OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 11 July 1996 *

1. The Hof van Cassatie, Belgium, has referred to the Court of Justice for a preliminary ruling a question on the interpretation of Article 17(2) 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 [1] ('the Sixth Directive').

2. The purpose of the reference to the Court is to determine the content and scope of the right to deduct the value added tax ('VAT') borne by an industrial undertaking in connection with certain investments made for the development of land which was not, in the final event, used for the purpose initially envisaged.

3. The question referred to the Court is worded as follows:

'Does Article 17 of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes mean that the right to deduct remains in existence for value added tax on investments which were originally intended for use in the undertaking but which, for reasons beyond its control, were never in fact put into use by the undertaking?'

Facts and procedure in the main proceedings

4. The order for reference merely sets out, very succinctly, only the three following facts as relevant to the dispute:

(a) in 1980 NV Ghent Coal Terminal ('Ghent Coal') bought land in the harbour area of Ghent;

(b) the undertaking carried out investment work in respect of that land and immediately deducted the VAT in its return for the period 1 January 1981 to 31 December 1983;

* Original language: Spanish.
1 — OJ 1977 L 145, p. 1.

(c) on the initiative of the city of Ghent, Ghent Coal exchanged the purchased ground on 1 March 1983 and, as a result of that exchange, never used the investment work which it had carried out.

5. The order for reference acknowledges that it is common ground between the parties that — as found in the judgment appealed against — 'the invested goods had been in the normal course of events intended for use in taxable transactions, that the exchange had not been foreseen or planned in advance by the respondent, and that it could not have been avoided by the respondent in the normal course of its business and even constituted economic *force majeure* for it'.

6. The various documents submitted by the parties in the main proceedings also reveal other facts and the progress of the procedure before the national courts, which are of interest for a better understanding of the dispute and which I shall now briefly describe.

7. In 1980 Ghent Coal, which had decided to extend its port installations, purchased various plots of land at Imsakkerlaan, alongside Ghent tanker quay, to build a coal terminal and a coal packing plant.

8. Ghent Coal commenced the necessary work for this construction, to which end it made certain investments for, in particular, a preliminary survey carried out by a construction undertaking, another survey of the physical characteristics of the ground, and the installation of a high-voltage cable and operations to level the land. The cost of that work came to more than BFR 50 million.

9. On 1 March 1983 the municipal authorities of Ghent required Ghent Coal to exchange the abovementioned land, which was already partly developed, for other land belonging to the town. Ghent Coal also received additional compensation.

10. Ghent Coal, which during the 1981, 1982 and 1983 tax years had deducted BFR 9 354 677 as VAT paid in respect of the expenditure incurred for the development of the land, was required by the Belgian tax authorities to repay the amount of those deductions to which, in the authorities' opinion, it was not entitled.

11. In September 1984 Ghent Coal and the tax authorities concluded an agreement or arrangement under which Ghent Coal undertook to pay the sum of BFR 9 379 000 by way of VAT (plus interest and a fine). Payment was effected, in the form of a set-off against other credits in favour of Ghent Coal, on 31 January 1985.

12. Ghent Coal subsequently formed the view that both the repayment and the agreement concluded with the tax authorities had been unlawful. Consequently, on 10 March 1986 it claimed repayment from the Belgian authorities of BFR 2 751 085, the amount which in its opinion it was entitled to deduct for the investment expenditure after the corresponding adjustment had been made.

13. When the tax authorities refused to accede, Ghent Coal claimed that amount before the Rechtbank van Eerste Aanleg (Court of First Instance), Ghent, which, by judgment of 4 April 1990, dismissed its claim on the ground that the parties were validly bound by the agreement concluded between them in September 1984.

14. Ghent Coal appealed against the judgment at first instance to the Hof van Beroep (Court of Appeal), Ghent, which set it aside in a judgment of 26 October 1992 on the ground that the agreement concluded was not valid in law, since it concerned tax debts which could only be determined by applying the statutory rules. The appeal court took the view that the right of deduction was properly exercised and that Ghent Coal's claim should be granted. It therefore ordered the tax authorities to pay Ghent Coal the amount of BFR 2 751 085.

15. On 23 February 1993 the Belgian State sought to have the judgment of the Hof van Beroep set aside on a point of law. In the course of the proceedings the Hof van Cassatie (Court of Cassation) decided to refer the question to this Court for a preliminary ruling.

Applicable Community legislation

16. As a tax on supplies of goods or services, VAT seeks to be a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage when the tax is charged.

17. On each transaction, VAT is chargeable at the applicable rate on the taxable amount (the price of the taxable goods or services), after deduction of the amount of VAT borne directly by the various cost components.

18. The principle of deduction thus allows the taxable person to deduct from the VAT borne by the transactions which he has carried out the VAT which he paid when he acquired goods or received services in connection with the pursuit of an economic activity. The rules governing the deduction mechanism are laid down in Title XI (Articles 17 to 20) of the Sixth Directive. [2]

2 — The original rules were initially laid down by 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 (OJ, English Special Edition 1967, p. 16), in particular Article 11.

19. Article 17(1) of the Sixth Directive provides: 'The right to deduct shall arise at the time when the deductible tax becomes chargeable'.

20. Article 10(2) provides: 'The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed. ...'.

21. Article 17(2) provides as follows:

'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;

...'.

22. Article 20(1) refers to the adjustment of deductions, in the following terms:

'The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:

(a) where that deduction was higher or lower than that to which the taxable person was entitled;

(b) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; ...'.

23. Article 20(2) lays down special rules for the adjustment of deductions in respect of capital goods:

'In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one-fifth of the tax imposed on the goods. The adjustment 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 or manufactured.

By way of derogation from the preceding subparagraph, Member States may 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 10 years'.

24. Finally, Article 20(3) provides for the situation of capital goods which have been transferred during the period of adjustment.

The wording of the question referred to the Court

25. The order for reference hinges on a key phrase (whether the right to deduct the VAT 'remains in existence'), which, applied to the present case, contains a certain measure of ambiguity. By asking whether the right to deduct 'remains in existence' in the case of investments intended for goods which are not subsequently used, the Hof van Cassatie seems by implication to accept that such a right had already arisen [3] and expresses doubt only as to its possible continuity in time.

26. The parties' submissions differ, however, concerning the content of the question referred to the Court. In Ghent Coal's view the way in which the question is worded by the Hof van Cassatie implies that the right to deduct had already arisen, as demonstrated by the fact that the Hof van Cassatie did not adopt the wording suggested by the Belgian State in its appeal. [4] The question therefore draws a distinction between the origin of the right and its subsequent continued existence.

27. The Belgian Government, however, takes the view that the failure to use the investment work carried out by Ghent Coal means that 'the deduction must be rejected *ab initio*, outright and in full'. In other words, the right to deduct had never legally arisen.

3 — In its various senses, the expression 'remains in existence' implies that something or someone which or who previously existed remains, endures, subsists, continues its or his life, in spite of any adverse circumstances which may arise or the passing of time.

4 — The suggested wording was: 'Does Article 17 ... mean that the right to deduct *arises and remains in existence* when the investments ... have not in fact been put into use by the undertaking?' (emphasis added).

28. The problem is accentuated when it is combined with the system of review or adjustment [5] of deductions. Adjustment is the mechanism whereby the Sixth Directive (Article 20) allows subsequent changes to be made to deductions.

29. Article 20 provides that the initial deduction is to be adjusted where that deduction proves to be higher or lower than that to which the taxable person was entitled or where some change subsequently occurs in the factors used to determine the amount to be deducted.

30. It might be thought, in principle, that the Hof van Cassatie, by asking whether the right to deduct 'remains in existence', seeks to ascertain whether or not it is possible to apply the procedure for adjusting deductions to the present case in order to amend the deductions already effected, since it appears to be the specific procedure provided for by the Sixth Directive. Neither of the parties to the main proceedings supports that approach, however.

5 — The word normally used is 'adjustment', in preference to 'review'.

31. According to the Belgian Government, 'rejection of the right to deduct *ab initio* is not to be confused with adjustment of a deduction of VAT' and, since the right to deduct did not arise in this case, it is not correct to speak of the adjustment of such a deduction.

32. Ghent Coal, on the other hand, maintains that the question of adjustment was not in dispute between the parties and was not raised before the Hof van Cassatie. It therefore falls outside the scope of the proceedings between those parties. On the basis that the original deduction was lawful, however, and that subsequent events deprived the investments of their intended purpose, Ghent Coal suggests that the Court should answer the Hof van Cassatie by confirming that, in principle, the deduction may be adjusted subject to the limits and conditions laid down in the Sixth Directive. [6]

33. I consider that the Court's answer to the Hof van Cassatie should essentially be confined to the actual terms of the question, which do not refer directly to — although they do not exclude — problems of adjustment.

6 — That does not prevent Ghent Coal from maintaining that, as it was a case of 'economic *force majeure*', comparable to the destruction or loss of the goods (a situation provided for in the Sixth Directive as an exceptional case in which the deduction is not to be adjusted), the original deduction had become definitive, which allowed Ghent Coal, *inter alia*, to 'claim full reimbursement, in separate proceedings, of the VAT which it had deducted in respect of the investments in question and had subsequently repaid on demand by the Belgian State'.

34. I shall therefore analyse, first of all, the requirements necessary to give rise to the right to deduct the business expenditure incurred with a view to setting up Ghent Coal's project. That analysis will extend to the possible effect on the right to deduct of the fact that the project initially envisaged was abandoned.

35. Secondly, if, as seems likely at first sight, that analysis should favour the existence of the right to deduct, I shall consider to what extent the usefulness of the Court's answer would be enhanced by going on to examine the problems of the adjustment of the deductions.

The right to deduct

36. In the dynamics of VAT, deduction, governed by Article 17 of the Sixth Directive, becomes a key part of the system. As a result of the way in which it is regulated, the VAT paid by undertakings does not entail any fiscal burden whatsoever for them and the underlying principle of the neutrality of VAT, a tax on final consumption and not on the earlier economic stages, is respected. If the right to deduct VAT on inputs did not exist that VAT would become an extra fiscal cost for undertakings and distort the principle of neutrality.

37. Deduction of VAT on inputs is possible in so far as the corresponding goods or services (those whose acquisition or use determines the right to deduct) are acquired and used by the taxable person to carry out, in turn, transactions which fall within the scope of his economic activity. [7]

38. It is sufficient, then, that the goods or services are acquired and used by an undertaking within the framework of an economic activity for the VAT paid or due to be deductible. Where Article 17(2) of the Sixth Directive speaks of 'goods and services ... used' for the 'purposes of his taxable transactions', it seeks to emphasise that the use must be specifically aimed at the business activity and not at other activities of a different kind.

39. That does not mean, however, that the purpose or objective for which the goods acquired or services received are to be used in the normal course must always be achieved in every case. On the contrary, it is perfectly possible that certain business transactions for the realisation of which goods or services were acquired may subsequently be

7 — This statement must be qualified where the taxable person acquires and uses the goods or services for exempt transactions, in which case the right to deduct does not arise and the taxable person becomes, so to speak, the 'final consumer' and is unable to deduct the VAT. In such a case the taxable person must therefore bear all the VAT which has been passed on to him by the previous economic agents (those who have supplied the products or services) and cannot deduct it, in strictly legal terms. He is therefore in the same position as the final consumers, the true payers of VAT.

frustrated. The right to deduct the VAT paid does not cease to exist for that reason.

40. I believe that the terms employed by the Court in its decisions on the deduction of VAT and, specifically, in its judgments in *Rompelman*, [8] *Lennartz* [9] and *INZO* [10] are sufficient to resolve the present case. For that reason I consider it necessary to set out some of those considerations before analysing their application to this case.

41. The *Lennartz* judgment begins by stating: 'Pursuant to Article 17(1) of the Sixth Directive, which is entitled "Origin and scope of the right to deduct", the right to deduct arises at the time when the deductible tax becomes chargeable. Consequently, only the capacity in which a person is acting at that time can determine the existence of the right to deduct. By virtue of Article 17(2), in so far as a taxable person, acting as such, uses the goods for the purposes of his taxable transactions, he is entitled to deduct the tax due or paid in respect of those goods'. [11]

42. As regards the scope of the right to deduct the VAT due, the *Lennartz* judgment refers to the *Rompelman* judgment and reiterates:

'... the economic activities referred to in Article 4(1) may consist in several consecutive transactions, as is indeed suggested by the wording of Article 4(2). Amongst such transactions preparatory activities, such as the acquisition of operating assets, must be treated as constituting economic activities within the meaning of that article'. [12]

'... a person who acquires goods for the purposes of an economic activity within the meaning of Article 4 does so as a taxable person, even if the goods are not used immediately for such economic activities'. [13]

43. Consequently, according to the *Lennartz* judgment, it is the acquisition of the goods by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The

8 — Case 268/83 *Rompelman* v *Minister van Financiën* [1985] ECR 655.

9 — Case C-97/90 *Lennartz* v *Finanzamt München III* [1991] ECR I-3795.

10 — Case C-110/94 *Intercommunale voor Zeewaterontzilting (INZO)* v *Belgian State* [1996] ECR I-857.

11 — Paragraph 8.

12 — Paragraph 13.

13 — Paragraph 14.

use to which the goods are put, or intended to be put, merely determines the extent of the initial deduction to which the taxable person is entitled under Article 17 and the extent of any adjustments in the course of the following periods. [14]

44. More recently, in the *INZO* judgment, cited above, the Court of Justice answered a question referred by another Belgian court (the Rechtbank van Eerste Aanleg, Bruges) which presents great similarities to the question referred in these proceedings.

45. The question for the Court in *INZO* was whether or not an undertaking which had acquired certain capital goods and commissioned a study on the profitability of a project for the construction of a desalination plant (in respect of which supply of goods and services the undertaking paid VAT) could deduct the VAT paid, [15] despite the fact that owing to profitability problems and the withdrawal of some investors it subsequently abandoned the project without commencing the activity envisaged.

46. In *INZO* the Court observed that it had held (in *Rompelman*) that even the first investment expenditure incurred for the purposes of a business may be regarded as an economic activity within the meaning of Article 4 of the Sixth Directive and that, in that context, the tax authority must take into account the declared intention of the business.

47. Next, the judgment stated that where the tax authority had accepted that a company which had declared its intention to begin an economic activity giving rise to taxable transactions had the status of a taxable person for the purposes of VAT, the carrying out of a study into the profitability of the activity envisaged may be regarded as an economic activity within the meaning of Article 4 of the Sixth Directive even if the purpose of that study is to investigate the degree of profitability of the activity concerned.

48. In the Court's view, it followed that, if the same requirements were met, VAT paid in respect of such a profitability study might in principle be deducted in accordance with Article 17 of the Sixth Directive, even if it

14 — Paragraph 15.

15 — Rather than deduction *stricto sensu*, the case concerned the repayment of the VAT paid, which was initially agreed by the tax authority pursuant to Article 76 of the Belgian VAT Code. On subsequently finding in the course of a tax inspection that INZO had not carried out any taxable transaction, the tax authority claimed repayment of the VAT recovered by INZO. INZO contested that claim before the Rechtbank van Eerste Aanleg, relying on the doctrine formulated by the Court of Justice in *Rompelman*.

had subsequently been decided, in view of the results of that study, not to move to the operational phase but to put the company into liquidation, with the result that the economic activity envisaged had not given rise to taxed transactions. [16]

49. In accordance with those legal principles, the Court gave the following answers to the questions referred to it in *INZO*:

— where the tax authority has accepted that a company which has declared an intention to commence an economic activity giving rise to taxable transactions has the status of a taxable person for the purposes of VAT, the commissioning of a profitability study in respect of the envisaged activity may be regarded as an economic activity within the meaning of that article, even if the purpose of that study is to investigate to what degree the activity envisaged is profitable, and

— except in cases of fraud or abuse, the status of taxable person for the purpose of VAT may not be withdrawn from that company retroactively where, in view of the results of that study, it has been decided not to move to the operational phase, but to put the company into liquidation with the result that the economic activity envisaged has not given rise to taxable transactions.

The application of those decisions to the present case

50. Transposing the decisions in the *Rompelman*, *Lennartz* and *INZO* judgments to the present case, there is little doubt that Ghent Coal's argument regarding the right to deduct — which is also supported by the Commission and, with certain qualifications, by the German Government — is better founded than that of the Belgian Government.

51. If the conditions determining the right to deduct are to be assessed at the time when the tax is payable, Ghent Coal enjoyed that right when it acquired or received, for the purpose of its business activities, certain goods and services which all bore VAT. At

16 — The judgment based that conclusion on two principles:
(a) the principle of legal certainty, according to which the rights and obligations of taxable persons cannot depend on facts, circumstances or events which occurred after they were recognised by the tax authority. It follows that, as from the time when the tax authority accepted, on the basis of information provided by a business, that it should be accorded the status of a taxable person, that status cannot, in principle, subsequently be withdrawn retroactively on account of the fact that certain events have or have not occurred;
(b) the principle that VAT should be neutral as regards the tax burden on a business. Any other interpretation of the directive, according to the Court, would be liable to create, as regards the tax treatment of the same investment activities, unjustified differences between businesses already carrying out taxable transactions and other businesses seeking by investment to commence activities which will in future be a source of taxable transactions. Likewise, arbitrary differences would be established between the latter businesses, in that final acceptance of the deductions would depend on whether or not the investment resulted in taxable transactions.

that time the corresponding economic agents (providers, or sellers in general) charged Ghent Coal VAT, which, in order to guarantee the fiscal neutrality of VAT provided for in the Sixth Directive, it was entitled to, and which it did in fact, deduct.

52. In other words, when Ghent Coal acquired the land at Imsakkerlaan, engaged the services of other undertakings to carry out a development survey and carried out certain investment works in connection with the land for the purpose of constructing a coal terminal, it was entitled to deduct from the VAT paid on those transactions the VAT which, according to the corresponding invoices, had been passed on to it in respect of the works carried out and the services received.

53. For the right to deduct to arise, it was irrelevant that the necessarily slow process of preparing and developing the land for the purpose of erecting the coal plant had not been completed when the Ghent municipal authorities required Ghent Coal to exchange its land. What matters for the purposes of VAT is that the VAT which was paid when the goods or services were received could also be deducted during the corresponding period.

54. The condition that determines whether the right to deduct VAT arises is that the goods acquired and the services received are acquired and received in connection with the business activity of the taxable person, that is to say for the purpose of being incorporated within its economic activity.

55. In accordance with the principles expressed in the judgments cited, Ghent Coal could deduct the VAT paid on purchasing the goods or paying for the services connected with the construction of the coal plant, in so far as:

(a) it is not necessary that the goods and services acquired in the course of operations preparatory to carrying out an activity be immediately used for transactions subject to VAT (*Rompelman*), when there is no doubt whatsoever as to Ghent Coal's purpose in acquiring those goods and services, which are directly linked to the pursuit of its business activity;

(b) strictly speaking, it is not even necessary that those goods and services be used to carry out subsequent taxable transactions where they have been acquired in the course of the stages prior to the performance of an envisaged activity which subsequently and for lawful reasons does not reach the operational phase (*INZO*);

(c) in this case all suspicion of fraud or abuse is precluded, since Ghent Coal was in fact unavoidably obliged to abandon the construction project which it

had begun by the requirements of a public administration acting in the exercise of its functions.

56. The conclusion from all the foregoing is that, in accordance with Article 17(2) of the Sixth Directive, an undertaking like Ghent Coal is entitled to deduct the VAT paid in connection with the acquisition of goods and the receipt of services corresponding to investment works initially intended to be used for its business activity but which, for subsequent reasons beyond its control, were never in fact put into use.

Possible adjustment of the deductions

57. In paragraphs 28 to 32 of this Opinion I set out the arguments of both parties to the dispute regarding the treatment of the possible adjustment of the deductions, a question which, in Ghent Coal's view, is extraneous to this dispute in so far as it was neither submitted to the Hof van Cassatie nor raised by that court in its reference for a preliminary ruling.

58. It is true that the question referred simply seeks the interpretation of Article 17(2) of the Sixth Directive, without referring to Article 20, which lays down the system of adjustments to initial deductions.

59. However, the mechanism of cooperation established by Article 177 of the EC Treaty allows the Court of Justice to provide the national court with the matters relating to the interpretation of the rules of Community law which it considers applicable to the case, even where the national court has not referred expressly to any of them.

60. It would be difficult to accept that adjustment is extraneous to the problem raised in the main proceedings: in fact Ghent Coal's request to the Belgian authorities for repayment of BFR 2 751 085, and also its claim of 27 March 1987 before the court of first instance, quantify that figure as the amount owed in respect of the investment expenditure effected, once the corresponding adjustment has been made. [17]

61. Nor can it be said that the problem is extraneous to the appeal to the Hof van Cassatie: indeed, counsel for the Belgian State claimed that the appeal court had erred in law by stating, *inter alia*, that the right to deduct had arisen and that the only available

17 — The application at first instance, in addition to confirming the origin of the right to deduct, further states: 'in any event, that deduction is subject to adjustment in pursuance of Article 48 of the VAT Code, which provides that the deduction can be reviewed where there have been variations in the factors taken into consideration for the calculation of the VAT deductible, and Article 10.4 of Royal Decree No 3'.

means of correcting the deduction was adjustment. [18]

62. Moreover, in their observations to the Court both the Commission [19] and Ghent Coal [20] suggest answers to the questions referred which expressly include a confirmation of the possibility of adjustment.

63. That, in my view, is the more reasonable position. If the Court's answer were simply to confirm the applicability of the deduction, without further distinction, it might lead to confusion, since it would only address part of the problem (the validity of the original deduction) but not the associated problem.

64. The answer should therefore contain an express reference to the possibility of adjusting the original deduction owing to the existence of subsequent circumstances which affected the factors taken into account to establish that deduction.

65. On that point, however, I do not believe that the Court's answer should go much beyond a reference to Article 20 of the Sixth Directive. I do not in fact believe that the Court should become involved in the argument concerning the actual extent of the adjustment (the number of years to be taken into account, the possible extension of the delivery of the land under Belgian law, the different schemes applicable to the delivery of capital goods and to the services received, the rules applicable where capital goods are delivered during the adjustment period, etc.).

66. An answer going into a detailed analysis of such questions would in my view go beyond the terms in which the Court's interpretation was sought in the question referred for a preliminary ruling. In order to remain faithful to the question raised and at the same time provide further elements based on Community rules to which the national court did not refer, it is sufficient, in this case, to indicate that Article 20 of the Sixth Directive lays down the procedure for the adjustment of deductions validly made.

18 — The judgment of the appeal court stated: 'in so far as it is apparent that after the return has been made a change has occurred in the factors used to determine the amount to be deducted, as happened in the present case, since as a result of the exchange the purpose normally attributed to the goods in question could not be achieved, the only possible way of correcting it is by adjustment, as provided for in Article 48 of the VAT Code and Articles 6 and 10 of Royal Decree No 3, cited above'.

19 — The Commission maintains that the right to deduct the VAT paid in respect of those investments originally intended to be used in the undertaking remains in existence even where the undertaking, for reasons beyond its control, has subsequently been unable to use them; it adds that 'in any event, it is appropriate to adjust the deductions, to the extent and subject to the conditions provided for by Article 20(3) of the Sixth Directive, in the case of tax-exempt deliveries of capital goods during the adjustment period'.

20 — Ghent Coal suggests that the Court should answer the question referred to it by stating, first, that the deduction in respect of the investments intended for a business activity aimed at taxable activities is valid. In its view the Court's answer should further state that 'where it transpires that such investments subsequently became devoid of purpose and, consequently, were never actually used in the undertaking, there should then, in principle, be an adjustment within the limits and subject to the conditions determined by the Sixth Directive. The fact that the investments have become devoid of purpose and consequently have never actually been used, for reasons beyond the control of the undertaking, cannot affect the lawfulness of the deduction already made, except that, at the very most, it may be possible to adjust the deduction'.

Conclusion

67. I therefore propose that the Court of Justice should answer the question referred by the Hof van Cassatie as follows:

Article 17(2) 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, allows an undertaking to deduct the VAT paid in connection with the acquisition of goods and the receipt of services corresponding to investment works originally intended to be used in its business activity but which, for reasons beyond its control, were never in fact put to use by the undertaking. The adjustment of those deductions must be effected as provided for in Article 20 of that Directive.