regard by the VAT Directive (see, to that effect, judgment of 10 October 2013, *Pactor Vastgoed*, C-622/11, EU:C:2013:649, paragraph 37).

54 Requiring a deduction applied by the seller of immovable property to be adjusted by the purchaser of that property would be tantamount to requiring the latter to pay a tax debt pertaining to a transaction in which he or she had no involvement and which was carried out in connection with the economic activity of another taxable person. On the other hand, the seller who applied the deduction would continue to benefit from a deduction higher than that to which he or she is entitled on account of the actual use of the immovable property and the objective of neutrality of the tax burden would not be achieved in respect of that person.

55 The Tax Board and the Finnish Government nevertheless argue, first, that the grounds of the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), cannot be applied to the present case because of the differences between the situations at issue in the two cases, and, second, that the grounds relating to legal certainty and the need to ensure that adjustments do not give rise to any unjustified advantage and do not result in the creation of a disguised tax burden justify the recovery of amounts due following the adjustment of a VAT deduction from a taxable person other than the person who applied that deduction.

56 In the first place, in order to distinguish the present case from the case which gave rise to the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), the Tax Board and the Finnish Government state that, in the case at issue in the main proceedings, the purchaser was requested to adjust the deduction on account of the change in use of the immovable property concerned, following the sale of that property to individuals, and that the amount of tax claimed on that basis related only to the adjustment period still to run. They add that the assumption of rights and obligations with regard to adjustment is optional and that the purchaser is in possession of the information relating to the deduction for which adjustment is sought.

57 However, it must be held that those circumstances do not call into question the relevance, for the present case, of the considerations set out by the Court in the case which gave rise to the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649).

58 First of all, in the case which gave rise to the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), the Court considered whether the adjustment of a VAT deduction could be imposed on a taxable person other than the person who made that deduction, where the first taxable person has not complied with the detailed rules justifying the deduction made by the second. The Court answered that question in the negative, taking the view, in essence, in paragraphs 40 and 41 of that judgment, that, in such a situation, requiring a VAT deduction to be adjusted by a taxable person other than the person who applied that deduction would compromise the accuracy of deductions and the neutrality of VAT, which the rules relating to the adjustment of deductions are intended to ensure.

59 In the case in the main proceedings, the question arises as to whether amounts due following the adjustment of a VAT deduction may be recovered from a taxable person who did not make that deduction where, because of the sale of the immovable property by that taxable person to individuals who no longer intend to use the property for taxable transactions, the conditions justifying waiver of the adjustment are no longer met. That question is similar to the question raised in the case which gave rise to the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), inasmuch as the actions of a taxable person led the tax authority in both cases to require that person to adjust a VAT deduction applied by another taxable person.

60 Next, it is irrelevant in that regard that the adjustment required in this case relates solely to the amount corresponding to the adjustment period that remains to run, since the deduction for which adjustment is sought was applied by another taxable person.

61 It is apparent from the written replies given by the Tax Board to the Court's questions that the assumption by the purchaser of the seller's rights and obligations with regard to adjustment, provided for by the Swedish legislation at issue in the main proceedings, entails the assumption of the input tax relating to capital goods in respect of which the seller has not made any deduction in whole or in part. It follows, subject to verification by the national court, that where the seller has deducted VAT in whole or in part, the purchaser is not entitled to deduct that tax.

62 Last, a Member State may not impose on a taxable person obligations which go beyond what is permitted under EU legislation on VAT, even if that taxable person is informed in advance of the extent of those obligations or the application of those obligations is optional (see, by analogy, judgment of 18 March 2010, *Gielen*, C-440/08, EU:C:2010:148, paragraph 53 and the case-law cited).

63 Consequently, the argument put forward by the Tax Board and the Finnish Government that the approach taken in the judgment of 10 October 2013, *Pactor Vastgoed* (C-622/11, EU:C:2013:649), cannot be applied to this present case, is unsustainable.

64 In the second place, it should be noted that, contrary to the assertions of the Tax Board and the Finnish Government, the arguments relating to legal certainty and the need to ensure that adjustments do not give rise to any unjustified advantage and do not result in the creation of a disguised tax burden cannot justify the recovery of amounts due following the adjustment of a VAT deduction from a taxable person other than the person who applied that deduction.

65 First of all, the argument that it would be contrary to legal certainty to require the taxable person who applied the VAT deduction – in this case, the seller of the immovable property – to adjust that deduction in circumstances where it is the purchaser who has changed the use of that property and the seller has no influence over that use, cannot succeed.

66 As is apparent from paragraphs 45 and 46 above, it is for the Member States to adopt any measures needed for the application of Article 188 of the VAT Directive in accordance with Article 189 thereof, having due regard to all the provisions of that directive and to general principles, such as the principle of legal certainty.

67 Next, the Tax Board and the Finnish Government argue that the purchaser of the immovable property would receive an unjustified advantage if, following the change in use of that property by the purchaser, the purchaser were not required to adjust the deduction made by the seller. The purchaser would thus have acquired immovable property that was not subject to any tax.

68 First, that situation is the consequence of the provisions of Swedish law exempting transactions involving the disposal of immovable property from VAT, without permitting taxable persons to opt to have those transactions taxed, although Article 137(1)(b) of the VAT Directive gives Member States the power to allow taxable persons a right of option for taxation in respect of the supply of buildings.

69 Second, as pointed out in paragraph 61 above, where the seller has deducted VAT in whole or in part, the purchaser is not, subject to verification by the national court, entitled to deduct that tax. Therefore, the purchaser does not enjoy an 'unjustified advantage' in the form of a deduction to which he or she is not entitled on account of the use of the immovable property.

70 Third, the setting of a purchase price for the immovable property that is lower than the market price, to which the seller might agree since the purchaser might be required to adjust the deduction made previously, stems from the parties' freedom of contract and also cannot be classified as an 'unfair advantage' within the meaning of the VAT Directive.

71 Last, the Tax Board and the Finnish Government submit that, if it were not possible to have the purchaser make the adjustment, the continuity of the VAT system would be compromised in that the sale price of immovable property would be calculated so as to cover a possible adjustment of the VAT deduction and would therefore entail a disguised charge which the purchaser would not be able to deduct if he or she used that property for transactions giving rise to the right to deduct VAT.

72 In that regard, it must be pointed out that the same consequences, assuming them to be established, may also arise where a Member State decides not to exercise the option provided for in Article 188(2) of the VAT Directive to waive the requirement for adjustment. Moreover, as noted in paragraph 68 above, Article 137(1)(b) of that directive confers on Member States the power to allow taxable persons a right of option for taxation in respect of the supply of buildings, which would make it possible to avoid the consequences referred to in the preceding paragraph of this judgment.

73 In those circumstances, the answer to the first question should be that the VAT Directive must be interpreted as precluding national legislation which, while providing, on the basis of Article 188(2) of that directive, that the seller of immovable property is not required to adjust a deduction of input VAT where the purchaser will use that property only for transactions giving rise to a right of deduction, also requires the purchaser to adjust that deduction for the remainder of the adjustment period where the purchaser in turn transfers the property in question to a third party who will not use it for such transactions.

The second question

74 By its second question, the national court asks whether the answer to the first question would be different if the first transfer referred to in that question constituted a transfer of assets for the purposes of Article 19 of the VAT Directive.

75 In that regard, it should be recalled that, in accordance with settled case-law, within the framework of the cooperation between the Court and national courts and tribunals established by Article 267 TFEU, it is solely for the national court before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see, in particular, judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 40 and the case-law cited).

76 However, the Court must examine the circumstances in which cases are referred to it by the national court in order to assess whether it has jurisdiction. The spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court for its part to have regard to the function entrusted to the Court, which is to contribute to the administration of justice in the Member States and not to give advisory opinions on general or hypothetical questions (judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 41 and the case-law cited).

77 The justification for a reference for a preliminary ruling is not that it enables such opinions to be delivered but rather that it is necessary for the effective resolution of a dispute (see, in particular, judgments of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraph 38, and of 16 June 2016, *Rodríguez Sánchez*, C-351/14, EU:C:2016:447, paragraph 56).

78 It is true that, according to settled case-law, in the light of the division of responsibilities between the national courts and the Court, the referring court cannot be required to make all the findings of fact and of law required by its judicial function first before it may then bring the matter before the Court. It is sufficient that both the subject matter of the dispute in the main proceedings and the main issues raised for the EU legal order may be understood from the order for reference, so that the Member States and other interested parties are able to submit their observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union and to participate effectively in the proceedings before the Court (see judgment of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraph 39).

79 However, in the present case, the national court expressly states that the applicability of the provisions on transfer of a business in the main proceedings must be determined in the light of the circumstances of the dispute in those proceedings and is not the subject of the present request for a preliminary ruling, and that it will resolve that issue when it gives final judgment in the main proceedings. Only if it were found that Sögård Fastigheter's acquisition of the immovable property had to be classified as a 'transfer of a business' would the question then arise as to whether requiring Sögård Fastigheter to adjust the deductions applied by the previous owner is compatible with Article 19 of the VAT Directive.

80 In those circumstances, the question relating to the interpretation of Article 19 of the VAT Directive is, at this stage of the main proceedings, hypothetical and it has not been shown that the reply to that question is necessary for the resolution of the dispute.

81 Accordingly, the Court cannot reply to the second question by delivering an advisory opinion on a problem which is, at this stage, hypothetical (see, to that effect, judgments of 10 November 2016, *Private Equity Insurance Group*, C-156/15, EU:C:2016:851, paragraph 56; of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 194; and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraph 166). The fact that that question might be relevant if the national court were to find that the provisions on transfers of a business had to be applied to the situation at issue in the main proceedings is irrelevant in that regard.

82 It follows that the second question is inadmissible.

Costs

83 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 (Seventh Chamber) hereby rules:

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation which, while providing, on the basis of Article 188(2) of that directive, that the seller of immovable property is not required to adjust a deduction of input value added tax where the purchaser will use that property only for transactions giving rise to a right of deduction, also requires the purchaser to adjust that deduction for the remainder of the adjustment period where the purchaser in turn transfers the property in question to a third party who will not use it for such transactions.

[Signatures]