

Case C-77/01

**Empresa de Desenvolvimento Mineiro SGPS SA (EDM), formerly
Empresa de Desenvolvimento Mineiro SA (EDM)**

v

Fazenda Pública

(Reference for a preliminary ruling
from the Tribunal Central Administrativo)

(Sixth VAT Directive — Articles 2, 4(2), 13B(d) and 19(2) — Meaning of
'economic activities' — Meaning of 'incidental financial transactions' —
Services effected for consideration)

Opinion of Advocate General Léger delivered on 12 September 2002 . . . I - 4299
Judgment of the Court (Fifth Chamber), 29 April 2004 I - 4319

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Deduction of input tax — Goods and services used both for*

transactions in respect of which VAT is deductible and for transactions in respect of which it is not deductible — Proportionate deduction — Calculation — Sale of shares and other securities such as holdings in investment funds — Excluded if they do not constitute an economic activity — Placements in investment funds — Excluded if they do not constitute supplies of services for consideration — Loans by a holding company to its subsidiaries or placements in bank deposits or securities — Included — Limit — Exempt activities constituting incidental transactions — Assessment criteria — Jurisdiction of the national court

(Council Directive 77/388, Arts 2(1), 4(2), 13B(d)(1) and (5), 17(5) and 19)

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable transactions — Supplies of goods or services effected for consideration — Meaning — Operations carried out under a consortium contract by a member of the consortium — Excluded — Limits*

(Council Directive 77/388, Art. 2(1))

1. Under Article 17(5) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, if the taxable person uses goods and/or services, on which he has paid input tax, both for transactions in respect of which VAT is deductible and for transactions in respect of which it is not deductible, it is necessary to calculate, in accordance with Article 19 of that directive, the deductible proportion to be applied to the amount of the input tax paid, transactions outside the scope of the Sixth Directive which do not give rise to a right to deduct having to be excluded from the calculation of that proportion.

securities, such as holdings in investment funds, do not constitute economic activities within the meaning of Article 4(2) of the Sixth Directive and therefore do not come within the scope of that directive.

Moreover, placements in investment funds do not constitute supplies of services 'effected for consideration' within the meaning of Article 2(1) of the Sixth Directive and therefore likewise do not come within the scope thereof.

In that regard, activities which consist in the simple sale of shares and other

The amount of turnover relating to those transactions must consequently be excluded from the calculation of the deductible proportion referred to in Articles 17 and 19 of that directive.

incidental within the meaning of that provision, the fact that income greater than that produced by the activity stated by the undertaking concerned to be its main activity is generated by such transactions does not suffice to preclude their classification as 'incidental transactions'.

By contrast the annual granting by a holding company of interest-bearing loans to companies in which it has a shareholding and placements by that holding company in bank deposits or in securities, such as Treasury notes or certificates of deposit, constitute economic activities carried out by a taxable person acting as such within the meaning of Articles 2(1) and 4(2) of the Sixth Directive.

It is for the national court to establish whether transactions involve only very limited use of assets or services subject to value added tax and, if so, to exclude those transactions from the calculation of the deductible proportion.

(see paras 53-55, 80, operative part 1)

However, since the said transactions are exempted from value added tax under points 1 and 5 of Article 13B(d) of the Sixth Directive, turnover attributable to them must be excluded from the calculation of the deductible proportion if they are incidental transactions within the meaning of the second sentence of Article 19(2) of the directive. They must in that respect be regarded as such in so far as they involve only very limited use of assets or services subject to value added tax; although the scale of the income generated by financial transactions within the scope of the Sixth Directive may be an indication that those transactions should not be regarded as

2. Operations carried out by the members of a consortium in accordance with the provisions of a consortium contract and corresponding to the share assigned to each of them in that contract do not constitute supplies of goods or services 'effected for consideration' within the meaning of Article 2 (1) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, nor, consequently, a taxable

transaction under that directive. The fact that such operations are carried out by the member of the consortium which manages it is irrelevant in that respect.

contract for a consortium member involves payment by the other members against the operations exceeding that share, those operations constitute a supply of goods or services 'effected for consideration' within the meaning of that provision

On the other hand, where the performance of more of the operations than the share thereof fixed by the said

(see para. 91, operative part 2)