OPINION OF ADVOCATE GENERAL LÉGER

delivered on 21 January 1999 *

1. This case concerns the precise scope of the power given to the Member States to deny a taxable person the right to deduct the value added tax ('VAT') he has paid when purchasing motor cars for use in his business.

I — The Community provisions

2. It is apparent from the reference for a preliminary ruling that one of the litigants in the main proceedings has submitted a claim to deduct VAT in respect of a period dating back to 1973, when the Second Directive 67/228/EEC [1] was in force. Like the Sixth Directive 77/388/EEC [2] to which the other appellant companies refer, the Second Directive is therefore part of the relevant Community legislation.

The Second Directive

3. Article 11(1) of the Second Directive, introducing the right of deduction, provides as follows:

'Where goods and services are used for the purposes of his undertaking, the taxable person shall be authorised to deduct from the tax for which he is liable:

(a) the value added tax invoiced to him in respect of goods supplied to him or in respect of services rendered to him;

...'.

* Original language: French.

1 — Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16, hereinafter 'the Second Directive').

2 — 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, hereinafter 'the Sixth Directive').

4. Article 11(4) provides however:

'Certain goods and services may be excluded from the deduction system, in particular those capable of being exclusively or partially used for the private needs of the taxable person or of his staff.'

The Sixth Directive

5. The provisions of the Sixth Directive relating to the right of deduction are set out in Article 17(2) which, in the form resulting from Article 28f (as amended) of the same directive, states as follows: [3]

'In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

...'.

6. Provision for exclusion of the right of deduction is made in Article 17(6), according to which:

'Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of value added tax. Value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.'

3 — Article 28f was inserted in the Sixth Directive by Article 1(22) of Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1). It was amended by Article 1(10) of Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388 and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them (OJ 1995 L 102, p. 18).

7. Article 1 of the Sixth Directive provides that the laws, regulations and administrative provisions adopted by the Member States in order to modify their VAT systems in accordance with the Sixth Directive were to enter into force by 1 January 1978 at the latest.

8. On 25 January 1983 the Commission submitted to the Council a Proposal for a Twelfth Directive on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: expenditure not eligible for deduction of value added tax,[4] which was amended by another proposal submitted by the Commission to the Council on 20 February 1984.[5] The Council did not adopt that proposal.

9. A new proposal for a directive was submitted by the Commission on 17 June 1998.[6]

II — The national provisions

10. According to the order for reference, the deduction of VAT on the purchase of motor cars has been prohibited in the United Kingdom since 1973 under a succession of statutory instruments ('the Cars Orders').

11. Article 4 of the VAT (Cars) Order 1972, cited by way of example by the national court, provides as follows:

'Tax on the supply or importation of a motor car shall not be deducted as input tax ... except where:

(a) the supply is a letting on hire; or

(b) the motor car is supplied or imported for the purpose of its conversion into a vehicle which is not a motor car; or

(c) the motor car is unused and is supplied or imported for the purpose of being sold'.[7]

4 — OJ 1983 C 37, p. 8.

5 — OJ 1984 C 56, p. 7.

6 — Proposal for a Council Directive amending Directive 77/388 as regards the rules governing the right to deduct value added tax (OJ 1998 C 219, p. 16).

7 — This footnote concerns only the original French version of this Opinion.

III — The facts and the national proceedings

12. There are three sets of appellants in the main proceedings.

13. Royscot Leasing Ltd and Royscot Industrial Leasing Ltd (hereinafter 'the Royscot companies') carry on a leasing business whereby they purchase cars and lease them on to their customers at a rent which includes VAT. They do not take physical possession of the cars, which are delivered by the manufacturer directly to the lessees. It is therefore not possible for the Royscot companies or their employees to make any private use of the cars.

14. T.C. Harrison Group Ltd (hereinafter 'Harrison') is a representative member of a VAT group of taxable persons, some members of which carry on three different businesses. The first is a long-term car leasing business which is the same as that of the Royscot companies. The second is a short-term car hire business. When not hired out, those cars are available for private use by employees outside working hours at no charge. The third business is a motor car dealership business pursuant to franchise agreements. It is a requirement of those franchise agreements that a fleet of demonstrator cars be available for the use of prospective customers and for the familiarisation of staff. Some employees are permitted to use those cars for their private use outside working hours without charge.

15. Allied Domecq plc (hereinafter 'Domecq') is a representative member of a VAT group of taxable persons, some members of which carry on brewing, and food, wine and beer retailing businesses. They employ travelling salesmen and technical operatives who use motor cars in order to perform their duties and travel a considerable number of miles per year for that purpose. The group purchases standard vehicles, known as 'need cars', for its employees' business use. The latter may also have a reasonable amount of private use of the cars outside their working hours. They have to pay a fee for that private use, which is therefore a taxable transaction, the price of which includes VAT.

16. Domecq also purchases motor cars (called 'perk cars') for the business and private use of its senior employees. Those vehicles are generally chosen from more luxurious models than those purchased as need cars. The ratio of business to private use of the perk cars varies widely from one employee to another. Employees with perk cars are not charged anything for their private use.

17. Each party has submitted a claim to deduct VAT on the purchase of the motor cars.

18. They submit that Article 11(4) of the Second Directive and Article 17(6) of the Sixth Directive do not permit the United Kingdom to introduce or retain a prohibition of the right to deduct VAT such as that contained in the Cars Orders.

19. The Commissioners of Customs & Excise have rejected all the claims on the ground that the deductions claimed were prohibited by the Cars Orders.

20. The parties appealed to the VAT and Duties Tribunal but their appeals were unsuccessful. After the High Court of Justice had also dismissed their appeals, they lodged a further appeal with the Court of Appeal.

IV — The national court's questions

21. According to the Court of Appeal, the sole issue is whether the Second and Sixth Directives confer on the appellants a right of deduction which overrides the prohibition in the Cars Orders. Taking the view that the relevant provisions of those directives were neither clear nor unequivocal, the Court of Appeal stayed the main proceedings and submitted the following questions to the Court of Justice for a preliminary ruling:

'1. Did Article 11(4) of the Second Council Directive of 11 April 1967 authorise Member States to introduce or retain, and does the second subparagraph of Article 17(6) of the Sixth Council Directive of 17 May 1977 authorise Member States to retain, national laws which exclude, without limit, the right to deduct VAT payable on the purchase of motor cars to be used by a taxable person for the purposes of his taxable transactions?

2. In particular, may the right to deduct be excluded:

(a) even though the cars are essential tools of the business in the sense that the business by definition would not exist without the cars (e.g. the car-leasing business of the Royscot companies, and the car-leasing and car-hire businesses of the T.C. Harrison Group)?

(b) even though the cars are never available for any private use by the taxable person or his staff (e.g., the car-leasing businesses of the Royscot companies and of the T.C. Harrison Group)?

(c) even though the taxable person could not carry on his business at all without the cars (e.g., "demonstrator" cars acquired by a member of the T.C. Harrison Group in his dealership business)?

(d) even though the taxable person's employees could not perform their duties without the cars (e.g., the travelling salesmen employed by the Allied Domecq Group)?

(e) notwithstanding (a), (c) or (d) above, on the ground that the taxable person's employees are permitted to make some, subsidiary, private use of the cars outside working hours?

3. Is it material to Question 2(e) above to consider whether:

(a) an apportionment of the expenditure on the cars can be made between the business use and the private use?

(b) the permission to make private use of the cars is a taxable transaction for VAT purposes because the taxable person charges the employee a fee for that use?

4. Did the authorisation granted to Member States by the second subparagraph of Article 17(6) lapse at the end of the four-year period referred to in the first subparagraph?'

V — The case-law of the Court of Justice

22. Since the order for reference the Court of Justice has ruled on the meaning and scope of Article 17(2) and (6) of the Sixth Directive in its judgment of 18 June 1998 in Case C-43/96 *Commission* v *France*. [8]

23. By its action in that case, the Commission sought a declaration that, by maintaining in force legislation which denied a taxable person the right to deduct VAT on means of transport which constituted the very tool of his trade, the French Republic had failed to fulfil its obligations under the Sixth Directive, and in particular under Article 17(2) thereof.

8 — [1998] ECR I-3903.

24. The provision at issue was Article 237 of Annex II to the French Code Général des Impôts ('the CGI'), which provided as follows: 'Value added tax shall not be deductible on vehicles or machines, whatever their nature, designed for the transport of persons or for mixed use which constitute fixed assets or, if not, are not intended for resale in a new state.'

25. The basic documentation of the French tax authority stated that the vehicles referred to in that provision included private motor cars.

26. The Commission took the view that, on that point, the CGI was contrary to the principle — which it considered to be fundamental — of the right to deduct VAT on a means of transport which constitutes the very object of a taxable person's trade.

27. The Court dismissed the Commission's action.

28. After pointing out that under the first sentence of the first subparagraph of Article 17(6) of the Sixth Directive the Council was to decide what expenditure was not eligible for deduction of VAT, the Court held that it followed from the next sentence, which states that 'value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure', that '... the rules which the Council is called upon to adopt are not automatically limited to expenditure which is not strictly business expenditure'. [9]

29. The Court went on to hold that the expression 'all the exclusions', used in the second subparagraph of Article 17(6), which provides that 'until the rules [which the Council must adopt] come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force', includes 'expenditure which is strictly business expenditure'. [10]

30. Finally, the Court clearly stated that 'that provision ... authorises the Member States to retain national rules which deny taxable persons the right to deduct VAT on means of transport which constitute the very tool of their trade'. [11]

VI — The answers to the national court's questions

31. The first and fourth questions both concern a Member State's right to retain national laws which exclude the right to

9 — Ibidem, paragraph 17.
10 — Ibidem, paragraph 18.
11 — Ibidem.

deduct VAT payable by a taxable person on the purchase of motor cars to be used by him for the purposes of his taxable transactions. They should therefore be considered together.

The first and fourth questions

32. By its first question the Court of Appeal is asking whether Article 11(4) of the Second Directive authorised Member States to adopt or retain legislation excluding such a right of deduction. Similarly, by its first and fourth questions, it wishes to ascertain whether Article 17(6) of the Sixth Directive authorises the Member States to retain legislation of that kind beyond the four-year period following the entry into force of the Sixth Directive.

33. The latter point should be considered first, since in its judgment in *Commission* v *France*, cited above, the Court provided valuable guidance as to the interpretation to be given to Article 17(6).

34. It should be noted that, according to the judgment in *Commission* v *France*, the second subparagraph of Article 17(6) of the Sixth Directive must be interpreted as meaning that the Member States are authorised to retain national rules which exclude the right to deduct VAT on means of transport that constitute the very tool of a taxable person's trade.

35. In reaching that conclusion and in finding that the Member State concerned had not failed to fulfil its obligations, the Court implicitly but necessarily accepted that the national legislation in question could lawfully be retained after the expiry of the four-year period provided for in the first subparagraph of Article 17(6). That legislation was still in force in 1996, when the application was lodged, whereas the four-year period, which began to run on 1 January 1978, the date of the entry into force of the Sixth Directive, had expired on 1 January 1982.

36. That decision follows from the very wording of the provision. The period of four years is effective against the Council alone and not against the Member States, it being the period within which the Council must determine the expenditure which does not give rise to a right of deduction. It was not fixed in order to impose a limit on the time by which the Member States were to abandon the measures which they had adopted whereby the right of deduction was excluded.

37. Although there is a time-limit upon the authorisation given to the Member States, it is not predetermined, since the national legislation may be retained until the Council has adopted the list of expenditure which does not give rise to the right of deduction.

38. There is, admittedly, a link between the right to retain national legislation and the period within which the Council must act, since, by adopting its decision, the Council puts an end to the national measures. However, the Council's failure to comply with that time-limit cannot curtail the freedom given to the Member States to retain their own systems, since the wording of the provision does not lay down any time-limit which expressly restricts the period during which the national legislation is to be valid.

39. The objectives pursued by Article 17(6) of the Sixth Directive, and the structure of the system which the Directive establishes, support this strictly literal construction.

40. The 12th recital in the preamble to the Sixth Directive states that harmonisation of the rules governing deductions is one of the Directive's objectives. However, the 17th recital nevertheless accepts that the Member States are to have the right, within certain limits and subject to certain conditions, to retain special measures derogating from the Directive in order to avoid fraud or tax avoidance.

41. If those principles are to be reconciled, national legislation denying the right of deduction has to be maintained until harmonised Community rules have been put in place. Any gap in the law in that area, such as that which would result from the immediate application of a general right of deduction before Community or national legal rules had determined what expenditure was not deductible, would facilitate fraudulent conduct by permitting taxable persons to deduct, without valid reason, all sorts of private expenditure from their taxable transactions.

42. The Court has therefore held that the Community legislature linked the duration of the authorisation given to the Member States not to the expiry of the four-year period laid down in the first subparagraph but rather to the actual entry into force of the rules which the Council, despite the expiry of that period, must still adopt.

43. The four-year period provided for in the first subparagraph cannot therefore be relied upon as against the Member States.

44. Not only does the Court's judgment in *Commission* v *France* give guidance as to the scope of the authorisation given to the Member States, but it also gives very specific guidance on the nature of the expenditure which they may exclude from the right of deduction under Article 17.

45. The freedom given to the Member States is clearly very wide in that area, since the judgment quite explicitly holds that expenditure on means of transport which constitute the very tool of a taxable person's business may be excluded from any right of deduction.

46. The Court expressly declined to distinguish between means of transport for private use and other means. On the basis of the wording of the second subparagraph of Article 17(6) the Court held that the expression 'all the exclusions' — which refers to exclusions which the Member States may retain in regard to the deduction of certain expenditure — includes 'expenditure which is strictly business expenditure'. [12]

47. A distinction made so as to allow deduction of VAT on goods for business use alone could, however, be justified by the desire to limit the harm to the neutrality of VAT which ensues from any exclusion of the right of deduction. To deny a trader the right to deduct VAT is in effect tantamount to acceptance of a cumulative effect of the tax, contrary to the very principle underlying VAT, namely to impose taxation solely on the added value created at a given stage of the production process.

48. However, the Member States' concern that, owing to the difficulty of carrying out effective controls, they would be unable to ensure observance of the dividing line between cars used exclusively for business purposes and cars used for mixed business and private use led the Community legislature to adopt legislation authorising the retention of rules in both cases. [13]

49. This same concern underlies the absence of a distinction by reference not to the use which may be made of the means of transport in question but to the nature of the economic activity. Under Article 17(6) as interpreted by the Court, it is irrelevant that cars purchased by a taxable person are used for a business which does not lend itself to any risk of their being used for private purposes.

50. The relevant legislation, as interpreted by the Court, therefore reflects the Community legislature's concern to avoid sacrificing the Member States' financial interests to the needs of the proper working and neutrality of the common system of VAT, at least until they have agreed on the categories of expenditure which are not to give rise to the right to deduct VAT.

12 — Ibidem.

13 — It is significant that the Commission's 1983 Proposal, which had suggested the principle of excluding the right to deduct VAT in respect of 'expenditure on the purchase, manufacture, importation, leasing or hire, use, modification, repair or maintenance of passenger cars ...' (Article 1(1)) was not found by the Council to be adequate from that point of view. It is true that Article 1(2) of the Proposal stated that exceptions were to be made in regard to vehicles used for carriage for hire or reward, for driving training or instruction, hired out, and vehicles which are part of the stock in trade of a business.

51. The Member States' right to exclude the right to deduct certain expenditure may therefore be regarded as very wide.

52. That right is not, however, limitless, since Article 17(6) of the Sixth Directive lays down a 'standstill' clause, freezing the national rights in force in the relevant area as at 1 January 1978, the date on which the Sixth Directive entered into force. [14] It does not therefore allow the Member States to increase, after that date, the burden upon traders resulting from the denial of the right of deduction.

53. Likewise, if those exclusions are to be maintained, it does not suffice that the national rules were applicable when the Sixth Directive entered into force on 1 January 1978. They must also be in accordance with the provisions of the Second Directive, which continued to be effective in each Member State until the entry into force of the Sixth Directive. [15]

54. It cannot be accepted that the consequence of the entry into force of the Sixth Directive, one object of which is to harmonise the rules governing deduction of VAT, [16] should be to allow a Member State to retain national rules that are contrary to the obligations which bound it under the Second Directive, which itself also sought to achieve convergence of national VAT systems. [17]

55. However, as will be seen, the rules laid down by the Second Directive also leave a broad margin of discretion to the Member States.

56. Let me point out, first of all, that the obligation to comply with the Second Directive naturally raises the question of the interpretation of Article 11(1) and (4) of that directive for purposes other than the simple determination of the rules applicable to taxable transactions arising during the period in which it was in force.

57. Article 11(1)(a) lays down the principle that a taxable person may deduct the VAT invoiced to him in respect of goods and services used for the purposes of his undertaking. Article 11(4) provides that certain goods and services may be excluded from the deduction system, in particular those capable of being used exclusively or partially for the private needs of the taxable person or of his staff.

58. The Member States may therefore take account of the very nature of the goods or

14 — See point 7 above.

15 — Article 37 of the Sixth Directive.

16 — Twelfth recital.

17 — Third recital.

services to exclude them from the right to deduct VAT. It is clear that a motor car can by its very nature easily be put to private use, whatever the use for which it was initially intended, whereas that is obviously not so in the case, for example, of a machine tool or of a large number of other goods for exclusively business use.

59. Nor is it apparent from the wording of Article 11(4) that the exclusion must be reserved for goods which are *actually* used — exclusively or partially — for private use. The difficulties of control appear to have convinced the Community legislature not to lay down a condition of actual use. It therefore suffices that the goods in question may potentially be used for a private purpose, as is emphasised by the use of the word 'capable'.

60. It should be added that the provision's suggested test of the use of goods or services for private needs is not the only possible test, as is shown by the words 'in particular' which precede that suggestion.

61. For all those reasons, use of a test based on the nature of the goods appears appropriate in the present case, having regard to the type of goods with which the main proceedings are concerned.

62. It therefore follows that, in my view, private cars fall within the category, covered by Article 11(4) of the Second Directive, of goods which are by their very nature capable of being used for the private needs of the taxable person or of his staff.

63. Under the Second Directive the Member States were therefore entitled to adopt or retain legislation denying the right of deduction in respect of that type of goods, which has made it possible for the Court to find that they are authorised to retain them under the Sixth Directive.

The second question

64. It follows from the foregoing that the judgment in *Commission* v *France* deals directly with points (a), (c) and (d) of the second question, by which the Court of Appeal asks the Court of Justice in essence whether the fact that motor cars are essential tools of a taxable person's business affects the right of deduction.

65. Whether the cars are of the type belonging to the Royscot companies or to the members of Harrison, which the national court classified as essential tools of their business, the demonstration cars of the members of Harrison, without which, according to the national court, they cannot carry on their business, or cars of members of Domecq, without which the taxable person's employees could not per-

form their duties, those types of motor cars are clearly means of transport which constitute the very tool of the taxable person's trade, as understood by the Court of Justice.

66. The fact that they are not a mere tool but an indispensable instrument for carrying on the business of the undertaking has no bearing on the breadth of the Court's interpretation of Article 17(6), second subparagraph, under which authorised exclusions may include expenditure which is strictly business expenditure.

67. It should be recalled that the Commission's action which gave rise to the judgment in *Commission* v *France* was confined '... to cases where the goods in question "are a necessity to such an extent that they condition in an absolute manner the exercise of the trade itself", as distinct from cases in which the goods "contribute substantially to facilitating the exercise of the trade"'. [18]

68. The Commission contended that 'the only expenditure liable to be excluded from the right to deduct [can be] that incurred by a taxable person on goods and services which are not absolutely essential for the operation of his business'. [19]

69. Consequently, by the expression 'the very tool' of the taxable person's trade, which the Court used in order to characterise the means of transport in respect of which the right to deduct VAT may also be denied, the Court was referring to goods without which the undertaking's business would be jeopardised, in other words goods which were an indispensable tool of the taxable person's business.

70. Furthermore, the indispensability of the cars for the businesses of the parties to the main proceedings does not alter the fact that they are goods capable of being used exclusively or partially for the private needs of the taxable person or of his staff within the meaning of Article 11(4) of the Second Directive.

71. The interpretation given by the Court also provides an unequivocal answer to Question 2(b) and (e), namely the consequences of the impossibility for the taxable person or his staff of making any private use of the vehicles in question, or the consequences of the strict conditions upon which such use is permitted.

18 — Opinion of Advocate General Jacobs in *Commission* v *France*, cited above, paragraph 7.

19 — Judgment in *Commission* v *France*, cited above, paragraph 15.

72. As has been seen, the power given to the Member States to retain any exclusion of the right of deduction applies irrespective of the kind of use actually made of the goods. The fact that no private use is made of vehicles does not therefore require the Member States to re-introduce the right to deduct sums expended in acquiring them. *A fortiori*, strictly regulated private use cannot compel them to do so.

73. The third question concerns the effect which an apportionment of expenditure on vehicles between their business use and their private use may have on the right of deduction. It also concerns the effect which the employee's private use of vehicles has where use is in the form of a taxable transaction. However, it follows from the foregoing that the Member States are entitled to retain rules denying the right to deduct VAT, whatever the use to which the motor cars are put. Since the third question is therefore devoid of purpose, I do not consider it necessary to answer it.

74. The interpretation which I have proposed that the Court should adopt following its judgment in *Commission* v *France* appears to me to be the only possible interpretation as the applicable Community law now stands, even if not the best. As the Court has observed, the wording of Article 17(6), and the absence of any agreement between the Member States on the arrangements applicable to expenditure on passenger transport, requires the adoption of that approach so long as the Council has failed to determine those rules. [20]

75. Like the Commission and like Advocate General Jacobs in his Opinion in *Commission* v *France*, cited above, I consider that 'the rules preventing taxable persons from deducting VAT on such important categories of expenditure severely disrupt the functioning and neutrality of the VAT system' and 'I doubt ... whether the risk of tax evasion can justify total exclusion of goods from the deduction mechanism'. [21]

76. In particular, there are valid grounds for regretting that where the vehicles are directly used in the business of the taxable person with no possibility of his taking physical possession of them, as in the case of leasing transactions, the exclusion of the right of deduction is not prohibited. For in such a case neither the taxable person nor his staff can use the vehicles for private use, so that the risks of tax evasion are insignificant.

77. However, like Advocate General Jacobs, I consider that 'the problem calls for a legislative solution'. [22] In the first place, the applicable Community legislation, which is unequivocal on the point in question, does not lend itself to a selective interpretation, even if that were justified on grounds of expediency. In the second place,

20 — Ibidem, paragraphs 18 and 19.

21 — Paragraph 23.

22 — Ibidem, paragraph 24.

an interpretation by the Court, which necessarily depends on the matters of fact and of law underlying the main proceedings, is likely to give rise to numerous questions as to the applicability of the decision to other types of business or methods of business organisation. Finally and above all, the applicable legislation, through its clearly expressed wish to permit retention of all the exclusions provided for under national laws, reflects the Member States' wish to refuse any differentiation in that area until agreement has been reached in the form of Community legislation.

78. Accordingly, I consider that only legislation apt to achieve exhaustive harmonisation of the right of deduction is capable of reconciling the broadest possible right of deduction with the prevention of the risks of fraud.

Conclusion

79. Having regard to those considerations, I propose that the Court give the following answers to the questions referred by the Court of Appeal (England and Wales):

1. Article 11(4) of the Second Council Directive 67/228/EEC of 11 April 1967, on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax, authorised the Member States to adopt or retain in force legislative provisions which excluded the right to deduct value added tax in respect of motor cars used for a taxable person's business.

Article 11(4) of the Second Directive 67/228 did not preclude the Member States' right to adopt or retain in force legislative provisions which excluded the right to deduct value added tax in respect of motor cars used for the taxable person's business:

— where those vehicles were an indispensable tool of that business;

— where those vehicles were not capable of being used for private purposes.

2. The right conferred on Member States by Article 17(6), second subparagraph, of the Sixth Council Directive 77/388/EEC of 17 May 1977, on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, to retain all the exclusions of the right to deduct value added tax provided for under their national laws when the Sixth Directive 77/388 entered into force did not cease upon the expiry of the four-year period provided for in Article 17(6), first subparagraph, of the Sixth Directive 77/388, within which the Council was to adopt rules determining the expenditure which is not eligible for deduction of value added tax, but does so upon the entry into force of those rules.

3. Until the entry into force of the rules determining the expenditure which is not eligible for deduction of value added tax which the Council must adopt under Article 17(6), first subparagraph, of the Sixth Directive 77/388, Article 17(6), second subparagraph, of the Sixth Directive 77/388 authorises the Member States to retain legislative provisions which exclude the right to deduct value added tax in respect of motor cars used for the taxable person's business.

Article 17(6), second subparagraph, of the Sixth Directive 77/388 does not preclude the Member States' right to retain legislative provisions which exclude the right to deduct value added tax in respect of motor cars used for the taxable person's business:

— where those vehicles are an indispensable tool of that business;

— where those vehicles are not capable of being used for private purposes.