OPINION OF ADVOCATE GENERAL MENGOZZI
delivered on 22 April 2010[1]

1. While, as a general rule, reasonably straightforward, the common system of VAT can, as anyone who is required to deal with it is well aware, give rise in practice to complex situations. The present case provides such an example.

2. Three questions have been referred to the Court by a United Kingdom tax tribunal concerning the correct perspective from which to view, for the purposes of VAT, a situation in which an employer offers his workers the possibility of receiving, in addition to cash, part of their remuneration in the form of retail vouchers.

I – Legal background

A – *EU law*

3. The questions referred for a preliminary ruling by the VAT and Duties Tribunal, Manchester, relate to the provisions of the Sixth VAT Directive.[2] However, they may also be framed in the same terms by reference to the corresponding rules in the more recent Directive 2006/112/EC,[3] as indicated by the referring court.

4. Article 2 of the Sixth Directive[4] provides as follows:

'The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

...'

1 — Original language: Italian.

2 — 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).

3 — Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

4 — Corresponding to Article 2(1)(a) and (c) of Directive 2006/112.

5. Article 5, entitled 'Supply of goods', is worded as follows:

'1. "Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.

…'

6. Article 6, entitled 'Supply of services',[5] provides as follows:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

…

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

(a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible;

(b) supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business.

…'

7. Article 17 of the Sixth Directive,[6] entitled 'Origin and scope of the right to deduct', provides as follows:

'…

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

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

…'

5 — Corresponding to Article 26(1) of Directive 2006/112.

6 — Corresponding to Article 168 of Directive 2006/112.

B – *National legislation*

8. The referring court does not provide any details of national legislation, since the questions referred concern only the interpretation to be given to provisions of European Union law. However, the following is apparent from reading the order for reference and the observations submitted.

9. In general, with regard to the tax treatment of retail vouchers, United Kingdom legislation provides that the retailer who issues vouchers and at whose outlets they can be used is required to account for VAT only at the point at which the vouchers are actually redeemed to purchase goods.

10. If, however, as in the present case, the vouchers are supplied by the retailer to an intermediary who then resells them to third parties, the retailer who issues the vouchers must also invoice the intermediary for VAT, even though it is required to pay it to the tax authorities only at the point at which the voucher is redeemed. In all subsequent movements of the voucher (that is, after the involvement of the intermediary), VAT must be charged and duly paid.

11. However, the particular legal framework currently applicable in the United Kingdom is, as I have indicated, of no relevance for the purpose of resolving the questions referred.

II – Facts, the main proceedings and the questions referred

12. The appellant in the main proceedings, Astra Zeneca UK Limited ('Astra Zeneca'), is a company operating in the pharmaceuticals sector. It offers its employees the possibility of receiving, as an alternative to cash, part of their remuneration in the form of retail vouchers which can then be redeemed at specific high street retailers.

13. On the employees' payslips, the retail vouchers are shown as having a lower value than their face value. For example, a GBP 10 voucher may be shown in the break-down of the payslip as having a value of GBP 9.5; the employee can purchase goods to the value of GBP 10, while having 'spent' only GBP 9.5 of his remuneration.

14. In concrete terms, the system operates as set out below.

15. The retailer issues vouchers having a given face value (for example, GBP 10) and sells them at a discounted price (for example, GBP 9) to an intermediary company. That company in turn sells the vouchers to Astra Zeneca, which purchases them for a sum lower than the face value (for example, GBP 9.5). Astra Zeneca then uses the vouchers in part payment of the remuneration of its employees who choose to avail themselves of that option. [7]

16. The question which the appellant company has raised with the United Kingdom tax authorities and which the referring court is called upon to clarify concerns the tax treatment for VAT purposes of retail vouchers used as a form of remuneration.

17. The VAT and Duties Tribunal, Manchester, must determine, first, whether Astra Zeneca is required to charge its employees in respect of the VAT element contained in the retail vouchers; should that not be necessary, it must be clarified whether Astra Zeneca can deduct the input VAT which it has incurred (in purchasing the vouchers from the intermediary).

18. Against that background, the VAT and Duties Tribunal, Manchester, has stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) In the circumstances of this case, where an employee is entitled under the terms of his or her contract of employment to opt to take part of his or her remuneration as a face value voucher, is Article 2(1) of Sixth Council Directive 77/388/EEC (now Article 2(1)(c) of the Principal VAT Directive) to be interpreted such that the provision of that voucher by the employer to the employee constitutes a supply of services for consideration?

(2) If the answer to question 1 is no, is Article 6(2)(b) (now Article 26(1)(b)) to be interpreted as requiring the provision of the voucher by the employer to the employee in accordance with the contract of employment to be treated as a supply of services, in circumstances where the voucher is to be used by the employee for his or her private purposes?

(3) If the provision of the voucher is neither a supply of services for consideration within the meaning of Article 2(1) nor is to be treated as a supply of services under Article 6(2)(b), is Article 17(2) (now Article 168) to be interpreted so as to permit the employer to recover the value added tax it has incurred in purchasing and providing the voucher to the employee in accordance with the contract of employment, in circumstances where the voucher is to be used by the employee for his or her private purposes?'

7 — In reality, Astra Zeneca never takes physical possession of the vouchers. In fact, it simply tells the intermediary company which employees the vouchers are to be sent to and the intermediary company delivers them.

III – Procedure before the Court of Justice

19. The order for reference was received at the Court Registry on 29 January 2009. The Governments of the United Kingdom and the Hellenic Republic and the Commission subsequently submitted written observations pursuant to Article 23 of the Statute of the Court of Justice. Astra Zeneca, the appellant in the main proceedings, also submitted written observations.

20. Astra Zeneca, the United Kingdom Government and the Commission made oral submissions at the hearing on 11 March 2010.

IV – Preliminary observations

21. In its written observations, the Commission has set out a number of considerations, the scope of which, as the Commission itself acknowledges, goes well beyond what is required by the referring court. In particular, the Commission has set out its position on two issues.

22. First, the Commission is opposed to classifying the provision of retail vouchers as a supply of services: such a classification is taken for granted by the referring court, on the basis of the national rules applicable. However, according to the Commission, the nature of the provision of the vouchers depends on the ultimate use to which the vouchers give entitlement: as the case may be, therefore, the provision could be a supply of goods or a supply of services.

23. Second, the Commission considered the problem concerning the rate of VAT to be applied to retail vouchers, which can be used, at the purchaser's choice, to obtain either goods or services which are taxed at the standard rate of VAT or goods or services which are rated differently for VAT purposes. In that context, the Commission criticises the system applied in the United Kingdom, under which a reasonably 'appropriate' rate is applied in respect of retail vouchers, depending on the circumstances.

24. According to the Commission, the system in question does not comply with the principles applicable to VAT and may possibly be accepted only if the national authorities make a specific application for a derogation. [8]

8 — Under Article 27 of the Sixth Directive (and Article 395 of Directive 2006/112).

In the absence of any such authorisation, VAT would have to be accounted for in a precise manner, account being taken of the tax rate applicable to each individual item or service purchased with the vouchers. The practical difficulties entailed in adopting such an approach would not in any event justify any failure to adopt it in the present case.

25. However, there is no need to take account of the Commission's observations and arguments for the purpose of answering the questions referred to the Court in the present case.

26. The problem of the tax rate applicable to vouchers which can be redeemed for goods or services which are taxed at different rates of VAT is wholly unrelated to the dispute in question: if the Commission considers that the solution to the problem adopted by the United Kingdom authorities is incompatible with European Union law, it is for the Commission to bring infringement proceedings against that State.

27. However, more relevant to the present case, albeit not essential, is the more general problem concerning the nature (supply of goods or supply of services?) of the provision of retail vouchers.

28. As has been seen, according to the Commission, the nature of vouchers depends on the kind of use to which they are actually put. Thus, if vouchers are used to purchase services, for the purposes of VAT, the provision of the vouchers will also be a supply of services. If, on the other hand, the vouchers are used to purchase goods, the provision of the vouchers will itself be regarded as a supply of goods.

29. I do not find the Commission's analysis convincing. In particular, it seems to me that it is impossible in any event to regard the provision of retail vouchers as a supply of goods, even where they are in fact ultimately used to purchase goods.

30. Let us consider the situation, which would appear to be typical in the context of the present case, in which the voucher is used to purchase goods (for example, a jacket or a watch). It should be observed in this regard that, in itself, the provision of the voucher by the employer to the employee *does not confer an immediate right to dispose of property*, which is, however, required under Article 5(1) of the Sixth Directive in order for a supply of goods to be deemed to be effected. Indeed, by definition, it is *only at the point at which the voucher is used*, that is, exchanged for goods at the retailer's premises, that the goods to which the voucher confers entitlement are precisely identified.

31. Consequently, the provision of retail vouchers such as those at issue in the main proceedings does not constitute, for VAT purposes, a supply of goods, but simply the transfer of a future (and as yet indeterminate as to the object) right to goods and/or services. I therefore consider that the provision of such a voucher must be regarded as a supply of services, on account of the fact that, for VAT purposes, each transaction that is not a supply of goods is, necessarily, a supply of services. [9]

32. The case-law lends support to my position. While having clearly indicated that, in accordance with the rules governing VAT, there can be a supply of goods even if there is no formal transfer of ownership, the Court has nevertheless stressed the need for it to be possible for the purchaser of the goods 'actually to dispose of [the property] as if he were its owner'. [10] By contrast, in the case of the provision of retail vouchers, the transfer of the voucher from one person to another does not (as yet) confer any right to specific goods.

33. Moreover, the effect of adopting the tax solution proposed by the Commission would be that the provision of vouchers that can be used to purchase either goods or services could be classified, for VAT purposes, only *ex post*, after the vouchers have been exchanged for goods or services. It seems to me that, far from being the best, that solution could render the tax treatment of the provision of vouchers more complex. It could also have the effect in practice of discouraging that particular form of payment of remuneration, which, nevertheless, represents a certain social advantage for employees.

34. The fact nevertheless remains that, irrespective of whether the provision of retail vouchers should be regarded as a supply of goods or services, what matters in this case, for the purpose of providing the referring court with an answer to its questions, is simply to *determine whether or not such a supply constitutes a taxable transaction*. As has been seen, for VAT purposes, Article 2(1) of the Sixth Directive provides that both the supply of goods and the supply of services are taxable transactions, without drawing any distinction between them. It is therefore unnecessary to dwell further on the Commission's observations and I shall move on to consider the three questions referred for a preliminary ruling.

9 — Article 6(1) of the Sixth Directive.

10 — Case C-320/88 *Shipping and Forwarding Enterprise Safe* [1990] ECR I-285, paragraph 7; Case C-185/01 *Auto Lease Holland* [2003] ECR I-1317, paragraph 32; and Case C-435/03 *British American Tobacco and Newman Shipping* [2005] ECR I-7077, paragraph 35.

V – Question 1

A – *Introduction*

35. By Question 1, clarification is sought from the Court as to whether the provision of retail vouchers by an employer to an employee by way of substitution in payment of part of the employee's remuneration constitutes a supply of services for consideration.

36. Since, as I have already indicated, it is irrelevant in this case whether the provision of vouchers constitutes a supply of goods or a supply of services, the question may be reformulated so that it can be interpreted as asking the Court whether the provision in question constitutes a supply for consideration falling, as such, within the scope of VAT legislation.

37. If it is in fact a transaction that is subject to VAT, Astra Zeneca should, at the point at which it makes the voucher available to its employee, account for the output VAT – incorporated in the amount deducted for the voucher from the employee's remuneration – and then deduct from that the VAT which Astra Zeneca has paid, by way of input VAT, to the intermediary from whom the vouchers were purchased.

38. If, on the other hand, the transaction is one that falls outside the scope of the rules governing VAT, the output VAT should not be accounted for. The question could therefore be asked – although, as will be seen, this is the subject matter of Question 3 – whether it is possible for Astra Zeneca to recover the input VAT by including the purchase of the vouchers as part of the general overheads incurred in the operation of its business.

39. The parties which submitted observations in the present case are divided over the answer to be given to Question 1. On the one hand, the Commission and the United Kingdom Government submit that the provision of vouchers by Astra Zeneca to its employees constitutes a supply for consideration, which is, as such, subject to VAT.

40. By contrast, Astra Zeneca and the Hellenic Government propose that that question should be answered in the negative, focusing in particular on the fact that payment of remuneration for work performed does not constitute an activity that is subject to VAT.

B – *Assessment*

41. Logically, the situation in question in the main proceedings can be interpreted, for the purposes of VAT legislation, in two completely contrasting ways: those are the two interpretations proposed by the parties which I have set out in the points above. Both interpretations have advantages and disadvantages, neither of them being clearly at odds with the applicable provisions of EU law.

42. However, in my opinion, the view that the provision of vouchers falls outside the scope of VAT has some drawbacks, which make the solution proposed by the Commission and the United Kingdom Government preferable.

43. First, I would observe that the interpretation according to which the provision of vouchers falls outside the scope of VAT can be accepted, in point of fact, only if a distinction is made between the situation in which the employer deducts from the employee's pay, by way of consideration for the vouchers, exactly the same amount which the employer has paid to purchase the vouchers themselves and the situation in which the employer makes such deductions and makes a profit. The interpretation in question should be confined to the first of those two situations. If the employer in fact makes a 'profit',[11] the transfer of the voucher from the employer to the employee would create added value for the purpose of VAT legislation, and thus give rise to liability to pay the tax.

44. In other words, according to the interpretation put forward by Astra Zeneca and the Hellenic Government, it would be necessary to propose that retail vouchers provided to employees be treated differently, for VAT purposes, according to whether the value of the voucher as accounted for in the employee's pay-slip is the same as the amount paid by the employer to purchase the voucher. In the first case (where the amount paid by the employer is the same as that accounted for in the pay-slip), the provision of vouchers would be outside the scope of VAT; in the second case (where the amount paid by the employer as input VAT is different from the amount accounted for in the pay-slip), on the other hand, the situation would fall within the scope of the Directive and the employer would be required to account for the VAT. In the present case, the situation is that covered by the first case, since, as was stated at the hearing, Astra Zeneca debits from its employees' pay the exact amount which it paid to the intermediary. The fact remains, however, that an interpretative approach that can be applied to both the first and second cases is

11 — That could arise, for example, whenever the employer obtained his vouchers at a significant discount and decided to pass on only a part of it to the employee (who would, nonetheless, obtain the vouchers for a price lower than their face value).

not only more straightforward but also easier to apply, by comparison with an approach which requires a distinction to be made between the two situations.

45. Second, I would observe that, from an economic standpoint, it is the employee who is ultimately liable for the VAT, which is in any event consistent with the VAT system, under which the tax is to be borne by the final consumer. As Astra Zeneca acknowledged at the hearing, *the value of the voucher as accounted for in the employee's pay-slip already includes the VAT payable on the goods which, by using the voucher, can be purchased in the retailers' shops.* In other words, with the deduction made from his pay, the employee pays the price of the goods and/or services which he will purchase from the retailer and that price includes VAT. It is the final payment in the VAT chain and the VAT borne by the employee clearly includes both that initially included in the original supply of the voucher by the retailer to the intermediary [12] and that accumulated over the subsequent stages, in particular the stage at which the intermediary made a profit. At the point at which the worker/consumer goes to the retailers' to use the voucher, he simply has to hand over the voucher itself, which includes VAT, and receives in exchange the goods or services required.

12 — As was seen in points 9 and 10, under the system which applies in the United Kingdom, that part of the VAT is paid to the treasury by the retailer only at the point at which the voucher is used to purchase goods and/or services. However, that particular feature of the system, as the Commission also observed at the hearing, has an effect only with regard to the *time* at which the tax is paid and not other aspects of the tax.

46. It is worth clarifying in this connection that, notwithstanding the complexity of the VAT chain in the present case, which prompted a debate at the hearing, the fact remains that there is just one payment of the tax. The VAT on the goods or services purchased from the retailer is incorporated in the voucher and, at the point at which he receives it, providing goods or services in exchange, the retailer 'completes the circle' and pays over to tax authorities, after deducting any amount which the retailer himself may have paid by way of input tax, the VAT collected in supplying the voucher to the intermediary.

47. There are two consequences to the observations made at point 45.

48. First, the fact that the VAT element included in the vouchers is in fact paid by the employee means that, of the two interpretative approaches set out above, preference should be given to that which requires such VAT to be charged. In that way, the situation is avoided in which that tax, which is in any event borne by the employee, 'disappears', becoming a kind of 'hidden' VAT.

49. Second, it is clear that the fact that Astra Zeneca is required to account for VAT on the

provision of vouchers to its employees does not, in itself, give rise to any particular economic damage for that company, since the burden of the tax ultimately rests, in accordance with the general principles governing VAT, with the final consumer of the products, namely the employee. [13]

50. In my opinion, therefore, the payment in part of remuneration in retail vouchers must be regarded as a transaction that is subject to VAT.

51. It should be observed in that connection, first, that Astra Zeneca's employees can choose not to receive any part of their remuneration in retail vouchers and instead to be paid entirely in cash, in accordance with a more traditional mode of payment. The provision of vouchers to employees can therefore be interpreted as a transaction entered into by the employees in exchange for payment of a given sum of money (that part of their remuneration which, if they did not receive vouchers, they would obtain in money).

52. Therefore, in the present case, all the conditions identified in the Court's case-law for establishing the existence of a supply for consideration are met: in particular, there is consideration, expressed in money terms, [14] which is the amount actually received in order to obtain the goods or services. [15] Moreover, if the notion that the provision of vouchers to employees constitutes a supply of services is accepted – as I accept it – there is undoubtedly a direct link between the service provided and the consideration received. [16]

53. It should also be pointed out that the Court has already acknowledged, albeit by implication, that it is possible for part of the remuneration of an employee to be regarded as the consideration given (by the employee) for a supply for consideration (provided by the employer to the employee). [17]

13 — If the exact amount which Astra Zeneca has paid for the vouchers is reflected in the employees' pay slips, that company will account for VAT simply by declaring that the input VAT and the output VAT are exactly the same and will not have to pay anything to the tax authorities. If the amount shown as having been deducted in the pay slip is greater than that actually paid to the intermediary, the VAT which Astra Zeneca will have to pay, the burden of which will in any event be passed on to the employee, will be only the VAT on the difference between those amounts.

14 — Case 154/80 *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445, paragraph 13; Case 230/87 *Naturally Yours Cosmetics* [1988] ECR 6365, paragraph 16; and Case C-288/94 *Argos Distributors* [1996] ECR I-5311, paragraph 17.

15 — See, in addition to the cases cited in the preceding footnote, Case C-126/88 *Boots Company* [1990] ECR I-1235, paragraph 19, and Case C-38/93 *Glawe* [1994] ECR I-1679, paragraph 8.

16 — Case 102/86 *Apple and Pear Development Council* [1988] ECR 1443, paragraph 12, and Case C-258/95 *Fillibeck* [1997] ECR I-5577, paragraph 12.

17 — See *Fillibeck*, cited in footnote 16, paragraph 16. In that case, the Court found that no consideration was given by the employees to the employer in exchange for the supply by the employer of transport services to the employees themselves. That was because their remuneration remained the same, regardless of whether the employees used the transport service provided. It may be inferred, a contrario, that, in general, part of remuneration may be regarded as consideration for a transaction that is subject to VAT, provided that, as is the case here, the part of the remuneration that constitutes the consideration is clearly identifiable.

54. Lastly, I would observe that, in order to accept Astra Zeneca's position that the payment of employees in retail vouchers constitutes a form of remuneration that is not subject to VAT, it would be necessary in practice to treat vouchers in the same way as money and to regard them as a simple 'alternative' to cash. In my opinion, however, that position cannot be sustained. First, unlike money, retail vouchers cannot be used everywhere but only at the premises of the retailers who issued them. Second, it should not be forgotten that, in general, retail vouchers are in point of fact provided *in exchange* for a sum of money and may, as in this case in the transfer from the retailer to Astra Zeneca, via an intermediary, generate added value and (as a consequence) VAT revenue; that does not, however, arise in the case of cash.

55. It therefore seems to me that, for all the reasons given, it is better to treat payment in part of remuneration in retail vouchers as a supply for consideration, in connection with which the employer is required to account for VAT.

56. I therefore propose that the Court's reply to Question 1 should be that the payment of a salary or part a salary in retail vouchers in accordance with the arrangements described in the main proceedings constitutes a transaction that is subject to VAT within the meaning of the Sixth Directive.

VI – Question 2

57. By Question 2, the VAT and Duties Tribunal, Manchester, seeks clarification from the Court as to whether, if the answer to Question 1 is no, the payment in part of remuneration in retail vouchers can be regarded as an activity that is covered by Article 6(2) of the Sixth Directive. As is generally known, that provision treats as supplies of services for consideration, and therefore subject to payment of VAT, certain activities carried out without pecuniary consideration; those include 'supplies of services carried out free of charge by the taxable person for [the] private use … of his staff'.

58. In view of the affirmative answer that I propose should be given to Question 1, it is not necessary to answer Question 2. The following considerations are therefore set out in the alternative, in the event that the Court does not follow the answer that I propose should be given to Question 1.

59. The legislature responsible for the directive made VAT payable on certain activities carried out without pecuniary consideration for the benefit of the taxable person carrying out the activities or his staff. It did so for an obvious reason. It is to prevent the taxable person, who, in general, is able to deduct input VAT on the purchase of goods or services used for his business, from escaping payment of VAT when he takes goods away from his business or provides services for private purposes. Such a taxable person is thus prevented from enjoying undue advantages over an ordinary consumer who buys the goods or services and pays VAT on them. [18]

60. As with Question 1, only the Commission and the United Kingdom Government, albeit in the alternative and with some reluctance, have suggested that the question may be answered in the affirmative. Their reasoning may be summarised as follows: if Question 1 were answered in the negative, the provision of retail vouchers by the employer to the employee would have to be regarded as being effected free of charge. As a consequence, the rule in Article 6(2) of the Sixth Directive is applicable.

61. It seems to me, however, that even if Question 1 were to be answered in the negative, the situation would not fall automatically within the scope of Article 6(2).

62. It should be noted that Article 6(2) becomes applicable when two distinct conditions are satisfied. First, the use of the service – or the goods, if account is also to be taken of the situation covered by Article 6(2)(a) – must be for private purposes or, in any event, for purposes other than those of the business, and, second, the supply must be free of charge.

63. As regards, first of all, the second requirement, even if Question 1 were answered in the negative, that condition would not be satisfied. The fact that it could be found that the provision of vouchers does not constitute a taxable transaction for VAT purposes would not necessarily mean that that provision was carried out free of charge. In particular, as has been seen, even though I do not favour such an interpretation, the provision of vouchers could be regarded simply as a mode of payment of remuneration and, as such, outside he scope of the rules governing VAT. However, that would not mean that the supply was free of charge.

64. In particular, it seems to me to be abundantly clear that, regardless of the legal classification which may be given to the provision

18 — Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 33: Joined Cases C-322/99 and C-323/99 *Fischer and Brandenstein* [2001] ECR I-4049, paragraph 56; and Case C-371/07 *Danfoss and AstraZeneca* [2008] ECR I-9549, paragraph 46.

of vouchers, they are not 'gifted' to the employees but are the consideration, which is clearly defined, for work performed by the employees.

65. Consequently, even though the ultimate purpose of the vouchers themselves cannot be said to relate to the business's activities, since they are clearly intended for the private needs of the staff, [19] the requirement that the supply should be free of charge is in any event not fulfilled. [20]

66. I therefore propose that, should it be necessary, the answer to Question 2 should be that the payment of a salary or part of a salary in retail vouchers does not constitute an activity carried out free of charge which can be treated, for the purpose of Article 6(2) of the Sixth Directive, as a supply of services for consideration.

19 — There is in fact no connection between purchases that can be made by employees with the vouchers and the employer's running of the business. Moreover, in that connection, the case-law of the Court has tended to favour a strict interpretation of the circumstances in which a connection can be said to exist with the activities of the business. See, for example, *Fillibeck*, cited in footnote 16, paragraphs 26 and 29, and *Danfoss*, cited in footnote 18, paragraphs 57 and 58.

20 — It is worth referring, if only briefly, to the fact that, as established by case-law, the supply must actually be free of charge: where the consideration is reduced or less than the cost price, the supply cannot be regarded as free of charge. See Case C-412/03 *Hotel Scandic Gåsabäck* [2005] ECR I-743, paragraphs 22 to 24.

VII – Question 3

67. Question 3 is formulated by the referring court in the further alternative. By that question, clarification is sought from the Court as to whether, in the event that the answer to the first two questions is no, Astra Zeneca can deduct input VAT on the basis that the purchase of the vouchers by Astra Zeneca from the intermediary can be regarded as forming part of the company's overheads.

68. Similarly in this case, in view of the answer which I propose should be given to Question 1, the following observations are set out in the alternative, in the event that the response given by the Court to Question 1 should be different from mine.

69. According to Astra Zeneca, as has been seen, the answer to the first two questions should be no, in which case the payment of part of the remuneration in retail vouchers would fall outside the scope of the rules on VAT. However, that company regards the purchase of vouchers as constituting an overhead forming part of its operating expenditure: consequently, the input VAT could be taken into account and deducted in calculating the total amount of VAT to be paid to the United Kingdom tax authorities.

70. The advantage for Astra Zeneca of such a tax solution is apparent. Whereas any requirement to charge VAT at the point at which the vouchers are provided to the employees would have as a consequence the input VAT and the output VAT cancelling each other out, [21] if the provision of vouchers to employees were regarded as an exempt transaction and the input VAT were treated as an overhead of the business, that would enable the company in question to obtain a tax advantage.

71. However, I do not think that Astra Zeneca's position can be accepted, even if the payment of part of the remuneration in retail vouchers were to be regarded as a transaction falling outside the scope of VAT.

72. It should be recalled that the Court has consistently held that the right to deduct input VAT is an integral part of the scheme of that tax and, in principle, may not be limited. [22] The purpose of the deduction mechanism is to ensure the neutrality of taxation of all economic activities, relieving the trader of the burden of the VAT paid or payable in the course of all his economic activities. [23]

73. It is true that the Court recognised the possibility of deducting input VAT paid by the trader to acquire goods and/or services necessary for the purpose of carrying out activities which are exempt from VAT or which fall outside the scope of that tax. That is the case in particular, provided that: (i) the trader carries out activities that are subject to VAT; (ii) the expenditure incurred in carrying out the exempt transactions is a component of the final price of the goods; and (iii) there is a direct and immediate link between the transactions in respect of which VAT has been paid and the economic activity of the taxable person. [24]

74. However, that case-law is based on the premiss that, in concrete terms, if the deduction of input VAT were not permitted, the principle of the neutrality of VAT would be infringed and the trader and the final consumer liable for payment of part of the tax. [25]

21 — Except in the case where, as has been seen, the amount of the input VAT paid by the intermediary and the amount debited by way of output VAT from the employee's pay are not the same. See, in that connection, footnote 13.

22 — See, for example, Case C-62/93 *BP Supergas* [1995] ECR I-1883, paragraph 18, and Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 43.

23 — Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19, and Case C-408/98 *Abbey National* [2001] ECR I-1361, paragraph 24 and the case-law cited.

24 — Case C-465/03 *Kretztechnik* [2005] ECR I-4357, paragraphs 36 and 37. See also Case C-29/08 *AB SKF* [2009] ECR I-10413, paragraphs 58 to 68, and my Opinion in that case of 12 February 2009, in particular points 59 to 62.

25 — See *AB SKF*, cited in footnote 24, paragraphs 66 and 67 and the case-law cited.

75. However, in the present case, that situation does not arise.

76. As I have already observed above, [26] Astra Zeneca deducts from the employee's pay the price that the company has paid for the voucher, which *is inclusive of* VAT. Ultimately, the employee pays, with his work, the VAT on the goods which he will acquire with the voucher. The burden of that tax does not fall on Astra Zeneca. There is, therefore, no reason to recognise that company's entitlement to deduct VAT which it does not ultimately have to bear.

77. Indeed, far from constituting a component the acquisition cost of which forms part of the undertaking's overheads, the voucher is transferred directly, together with the VAT which it incorporates, by the employer to the employee, who 'pays' for the value of the voucher with a corresponding reduction in that part of his remuneration that is paid in cash. By contrast, in the cases in which the Court acknowledged the right to deduct input VAT in respect of the acquisition of goods or services used to carry out exempt transactions, the VAT in question related to activities (typically, consultancy work) for which the tax was, clearly, ultimately borne by the undertaking. [27]

78. Lastly, it should not be forgotten that the right to deduct VAT on goods or services used for exempt transactions is by way of exception. [28]

79. I therefore propose that, should it be necessary, the Court's answer to Question 3 should be that an employer who pays part of his employees' remuneration in retail vouchers, in accordance with the arrangements described in the main proceedings, cannot deduct input VAT on such vouchers by including their purchase in the undertaking's overheads.

26 — See above, point 45.

27 — See, for example, *Abbey National*, cited in point 23; *Kretztechnik*, cited in footnote 24; and *AB SKF*, cited in footnote 24.

28 — Case C-4/94 *BLP Group* [1995] ECR I-983, paragraph 23.

VIII – Conclusion

80. In the light of the foregoing considerations, I propose that the Court's answer to the questions submitted by the VAT and Duties Tribunal, Manchester, should be that the payment of a salary or part of a salary in retail vouchers, in accordance with the arrangements described in the main proceedings, constitutes a transaction that is subject to VAT within the meaning 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, and within the meaning of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.