

OPINION OF ADVOCATE GENERAL
LENZ

delivered on 7 December 1995 *

A — Introduction

1. In the present case, a number of questions have been submitted to the Court by the Value Added Tax Tribunal, London, concerning the share investment activities of a limited-liability trust corporation ('the Wellcome Trust Limited'). The origins of this trust corporation, which is the appellant in the main proceedings, go back to Sir Henry Wellcome.

Burroughs, Wellcome and Company was founded as a partnership in London in 1880 by two American pharmacists, Silas Burroughs and Henry Wellcome, both of whom subsequently acquired British nationality. The Wellcome Foundation Limited ('the Foundation'), which took over the existing businesses, was incorporated in 1924. Sir Henry Wellcome died in 1936. He stated in his will that all his shares in the Foundation were to be held on charitable trusts (the Wellcome Trust) for the advancement of research in human and animal medicine and the support of the history of medicine. Originally, seven trustees were

appointed. On 1 June 1992, however, pursuant to a court order and a certificate issued by the Lord Chancellor, the Wellcome Trust Limited, the appellant in the main proceedings in the present case, was appointed to act as sole trustee in place of the individual trustees. The previous individual trustees became directors of the Wellcome Trust Limited. It is common ground that this change has no bearing on the questions to be addressed in this case (references to the 'Trust' in the text which follows relate to the individual trustees and, for the period after 1 June 1992, to the Wellcome Trust Limited).

2. Until 1984, the appellant's sole holding was in the Foundation and amounted, in 1980, to £250 million. Since it was desired to diversify that investment, however, a first sale of shares was carried out, generating revenue of £200 million. Strict rules were laid down in this connection as to the manner in which the shares were to be sold, with a stipulation that for two years after the sale no further shares were to be sold without prior consent. It was not until 1987 that the appellant obtained a court order giving it almost unlimited powers of investment.

* Original language: German.

3. In 1991, the appellant employed 160 persons, five of them in the field of its investment activity.

the shares — were carried out in a very careful and professional manner.

4. Following an extension of the powers of sale of the Wellcome Trust Limited by court order in 1992, a second sale of shares was effected. The aim was to raise funds for reinvestment in a wider range of holdings in order to produce a larger and more broadly based income. Despite the stipulation that a quarter of the shares were to be retained, this second sale of shares was the largest non-government sale carried out in the United Kingdom. It was very carefully planned and executed. In order to avoid too great a fall in the share price as a result of so many shares being sold, the 'bookbuilding' method was chosen. That method gives potential investors the opportunity to submit tenders within a specified period. Bids were invited from investors in the United Kingdom, France, Germany, Switzerland, the USA, Japan, the Pacific Rim and the rest of the world. For each of those regions a manager was appointed, the managers' work being supervised by a global coordinator. After the expiry of the tendering period, the Trust decided on the price and allocation of the shares. A public offer was also made in the United Kingdom. As an overall result, 288 million shares were sold at £8 each, approximately one third of them to persons outside the European Community. New investments in excess of £1.8 billion were subsequently made. Those investments — like the sale of

5. It appears that the powers of the Trust are limited to investing the proceeds from the sale of, *inter alia*, shares, but that it is not empowered to trade in those shares. The Trust is particularly careful not to exceed its powers. Care is also taken to ensure that the Trust does not hold any interest which would have to be reported to the authorities.

In addition to its investment activities, the appellant also sells books, medical photographs and photocopies, and is registered as a taxable person for those purposes. The proceeds from the share sales have never been taken into account in that regard.

6. After the second share sale, however, the appellant claimed a refund of input tax in respect of the 33.22% of the shares which had been sold to purchasers outside the European Community. The input tax amounted to £297 832.65. The appellant took the view that the second share sale had to be regarded as an economic activity, within the meaning of the Sixth VAT Directive, on account of its volume and the extensive

preparations made. It also argued, in the alternative, that all of the Trust's investment activities, and thus also the second share sale, were to be regarded as economic activities. The national authorities, on the other hand, contended that the appellant had to be treated in the same way as a private individual.

paragraph 2 in so far as the goods and services are used for the purposes of:

...

- (c) any of the transactions exempted under Article 13B(a) and (d), paragraphs (1) to (5), when the customer is established outside the Community or when these transactions are directly linked with goods intended to be exported to a country outside the Community.'

7. The Community provision relevant here is Article 17(3)(c) of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (hereinafter 'the Sixth VAT Directive'),¹ which provides as follows with regard to input tax deductions:

Reference is made there both to Article 17(2) and to provisions of Article 13B, which governs other domestic tax exemptions. Article 17(2) reads:

'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:

'3. Member States shall also grant to every taxable person the right to a deduction or refund of the value added tax referred to in

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

¹ — Council Directive 77/388/EEC of 17 May 1977 (OJ L 145, p. 1).

...’.

5. transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding:

Of Article 13B(a) and (d), subparagraphs (1) to (5), which are also cited, only subparagraph (d)(5) is relevant here. That provision reads as follows:

— documents establishing title to goods,

— the rights or securities referred to in Article 5(3)’.

‘Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

The basic definition of a ‘taxable person’ is to be found in Article 4 of the Sixth VAT Directive. That definition reads as follows:

...

‘1. “Taxable person” shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

(d) the following transactions:

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions.

...

The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

preliminary ruling the following questions concerning those rules of Community law:²

(1) Is the term 'economic activities' in Article 4(2)³ capable of covering sales of shares and securities by a person who is not a dealer in shares and securities?

Significance also attaches to Article 2, which specifies the activities that are 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;

(2) Can a multiplicity of share sales by a person who is not a dealer in shares to a large number of purchasers on the same day involving sophisticated preparation over a considerable period of time of itself constitute 'economic activities' within Article 4(2)?

2. the importation of goods.'

(3) If the reply to Question 1 and/or 2 is in the affirmative, are share sales by such a trustee to be regarded as effected by a 'taxable person acting as such' within Article 2(1)?

Against the background of the main proceedings as thus outlined, the national tribunal has now submitted to the Court for a

² — OJ 1994 C 275, p. 10.

³ — Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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).

(4) In answering Questions 1 and/or 2 and/or 3, is it relevant to consider whether the sale of shares and securities is the predominant concern of the activity in the course of which the sales take place; and, if so, how should such activity and its extent be defined?

for tax purposes,⁵ and also that an issue arises here as to the exploitation of tangible or intangible property within the meaning of the second sentence of Article 4(2) of the Sixth VAT Directive, Question 1 of the reference does, after all, require detailed examination.

B — Analysis

Question 1

8. As is clear from Article 4(2) of the Sixth VAT Directive, economic activities can comprise only the activities of producers, traders and persons supplying services. The activity to be examined in the present case is the sale of shares and securities, so that *prima facie* only the activity of a trader or dealer can be of relevance here. However, since it is indicated in the question in the reference that the person selling the shares is not a dealer, Question 1 could, without further consideration, be answered in the negative. In view, however, of the facts that Article 4 must be given as broad an interpretation as possible,⁴ that the principle of tax neutrality requires that all economic activities be treated equally

9. As already mentioned, the activity here at issue may possibly be considered in two respects to be an economic activity within the meaning of the Sixth VAT Directive: as the activity of a trader or as the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.

10. So far as the first possibility is concerned, Question 1 of the reference does admittedly state in express terms that the sale of shares and securities is effected by a person who is not a dealer, which is presumably to be understood as meaning that that person does not carry on the profession of a dealer in shares. It may, however, be possible to treat the person concerned in the same way as a dealer in shares.

11. In order to resolve this issue, it is necessary to consider in greater detail the activities

⁴ — Case C-186/89 *Van Tiem v Staatssecretaris van Financiën* [1990] ECR I-4363, paragraph 17, and Case C-60/90 *Polysar Investments Netherlands v Inspecteur der Invoerrechten en Accijnzen, Arnhem* [1991] ECR I-3111, paragraph 12.

⁵ — Case 268/83 *Rompelman v Minister van Financiën* [1985] ECR 655, paragraph 19.

of the Wellcome Trust. The present trust corporation has assumed the task of the originally individual trustees, that task being to manage the assets of Sir Henry Wellcome deriving from his shares in the Wellcome Foundation, with a view to advancing medical research. To this end, the assets are invested in shares and other securities and holdings. While this was initially possible only within the Foundation, the trustees later acquired almost unlimited power to make investments. Such an investment activity as is carried out by the appellant also covers the sale of shares and the purchase of new shares. This occurred on a very large scale in connection with the second share sale. The question is whether the share sales associated with this investment activity can be treated as constituting an economic activity within the meaning of the Sixth VAT Directive.

12. The Court has hitherto ruled only on the acquisition and holding of company shares. In its judgment in *Polysar*,⁶ the Court ruled that the mere acquisition and holding of shares in a company cannot be regarded as an economic activity within the meaning of the Sixth VAT Directive. The mere acquisition of financial holdings in other undertakings does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis

because any dividend yielded by that holding is merely the result of ownership of the property.⁷

13. The issue to be decided in the present case is whether this assessment must be reviewed in the case where the shares and company holdings are sold.

14. In the appellant's view, it must be assumed that the present case involves an economic activity within the meaning of the Sixth VAT Directive. The Wellcome Trust, it contends, buys and sells shares and must for that reason be treated in the same way as a professional dealer in shares. To decide otherwise would be to breach the principle of tax neutrality, under which all economic activities must be made subject to taxation in a completely neutral manner and irrespective of their purpose or result. The appellant does not deny that, in the case where investments alone are carried out, the investor is to be regarded as the final consumer in respect of the services required for the investment. Indeed, he receives no consideration for this investment. As the final consumer, he cannot be entitled to deduct input tax. The position, it contends, is different if the person in

6 — Case C-60/90, cited above.

7 — *Polysar*, cited above, paragraph 13.

question regularly makes supplies or provides services by disposing of his holdings. In such a case, he can no longer be regarded as a final consumer, and the goods and services re-enter economic channels and must be taxable.

15. That, however, will be the case only if the sales of shares are to be regarded as constituting an economic activity within the meaning of the Sixth VAT Directive. That precisely is the issue which must be addressed here.

16. The appellant further submits that it is not possible to conclude from the fact that, under Article 13B(d)(5) of the Sixth VAT Directive, transactions in shares are exempt from value added tax that such transactions are in principle not subject to such tax. I agree with that submission. An activity can indeed be exempt from a tax only if it was originally subject to that tax. It does not follow, however, that all transactions in shares come within the scope of the directive and are thus subject to value added tax. Rather, the position is that Article 13B(d)(5) concerns only those transactions which arise in connection with an economic activity within the meaning of the Sixth VAT Directive.

That, however, is precisely the issue to be examined here.

17. In the opinion of the United Kingdom, the activity in the present case is not an economic activity within the meaning of the Sixth VAT Directive. In its observations, it agrees with the Court's judgments in *Polysar*⁸ and *Sofitam*.⁹ It adds that if the acquisition or holding of shares does not constitute an economic activity within the meaning of the Sixth VAT Directive, the sale of shares by their holder for the purpose of profiting from his right of ownership also cannot be regarded as constituting the exploitation of property. The present case, it contends, concerned a disposal of assets which by definition could not yield income. Those assets merely changed their form. With particular regard to the present case, the United Kingdom continues by stating that the second sale and the appellant's investment activity amount to nothing more than an exchange of assets for liquid funds with which, in turn, other assets could be acquired which were regarded as representing a better investment. This does not constitute trade in shares. Nor is the Trust authorized to engage in such trade. It may use its assets only for specific purposes and, so far as concerns the management of its assets, it may not engage in any trade. Furthermore, according to the United Kingdom, neither the investment activity nor the second sale had any influence whatever on turnover. The United Kingdom does not, however, further indicate to what turnover it is here referring or whether it takes the view that any turnover was at all achieved which could have been influenced.

⁸ — Case C-60/90, cited above.

⁹ — Case C-333/91 *Sofitam v Ministre chargé du Budget* [1993] ECR I-3513, paragraph 12.

18. The purpose of the share sales, in its view, is not to obtain regular income from the Trust's financial investments but rather to turn those investments into liquid funds for the purpose of reinvestment. For that reason, in the United Kingdom's view, there is also no exploitation of property within the meaning of the second sentence of Article 4(2) of the Sixth VAT Directive.

19. That is a view with which I agree. The task of the Trust is to manage with maximum care the assets entrusted to it. This means that care must be taken to ensure that the assets do not decrease, but rather increase, through particularly remunerative investments where appropriate. This also means that the holdings which the appellant retains are monitored and, if there is a danger that the Trust may incur a financial loss, the shares are sold and new shares acquired which may be regarded as more profitable or involving less risk. The Trust thus endeavours to secure the highest possible dividends in order to maximize the money available for its essential task of furthering medical research. For this reason — as just described — it is necessary to buy and sell shares as required. This, however, is not analogous to the activity of a dealer in shares. A dealer in shares is not primarily concerned with managing assets; rather, he endeavours to make profits through buying and selling shares and engaging in risky investments and speculation. He does not acquire shares with the principal aim of securing the highest possible

dividends, but rather in order to resell them at as high a price as he can secure. The activity of the Trust is not comparable — indeed, it cannot lawfully be so. Rather, the activity of the Trust is similar to that of a private individual managing his own assets. Although such a person will on occasion buy and sell shares, he is nevertheless — and this is not in dispute — not regarded as a person exercising an economic activity within the meaning of the Sixth VAT Directive. It is only in respect of its extent (particularly in the case of the second share sale) that the Trust's activity can be distinguished from that of a private investor. However, even the second share sale cannot be regarded as an economic activity within the meaning of the Sixth VAT Directive, despite the fact that it was the largest private sale of shares in the United Kingdom. As the appellant itself submits, the sale of the shares was carried out in order to diversify the Trust's holdings. This, however, means simply that the original holdings were first realized and then transformed into new holdings. This also is not analogous to the activity of a dealer as described above.

20. As the appellant itself points out, the purpose of the share sale was not to secure income through regular sales, for which reason there can also be no question of the exploitation of property within the second sentence of Article 4(2). This means that neither the Trust's normal investment activity nor the extensive second sale constitutes an economic activity within the meaning of the Sixth VAT Directive.

21. This too is the view taken by the Commission, which also deals in its written

observations with the Trust's holdings in other companies. It points out in this connection that the Trust has itself stated that it takes great care not to have any interest so great as to be reportable to the authorities. According to the Commission, this means that, in its holdings, the Trust never exceeds a specified limit, which in turn means that it never holds a controlling interest. The Commission regards this as confirmation of its view that the Trust intervenes on the international financial markets but does not involve itself in the management of companies. In its judgment in *Polysar*, however, the Court regarded this assumption of involvement in the management of companies as being the sole exception to the rule that a holding in a company does not amount to an economic activity within the meaning of the Sixth VAT Directive.¹⁰

Moreover, it is today no longer possible even for a private investor to exercise his activity entirely without advice, albeit minimal. Support from consultancy firms cannot therefore indicate the existence of an economic activity for the purposes of the Sixth VAT Directive. So far as the scale of the share sale is concerned, a very wealthy private investor can also carry out extensive sales of shares. The United Kingdom further submits in this regard that it is very difficult, on the basis of the scope of a transaction, to determine whether it constitutes an economic activity. In this case, it is unclear what scale or volume would be required before there would be an assumption of an economic activity within the meaning of the Sixth VAT Directive.

22. The appellant submits further that a sale of shares as extensive as the second sale carried out by the Wellcome Trust cannot, in view of its scale and the professionalism of its preparation and implementation, be placed on a par with the activity of a private investor. Against this, the United Kingdom correctly points out that one cannot focus on the question whether an investor is himself in a position to carry out his investment activity or whether he requires the assistance of one or more advisers in that regard. Otherwise, the characteristics and skills of the investor would in part determine whether an economic activity within the meaning of the Sixth VAT Directive ought to be assumed.

23. Nor does a comparison of the Trust's activity to that of a private investor run counter to the principle of tax neutrality. Although the appellant submits that all economic activities must be treated equally for purposes of taxation, the activity of the Trust cannot be treated as if it were an economic activity within the meaning of the Sixth VAT Directive since — as has been demonstrated — it cannot be regarded as being such an activity. On the contrary: for reasons of tax neutrality, its activity must be classified in the same way as an activity of a private person. The appellant's argument that its activity resembles that of pension funds and investment trusts and must for that reason — in the same way as such funds — be

¹⁰ — Case C-60/90, cited above, paragraph 14.

regarded as an economic activity within the meaning of the Sixth VAT Directive also cannot lead to any different result. Unlike pension funds, the Trust manages its own assets — in precisely the same way as a private individual.

24. I am not entirely convinced by the United Kingdom's further argument that the Trust could not have been engaged in an economic activity because its investment powers were very limited. While this may well be true for the period up to 1987, the Trust did enjoy almost unlimited powers of investment in connection with the second share sale. It cannot therefore be held on this ground that there was no economic activity within the meaning of the Sixth VAT Directive. The existence of such an activity must, however, be denied on the grounds set out above.

25. Such a decision will also not lead to unacceptable results so far as entitlement to deduct input tax is concerned. If the Trust's activity is not to be regarded as an economic activity within the meaning of the Sixth VAT Directive, that directive will therefore not be applicable to it and the provisions governing tax deduction will also not be applicable to it. This is entirely compatible with the system of value added tax, since the Trust, not being engaged in an economic activity within the meaning of the Sixth VAT Directive, must be regarded as the final consumer in respect of the preparatory work required for the share sale, as the Commission correctly points out.

26. The appellant does admittedly contend that the VAT Directive may also be applied to a person all of whose transactions are exempt from the tax under Article 13B(d)(5) of the Sixth VAT Directive. Since input tax deduction is also not possible in such a case, there would be no distortions of competition. For that reason, it contends, the Sixth VAT Directive can also apply to the Trust.

27. The Sixth VAT Directive is undoubtedly applicable even in the case where the economic activity, within the meaning of the Sixth VAT Directive, relates exclusively to shares and is therefore exempt from value added tax. On the other hand, it is not applicable where — as in the present case — no economic activity is being exercised within the meaning of the Directive. Furthermore, even in the case of exemption from value added tax under Article 13, a deduction is possible in respect of transactions where the customer is established outside the Community (Article 17(3)(c) of the Sixth VAT Directive). It is precisely this input tax which the Trust wishes to deduct in the present case. If such a right of deduction were to be conceded to the Trust — even though it is not exercising an economic activity within the meaning of the Sixth VAT Directive — this would give rise to unequal treatment *vis-à-vis* the taxation of other private investors. On that ground the Trust must be held not to have a right to deduct input tax. In addition, the appellant is wrong when it argues that this is inequitable with regard to other persons who are registered as taxable persons

on the basis of other — additional — activities and are entitled, by virtue of that fact, to seek deduction of input tax pursuant to Article 17(3)(c). Under Article 17(3) too, tax deduction is possible only in respect of economic activities within the meaning of the Sixth VAT Directive. This is evident from the reference to transactions exempted under Article 13, which — as already mentioned — must result from economic activities within the meaning of the Sixth VAT Directive.

28. In addition, the legislative intention is unambiguous. The Sixth VAT Directive, along with all its rules and consequences, is intended to apply only to persons who are economically active within the meaning of that directive, not to those whose activity is analogous to that of a private investor. The activity of the Trust is consequently not to be regarded as an economic activity within the meaning of the Sixth VAT Directive. This finding cannot be altered by the fact that the appellant contends that it received consideration for its activity. As the Court ruled in the *Hong Kong Trade* case,¹¹ a service provided for no consideration cannot constitute an economic activity for the purposes of the Sixth VAT Directive. That, however, does not conversely mean that every service which is provided for consideration constitutes an economic activity.

29. I accordingly conclude that neither the normal sale of shares and securities by the

Trust nor the extensive second share sale constitutes an economic activity within the meaning of Article 4(2) of the Sixth VAT Directive.

Question 2

30. In the appellant's opinion, this question presupposes that Question 1 will have been answered in the affirmative. It takes the view that Question 2 is asking whether, if the Trust's general investment activity is regarded as an economic activity within the meaning of the Sixth VAT Directive, the second share sale can also be regarded as such an economic activity within the context of this investment activity. That interpretation is, in my view, not cogent. It may also be possible to consider the second share sale separately, and thus answer Question 2 independently of Question 1.

31. As has already been discussed in the reply to Question 1, the second share sale cannot be regarded as an economic activity within the meaning of the Sixth VAT

¹¹ — Case 89/81 *Staatssecretaris van Financiën v Hong Kong Trade Development Council* [1982] ECR 1277, paragraph 10.

Directive, despite its enormous scope and its careful preparation.

United Kingdom and the Commission in their written observations.

32. The appellant, however, submits that if the same quantity of shares had been sold in small parcels over a certain period of time, this would undoubtedly have been regarded as constituting an economic activity for the purposes of the Sixth VAT Directive. This is no more than a claim by the appellant which is at variance with the rule set out in the VAT Directive. In assessing an activity, it is neither the scope nor the duration which is conclusive, but solely the question whether that activity is an economic activity within the meaning of the Sixth VAT Directive. Since that is not the case here and the activity therefore does not come within the scope of value added tax, the appellant's further argument is also incorrect: it submits that, if the second share sale is not regarded as being an economic activity, within the meaning of the Sixth VAT Directive, on the ground that it was completed in a single day, it would be very easy for every taxable person to circumvent the obligation to pay value added tax by completing all his business in one day. As has already been mentioned, classification as an economic activity for the purpose of the Sixth VAT Directive does not fail on the ground that the activity was completed in a single day, but rather on the ground that the Trust is to be regarded in the same way as a private investor. The fact that the shares were sold over the course of one day has no bearing on the assessment of that sale for purposes of value added tax. If an activity is treated as an economic activity within the meaning of the Sixth VAT Directive, it will remain so even if completed in a single day. If it was not an economic activity, that assessment will *a fortiori* remain unchanged. This is also the conclusion reached by the

33. It is accordingly not only because all the sales were completed in a single day that the second share sale cannot be regarded as an economic activity.

Question 3

34. This question has been posed in the event that the reply to Question 1 and/or Question 2 is in the affirmative. Since I have reached the conclusion that the first two questions should be answered in the negative, my view is that there is accordingly no need to reply to Question 3. In the event that the Court should decide otherwise, however, I shall also address Question 3.

35. If the appellant's investment activity is recognized as being an economic activity within the meaning of the Sixth VAT Directive, it will follow from Article 4(1) that the Trust will have to be regarded as a taxable person. It will undertake all actions in connection with this activity as a taxable person acting as such, within the meaning of Article 2(1) of the Sixth VAT Directive. There is a direct connection between each of these two

concepts. In the context of the investment activity and the sale of shares, capacity as a taxable person cannot be considered independently of the classification as an economic activity within the meaning of the Sixth VAT Directive. This means that if the share sale is regarded as being an economic activity within the meaning of the Sixth VAT Directive, the person carrying out that activity must be a taxable person to that extent. All actions in connection with that activity are performed by him acting as a taxable person as such, within the meaning of Article 2(1). To that extent, the person in question will be entitled to deduct tax pursuant to Article 17(3)(c). If, on the other hand, it is held that there is no economic activity within the meaning of the Sixth VAT Directive, the person engaged in the activity in question cannot be regarded as taxable and cannot therefore be a taxable person acting as such, within the meaning of Article 2(1). In that case there will be no right to deduct tax. However, even if the person is classified as a taxable person — as the appellant is in respect of the sale of books and photographs — he cannot be a taxable person acting as such when managing private assets.

36. The appellant's remaining arguments centre essentially on the problems raised by the first two questions and need not therefore be considered here.

37. If the reply to Question 1 and/or 2 should be in the affirmative, share sales by

the appellant must be regarded as sales effected by a taxable person acting as such, within the meaning of Article 2(1).

Question 4

38. According to the appellant, this question relates to national case-law on the issue whether an activity is of predominant concern. Thus, the United Kingdom also submits in its written observations that it is useful to consider, in all the questions submitted in this case, whether the activity to be assessed is of predominant concern.

39. The Commission, in contrast, points out that the notion of 'predominant concern' is not used in the VAT Directive. Under the Directive, it is the inherent nature of the activity itself that is the vital consideration, not whether that activity is or is not predominant. I also take the view that, in order to determine whether an activity is an economic activity for the purposes of Article 4(2), it is not appropriate to consider whether the activity is of predominant concern. To illustrate this point, I would refer to the activities of the Wellcome Trust in respect of which it is registered as a taxable person. These relate to the sale of books, photographs and so forth, none in any event an activity which is of predominant concern. That notwithstanding, these activities must be regarded as being

economic activities for the purpose of the Sixth VAT Directive, whereas the principal occupation of the Trust, namely the management of assets, cannot be regarded as an economic activity within the meaning of the Sixth VAT Directive.

C — Conclusion

40. I accordingly propose that the Court reply as follows to the questions submitted in the reference:

- (1) The term 'economic activities' in Article 4(2)¹² does not cover sales of shares and securities by a person who is not a dealer in shares and securities but is acting in the management of his own assets.
- (2) A multiplicity of share sales by a person who is not a dealer in shares, but is managing his own assets, to a large number of purchasers on the same day involving sophisticated preparation over a considerable period of time cannot of itself constitute 'economic activities' within Article 4(2).¹³
- (3) In the alternative: If the reply of Question 1 and/or 2 is in the affirmative, share sales by such a trustee are to be regarded as effected by a 'taxable person acting as such' within Article 2(1).¹⁴
- (4) In answering Questions 1 and/or 2 and/or 3, it is not relevant to consider whether the sale of shares and securities is the predominant concern of the activity in the course of which the sales take place.

¹² — Sixth VAT Directive.

¹³ — Sixth VAT Directive.

¹⁴ — Sixth VAT Directive.