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EU VAT treatment of expenses connected with the sale of shares

by

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Abstract

The purpose of this work is to propose an interpretation of the law as it stands today in order to provide a coherent and cohesive legal framework regarding the treatment of expenses connected with the sale of shares. In order to achieve such purpose, this work includes an extensive analysis of the case-law of the European Court of Justice regarding this subject matter and a critical study of the doctrine that has addressed this topic.

List of abbreviations

AG	Advocate General
Art.	Article
Ch.	Chapter
Court of Justice	European Court of Justice
Court	European Court of Justice
E.g.	Exempli gratia (for example)
I.e.	Id est (that is)
P.	Page
Para.	Paragraph
Pp.	Pages
VAT Directive	COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax
Vol.	Volume

1. Introduction

1.1 Purpose and legal issue to be addressed

Almost every company eventually gets involved in a transaction with shares. In the modern economy, undertakings acquire, sell and issue new shares on a regular basis. Although it is a recurrent action that is constantly performed, there is no simple and short answer to answer to the question of whether the expenses incurred in connection with transactions with shares are deductible or not for VAT purposes.

The value added tax (VAT) has been defined as a general indirect tax on consumption[1]. The European VAT is based on the principle that the consumption of goods and services are subject to taxation exactly proportional to the price of such goods and services, irrespective of how many transactions take place in the production and distribution process before the stage at which the tax is charged[2].

VAT is a tax that intends to tax only private consumption[3], which means that VAT does not intend to tax expenditure performed by suppliers of goods and services in order to perform such supplies. The VAT Directive achieves this goal providing rules of deduction of input VAT[4]. The European Court of Justice has interpreted that such rules are meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently aims for complete neutrality of taxation of all economic activities, whatever their purpose or results[5].

The common system of VAT does not ensure the complete neutrality of the tax with respect of transactions that involve a sale of shares[6]. Moreover, part of the doctrine has expressed serious concerns regarding whether the law as it stands today provides a coherent and complete set of rules that could be used to determine the VAT treatment applicable to these transactions[7]. In this regard, it has been argued that the possibility of recovering input VAT on transaction costs related to the sale of shares in a company involves a significant level of uncertainty[8].

My goal is to challenge such point of view. That is why the question that we will address in this work is the following: Does the law as it stands today provide a coherent and cohesive legal framework for the treatment of expenses connected with the sale of shares?

We understand that the answer to this question is affirmative and that there is a "system" that can be derived from the dispositions of the VAT Directive and the case-law of the Court of Justice. Such framework is based on a set of questions that can be summarized as follows:

1) Is the person that perform the sale of shares a "taxable person"?

2) Is such sale of shares an "economic activity", or a "non-economic activity"?

3) Would the taxable person have incurred the expenses anyway, even if he had not exercised a taxable economic activity?

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[1] "*Introduction to European VAT (Recast)*" - Ben Terra - Julie Kajus, IBFD (Last Reviewed: 1 January 2015), page 236

[2] Article 1, VAT Directive

[3] "*Introduction to European VAT (Recast)*" - Ben Terra - Julie Kajus, IBFD (Last Reviewed: 1 January 2015), page 252

[4] Title X, VAT Directive

[5] Case 268/83, "*D.A. Rompelman and E.A. Rompelman-Van Deelen v Minister van Financiën*", 14 February 1985, paragraph 19, among many other cases.

[6] "*Introduction to European VAT (Recast)*" - Ben Terra - Julie Kajus, IBFD (Last Reviewed: 1 January 2015), page 1063

[7] Among others, Ibid., Chapter 17.7

[8] "*Sweden - Tax Treatment of Transaction Costs*" - Emilie Parland and Mattias Lindblad, European Taxation, 2013 (Volume 53), No. 4. Published online: 14 March 2013. See point 3.5

4) In case that the answer to the prior question is negative, are the expenses derived from the sale of shares directly linked with the output of the sale of shares or are part of the overheads of the taxable person?

5) In case that the expenses derived from the sale of shares are part of the overheads of the taxable person, is such overhead attributable to the business as a whole or it is an overhead of a clearly defined part of the business?

6) Does the business as a whole or the clearly defined part of the business referred to in the prior question involve economic activities, non-economic activities or both?

As it will be described in detail in the following chapters, we understand that these questions can be used as a general reference to cover the multiple circumstances and operations that can be involved in transactions with shares.

1.2 Method and materials

The issue that will be addressed in this work is of dogmatic nature. Therefore, the research has been performed based on a legal-dogmatic perspective, which final purpose is to identify a coherent system applicable to the VAT treatment of transactions with shares. In other words, this research deals with the law as it stands today.

The subject matter of this work is addressed only by a limited number of articles of the VAT Directive. However, the complexities connected with this topic has generated a vast body of case-law which will be extensively analysed in this work. Therefore, the main legal source used in this research is the content of the judgements of the Court of Justice.

1.3 Delimitation

The subject matter of this research is a specific part of the much broader problem of the deductibility rules applicable to VAT. The Chapter 3 contains a proposed interpretation about how the deduction rules work in the light of the current case-law, which we think is at least helpful to understand the deductibility rules applicable to transactions with shares.

The problems connected with the rules of attribution of expenses between economic and non-economic activities mentioned in the Chapter 4.3 constitute also a complex topic on its own that is referenced but it has been left out of our investigation.

2. Analysis of the first question: Under which circumstances a shareholder shall be considered a "taxable person"

2.1 Overview

The first question that shall be answered in order to perform our analysis is to determine the nature of the subject that perform the sale of shares. More precisely, it is necessary to determine if such subject shall be considered, or not, a taxable person.

It is clear from the Article 168 of the VAT Directive that only taxable persons have the right to deduct input VAT. The terms of such legal disposition are clear in this sense because they provide that VAT is deductible with respect to "*goods and services* (which) *are used for the purposes of the taxed transactions of a taxable person*" and that such "*taxable person*" is the one that is entitled to perform such deduction[9].

The VAT Directive contains a broad definition of "taxable person" that includes any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, is regarded as "economic activity'". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis is in particular regarded as an economic activity[10].

Every sale of shares implies the existence of a shareholder that carries out the transfer of his shares to another person. Therefore, a first step in the analysis of the VAT treatment of such operations shall be to determine whether the shareholder that perform the sale of shares shall be considered as a taxable person.

The case-law of the Court of Justice makes a major distinction between pure holding companies (i.e. pure shareholders) and mixed holding companies (i.e. mixed shareholders). A pure holding company can be defined as a company which only activity is to hold participations in other undertakings[11]. That is, a shareholder that only acts as such. On the other hand, a mixed holding company can be described as a company that holds participations in other undertakings but also carries out other activities[12]. That is, a shareholder that perform other activities apart from holding his shares.

The case-law that will be addressed in the following points indicates that a pure holding company shall not be considered a "taxable person" for VAT purposes and, consequently, has no right to deduct input VAT in connection with the transactions with shares that it may perform.

On the other hand, a mixed holding company that sell shares can be considered a "taxable person" for VAT purposes under the following circumstances: i) Where the holding activity is accompanied by direct or indirect involvement in the management of the concerned companies in so far as it entails carrying out transactions to such companies which are supplies for consideration[13]; ii) Where the

[9] Article 168, VAT Directive, paragraph 1
[10] Article 9, VAT Directive
[11] Considered by the Court in C-60/90, "*Polysar Investments Netherlands BV v Inspecteur der Invoerrechten en Accijnzen*", 20 June 1991, ECLI:EU:C:1991:268, paragraph 13
[12] Ibid., paragraph 14
[13] C-142/99, "*Floridienne SA and Berginvest SA v Belgian State*", 14 November 2000, ECLI:EU:C:2000:623, paragraph 19

holding company perform transactions with shares as part of a commercial share-dealing activity[14]; and iii) Where the holding company perform any other economic activity not mentioned in i) and ii). The first two scenarios are derived from the case-law that will be analysed in detail below. The third scenario is a logic derivation of the terms of Article 9, VAT because the performance of any activity characterized as an "economic activity" by the mixed holding company would make it a "taxable person" irrespectively of the circumstances considered in the next paragraphs.

2.2 Pure holding company

The treatment applicable to pure holding companies was analysed by the Court of Justice in the "Polysar" case[15]. Polysar BV was a company established in The Netherlands that formed part of the world-wide Polysar group. The full shareholding of Polysar BV was held by Polysar Holding Ltd, a company established in Canada. Polysar BV was a pure holding company, which meant that its only turnover was derived from the dividends derived from its shareholdings in other companies and that it did not engage in trading activities. Polysar BV paid for certain services which were charged with VAT during the fiscal period relevant for this case. The domestic Tax Authorities considered that Polysar BV was not allowed to deduct the VAT paid in consideration of such services. The Court of Justice concluded that Polysar BV did not have the right to deduct input VAT because it was not a "taxable person" under the VAT Directive[16]. In this regard, the Court mentioned in the paragraphs 12 and 13 of its judgement that it does not follow from the principle that the system of value added tax should be neutral that the mere acquisition and holding of shares in a company is to be regarded as an economic activity. Moreover, the Court explained in paragraph 13 that 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.

The decision made by the Court in the "Polysar" case has been criticized for assimilating the situation of a holding company to that of a private person[17], which is the major factor that prevents the VAT neutrality of transactions with shares performed by undertakings. The only true consumers are the individuals[18] and any deviation from such principle creates distortions from the point of view of tax neutrality.

2.3 Mixed holding company

As regards to the treatment applicable to mixed holding companies, the case-law that is analysed below holds that a holding company that carry out a transaction with shares may be considered to perform an economic activity, in particular, where such transactions are effected as part of a commercial share-dealing activity or in order to secure a direct or indirect involvement in the management of the companies in which the holding has been acquired.

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[14] C-155/94, "*Wellcome Trust Ltd v Commissioners of Customs and Excise*", 20 June 1996, ECLI:EU:C:1996:243, paragraph 36

[15] C-60/90, "*Polysar Investments Netherlands BV v Inspecteur der Invoerrechten en Accijnzen*", 20 June 1991, ECLI:EU:C:1991:268

[16] Ibid., paragraph 17

[17] "*Introduction to European VAT (Recast)*" - Ben Terra - Julie Kajus, IBFD (Last Reviewed: 1 January 2015), p. 1063

[18] "*Activities outside the Scope of VAT and Exempt Activities*" - Peter Melz, International VAT Monitor, 2011 (Volume 22), No. 5, Published online: 06 September 2011. See paragraph 2

This position was expressed by the Court of Justice in the "Wellcome Trust" case[19], where it was concluded that a charitable trust that carries out purchase and sale of shares in the course of the management of its assets does not perform an economic activity[20]. The Court mentioned in such case that Wellcome Trust did not meet the requirements set in the "Polysar" case to be considered as a holding company that perform an economic activity. In this sense, the Court pointed out that: i) Wellcome Trust was not a registered professional dealer in securities[21]; ii) Wellcome Trust used the yields derived from the sale of shares exclusively for its charitable activities[22]; iii) Irrespective of whether the activities in question are similar to those of an investment trust or a pension fund, Wellcome Trust managed an investment portfolio in the same way as a private investor[23] and iv) Neither the scale of a share sale nor the employment of consultancy services are relevant for distinguishing between the activities of a private investor and an investor whose transactions constitute an economic activity[24].

Another precedent relevant regarding this issue is the "Floridienne" case[25]. Floridienne SA was a holding company at the head of a group of companies operating in the chemicals, plastics and agri-foodstuffs sectors. Berginvest SA was an intermediary holding company at the head of the plastics division of the same group. Floridienne SA and Berginvest SA performed the following activities: i) Holding activities, for which they received dividends; ii) Management services to its subsidiaries, for which they received fees; and iii) Financial services to its subsidiaries, for which they received interest payments. The Court of Justice mentioned in the paragraph 19 of its judgement that a holding company that has direct or indirect involvement in the management of the companies in which the holding has been acquired shall be considered as an economic activity in so far as it entails carrying out transactions which are subject to VAT, such as the supply by Floridienne SA and Berginvest SA of administrative, accounting and information technology services to their subsidiaries.

The "Floridienne" case seems to clarify the criteria established in the "Polysar" case because it establishes that a holding company that is involved in the management of the companies in which owns shareholdings can only be considered to perform an economic activity where it provides taxable supplies to the mentioned companies as a consequence of such involvement in their management. In this regard, Floridienne SA and Berginvest SA were considered to perform an economic activity because, apart from the involvement in the management of the companies, they provided administrative, accounting and information technology services to such companies.

Based on the above mentioned precedent, it could be argued that the mere fact that the holding company is involved in the management of the concerned companies may not be enough to characterize the activity of the holding company as an economic activity[26]. Such involvement in the management of the companies must be connected with the performance of a supply for consideration to be considered an economic activity.

This conclusion seems to be confirmed by the "Welthgrove" case[27]. Welthgrove BV was a holding company which held shares in a number of companies established in the European Union that manufactured plastic packaging. During the relevant period for this case, the only turnover that

[19] C-155/94, "*Wellcome Trust Ltd v Commissioners of Customs and Excise*", 20 June 1996, ECLI:EU:C:1996:243
[20] Ibid., paragraph 41
[21] Ibid., paragraph 31
[22] Ibid., paragraph 34
[23] Ibid., paragraph 36
[24] Ibid., paragraph 37
[25] C-142/99, "*Floridienne SA and Berginvest SA v Belgian State*", 14 November 2000, ECLI:EU:C:2000:623
[26] "*Introduction to European VAT (Recast)*" - Ben Terra - Julie Kajus, IBFD (Last Reviewed: 1 January 2015), Ch. 17.7, p. 1063
[27] C-102/00, "*Welthgrove BV v Staatssecretaris van Financiën*", 12 July 2001, ECLI:EU:C:2001:416

Welthgrove BV received was derived from the dividends distributed by its subsidiaries. Welthgrove BV's directors provided guidance to its subsidiaries, service which was not remunerated by such subsidiaries. The Tax Authorities held that Welthgrove BV did not have the right to deduct input VAT with respect of the supplies received during the relevant period because Welthgrove BV did not perform an economic activity and, therefore, was not a taxable person[28]. The Court of Justice confirmed the position of the Tax Authorities. In this regard, the Court mentioned in the paragraph 17 of its judgement that a holding company that is involved in the management of its subsidiaries without remuneration does not carry out an economic activity and, therefore, cannot be regarded as a taxable person.

This position follows the same line of though expressed by the Court of Justice many years before in the "Hong Kong Development" case[29], in which it was established that where a person's activity consists exclusively in providing services for no direct consideration there is no basis of assessment and the free services in question are therefore not subject to value added tax. In such circumstances the person providing services must be assimilated to a final consumer because he is at the final stage of the production and distribution chain[30].

The Court of Justice followed the same approach in the "EDM" case[31]. Empresa de Desenvolvimento Mineiro SGPS SA (EDM) was a company established in Portugal that organized consortiums with other companies with the purpose to perform mining activities. EDM provided management services to its partners in such consortiums. EDM did not receive a payment from the other partners of the consortium in consideration for its services. Instead of that, the value of the services was used to determine the value of the shareholding of EDM in the consortium. The Court of Justice concluded that the supply of services to partners in consortiums which value correspond to the share capital assigned in the consortium contract shall not be considered economic activities[32]. The Court based such conclusion on the fact that such transactions did not constitute supplies of goods or services effected for consideration because the services cannot be considered to be paid for where their value was contractually determined based on the shareholding held by the company that provided the services. Accordingly, The Court stated that the services provided by EDM to the consortium could only be considered an economic activity if the value of such services exceeded its share in the consortium and such exceeding amount was actually paid by the other partners in the consortium[33].

This criteria is complemented by the concept of financial activities which are not incidental, as it was described by the Court in the "Régie Dauphinoise" case[34]. Régie Dauphinoise — Cabinet A. Forest SARL ("Regie") was a company established in France which activity consisted in the management of property. The management activities included the management of property leased to tenants, and management of property held in condominium by multiple co-owners. Regie received monetary advances by the owners and the lessees of the properties, which Regie invested for its own account with financial institutions. The Tax Authority held that Regie performed activities subject to VAT (management activities) and exempted activities (the financial investments) and that, therefore, the input VAT deductible by Regie had to be calculated through the apportionment of Articles 173 and 174

[28] Ibid., paragraph 18
[29] C-89/81, "*Staatssecretaris van Financiën v Hong-Kong Trade Development Council*", 1 April 1982, ECLI:EU:C:1982:121
[30] Ibid., paragraph 10
[31] C-77/01, "*Empresa de Desenvolvimento Mineiro SGPS SA (EDM) v Fazenda Pública*", 29 April 2004, ECLI:EU:C:2004:243
[32] Ibid., paragraph 88
[33] Ibid., paragraph 89
[34] C-306/94, "*Régie dauphinoise - Cabinet A. Forest SARL v Ministre du Budget*", 11 July 1996, ECLI:EU:C:1996:290

Directive[35]. The Tax Authority also held that the financial investments made by Regie could not be considered as incidental because they exceeded 5% of Regie's total receipts[36]. Therefore, the turnover of the financial investments had to be included in the denominator of the apportionment calculation.

The Court concluded in the "Régie Dauphinoise" case that the financial activities performed by Regie shall be considered an economic activity included inside the scope of VAT. In this regard, the Court indicated in the paragraph 18 that "*...the receipt, by such a manager, of interest resulting from the placements of monies received from clients in the course of managing their properties constitutes the direct, permanent and necessary extension of the taxable activity, so that the manager is acting as a taxable person in making such an investment*". The Court considered that the financial investments made by Regie were the consequence of the monetary advances made by the owners and the lessees of the properties and, therefore, they were "*the direct, permanent and necessary extension of the taxable activity of property management companies*"[37]. Consequently, "*such placements cannot therefore be characterized as incidental financial transactions*"[38].

2.4 Conclusions

Based on the above mentioned analysis, the conclusions regarding the circumstances under which a shareholder shall be considered a "taxable person" can be summarized as follows:

- Pure holding company: it is not a "taxable person" because it does not perform an economic activity

- Mixed holding company: it can be considered a "taxable person" if it meets at least one of the following requirements:

  - The mixed holding company has indirect involvement in the management of the concerned companies in so far as it entails carrying out transactions to such companies which are supplies for consideration.

  - The mixed holding company perform transactions with shares as part of a commercial share-dealing activity.

[35] Ibid., paragraph 23
[36] Ibid., paragraph 9
[37] Ibid., paragraph 22
[38] Ibid., paragraph 22

3. Analysis of the second question: The concept of an operation with shares as an "economic activity" or a "non-economic activity"

3.1 Overview

The second issue that shall be addressed in our analysis is to determine the characterization of the sale of shares under the VAT Directive. More precisely, it is necessary to determine if such operation with shares shall be considered, or not, as an "economic activity".

The performance of an "economic activity" is considered a transaction inside the scope of the VAT which can be subject to taxation[39], exempt[40], or could be disregarded under certain conditions[41]. The performance of a "non-economic activity" is considered a transaction outside the scope of the VAT.

Where a sale of shares is considered an "economic activity", such sale is regarded as an exempt transaction under Article 135(1)(f), VAT Directive, which provides that: "*Member States shall exempt the following transactions:* (…) *transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2)*".

However, where the sale of shares is considered a "non-economic activity", such sale will be considered as an operation outside the scope of the VAT.

3.2 Sale of shares as an "economic activity"

In first place, we will analyse under which circumstances the Court of Justice considered a sale of shares as an "economic activity" exempt under Article 135(1)(f), VAT Directive.

In the "BLP" case[42] BLP Group plc, a company established in the United Kingdom, was a mixed holding company that provided services to a group of trading companies producing goods for use in the furniture industry. BLP Group plc had purchased the 100% of the share capital of Berg Mantelprofilwerk GmbH, a company established in Germany. Two years after such acquisition, the financial position of BLP Group plc had become worrying, and it sold 95% of the shares in Berg Mantelprofilwerk GmbH. The money raised by the sale was used to pay off the debts of BLP Group plc. The Court of Justice concluded that the sale of shares performed by BLP Group plc was an "economic activity" exempt under Article 135(1)(f), VAT Directive[43].

In the "EDM" case[44] Empresa de Desenvolvimento Mineiro SGPS SA (EDM) was a company established in Portugal that sold shares and other negotiable securities and obtained a turnover as a consequence of such sales. The Court of Justice concluded that the sale of shares performed by EDM shall not be considered as "economic activities". In this regard, the Court indicated that the mere sale of shares and other negotiable securities shall be considered a "non-economic activity" because it does not imply the exploitation of an asset intended to produce revenue on a continuing basis and are activities that are confined to the management of a an investment portfolio in the same way as a private investor[45]. On the other hand, the Court of Justice indicated that the sales of shares that shall be considered an "economic activity" are those in which the taxable person draws a revenue on a

[39] Article 2, VAT Directive
[40] Title IX, VAT Directive
[41] The transfer of going concern of Article 19, VAT Directive
[42] C-4/94, "*BLP Group plc v Commissioners of Customs & Excise*", 6 April 1995, ECLI:EU:C:1995:107
[43] Ibid., paragraph 23
[44] C-77/01, "*Empresa de Desenvolvimento Mineiro SGPS SA (EDM) v Fazenda Pública*", 29 April 2004, ECLI:EU:C:2004:243
[45] Ibid., paragraph 57

continuing basis from activities which go beyond the compass of the simple acquisition and sale of securities, such as transactions carried out in the course of a business trading in securities[46].

It is also necessary to mention the "SKF" case[47] AB SKF, in which a company established in Sweden, decided to perform restructuring operations of its industrial group as a consequence of which AB SKF would sell 100% of the shares in one of its wholly-owned subsidiaries and would also sell the totality of the shares that it owned in another company (26% of shareholding). AB SKF decided to carry out these sales of shares in order to obtain funds to finance other activities of the group. The Court of Justice concluded that the sales of shares to be performed by AB SKF shall be considered an exempt "economic activity"[48]. In this regard, the Court mentioned that the term "*transactions … in shares*" referred to in the Article 135(1)(f), VAT Directive is broad enough not to be restricted to the business of trading in shares[49]. The fact that the sale of shares is not part of that company's normal commercial business is not a determinant factor to characterize such sale as an economic activity[50]. The Court of Justice then highlighted that the words "*transactions … in securities*" refer to transactions which are liable to create, alter or extinguish party's rights and obligations in respect of securities[51]. The sale of shares performed by AB SKF shall be considered an "economic activity" where it constitutes the direct, permanent and necessary extension of the taxable activity because it was performed in order to obtain funds to finance other activities of the group[52].

This concept of transactions that constitute an extension of the economic activity of the taxable person had been already mentioned by the Court in the "Régie Dauphinoise" case, which was analysed in the prior point[53].

3.3 Sale of shares as a "non-economic activity"

In second place, we will analyse under which circumstances the Court of Justice considered a sale of shares as a "non-economic activity" outside the scope of the VAT Directive.

In the "Wellcome Trust" case[54] Wellcome Trust was a charitable trust established in the United Kingdom for the promotion of medical research that held part of the share capital of Wellcome plc, a pharmaceutical undertaking. The investment activities performed by Wellcome Trust consisted essentially in the acquisition and sale of shares and other securities with a view to maximizing the dividends and capital yields which were destined for the promotion of medical research. Wellcome Trust sold part of its shareholding in Wellcome plc. The Court of Justice concluded that the sale of shares made by Wellcome Trust was a "non-economic activity"[55]. In this regard, the Court pointed out that Wellcome Trust was forbidden to engage in commercial share-dealing activities[56] and was not allowed to have direct or indirect involvement in the management of the companies in which it held participation. The Court held that neither the scale of the share sale nor the employment of consultancy services can constitute criteria for determining that the sale of shares was an "economic activity"[57]. In conclusion, Wellcome Trust managed an investment portfolio in the same way as a private investor[58].

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[46] Ibid., paragraph 58
[47] C-29/08, "*Skatteverket v AB SKF*", 29 October 2009, ECLI:EU:C:2009:665
[48] Ibid., paragraph 53
[49] Ibid., paragraph 46
[50] Ibid., paragraph 47
[51] Ibid., paragraph 48
[52] Ibid., paragraph 51
[53] C-306/94, "*Régie dauphinoise - Cabinet A. Forest SARL v Ministre du Budget*", 11 July 1996, ECLI:EU:C:1996:290, paragraphs 18 to 22
[54] C-155/94, "*Wellcome Trust Ltd v Commissioners of Customs and Excise*", 20 June 1996, ECLI:EU:C:1996:243
[55] Ibid., paragraph 41
[56] Ibid. paragraph 35
[57] Ibid., paragraph 37
[58] Ibid., paragraph 36

In the "Kretztechnik" case[59] Kretztechnik AG was a company limited by shares established in Austria whose objects were the development and distribution of medical equipment. Kretztechnik increased its capital and made a public offer of the new shares in the Frankfurt Stock Exchange. The Court of Justice concluded that the issue of shares performed by Kretztechnik AG as a consequence of its public offer of the new shares was a "non-economic activity" outside the scope of the VAT[60]. In this sense, the Court mentioned that the nature of the issue of new shares does not differ according to whether it is carried out by a company in connection with its admission to a stock exchange or by a company not quoted on a stock exchange[61]. The Court made a reference to the "KapHag" case[62], in which it was decided that a partnership which admits a partner in consideration of payment of a contribution in cash does not effect to that partner a taxable supply. Based on such case, the Court argued that the same conclusion must be drawn regarding the issue of shares for the purpose of raising capital. From the issuing company's point of view, the aim is to raise capital and not to perform a supply. As far as the shareholder is concerned, payment of the sums necessary for the increase of capital is not a payment of consideration but an investment or an employment of capital[63].

Analysed together, the case-law of the Court of Justice seems to identify two scenarios in which the characterization of the operation with shares is clear and one situation in which a deeper consideration may be required in order to reconcile the positions expressed by the Court of Justice.

First, there is no doubt that where the sale of shares is made in the course of a business trading in securities, in which the taxable person draws a revenue on a continuing basis, such sale of shares shall be considered an "economic activity".

Second, it is clear that where the sale of shares does not imply the performance of a business intended to produce revenue on a continuing basis but, instead, is the consequence of the management of an investment portfolio in the same way as a private investor, such sale of shares shall be considered a "non-economic activity".

The situations in which the tax treatment may require a further analysis are those in which the operation of shares is made with the purpose of financing the economic activities of the taxable person.

The Court expressed in the "SKF" case that the sale of shares performed by AB SKF had to be considered an "economic activity" because it constituted the direct, permanent and necessary extension of the taxable activity since it was performed in order to obtain funds to finance other activities of the group. The same reasons may be applicable to support the conclusion arrived in the "BLP" case, in which the Court concluded that the sale of shares performed by BLP Group plc with the purpose of raising money to pay off debts shall be considered an economic activity.

On the other hand, the Court said in the "Kretztechnik" case that the issue of shares for the purpose of raising capital to finance the economic activities of Kretztechnik AG shall be considered a "non-economic activity" because the issue of the shares did not imply a supply for consideration, following the criteria of the "KapHag" case.

The only apparent difference between the operation with shares performed in the "SKF" case and the operation with shares made in the "Kretztechnik" case is that AB SKF sold shares that owned in other companies while Kretztechnik AG issued new shares in its own capital. Could it be argued that the nature of the operations is essentially the same?

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[59] C-465/03, "*Kretztechnik AG v Finanzamt Linz*", 26 May 2005, ECLI:EU:C:2005:320
[60] Ibid., paragraph 36
[61] Ibid., paragraph 21
[62] C-442/01, "*KapHag Renditefonds 35 Spreecenter Berlin-Hellersdorf 3. Tranche GbR v Finanzamt Charlottenburg*", 26 June 2003, ECLI:EU:C:2003:381, paragraph 38
[63] C-465/03, "Kretztechnik AG v Finanzamt Linz", 26 May 2005, ECLI:EU:C:2005:320, paragraph 26

Under the VAT Directive, the sale of shares is considered a supply of services. That is so because it is a transaction which does not constitute a supply of goods in the terms of Article 24, VAT Directive[64]. Following the approach of the "Kretztechnik" case, both AB SKF and Kretztechnik AG exchanged shares for money with the same purpose: to finance their economic activities.

The Court makes a distinction between these two cases. According to the Court, AB SKF made a supply of services (shares in other companies) regarding which it received a consideration (the price of the shares). On the other hand, Kretztechnik AG also did not make a supply of services (it issued shares in its own capital) and, instead of receiving a consideration, it raised capital (the capital contribution).

Continuing with the reasoning contained in the "Kretztechnik" case, the above distinction appears less clear from the perspective of the purchaser of the shares. As far as the persons that acquired the shares in Kretztechnik AG and those who purchased the shares that AB SKF held in other companies are concerned, the payments they made were not a consideration for a service but an investment of capital. In both cases, these persons made an investment in securities regarding which they expect to collect a dividend in the future. The difference between a capital contribution (in the case of an investment in Kretztechnik AG) and a purchase price (in the case of an investment in the shares owned by AB SKF) seems irrelevant from the perspective of the investor.

It is neither easy to observe the difference between these two scenarios applying the approach of the "SKF" case. The Court stated in such case that the operation with shares made by AB SKF in order to obtain funds to finance its economic activities shall be considered an extension of such economic activities. Following the same reasoning, it may be legitimate to wonder whether the raising of funds made by Kretztechnik AG to finance its economic activities through an increase of capital and issue of new shares should also be considered an extension of its economic activities.

3.4 Conclusions

Based on the above mentioned analysis, the conclusions regarding the circumstances under which a sale of shares shall be considered as an "economic activity" or a "non-economic activity" can be summarized as follows:

- An operation with shares shall be considered an "economic activity" where:

  - The sale of shares is made in the course of a business trading in securities, in which the taxable person draws a revenue on a continuing basis.

  - The sale of shares constitute the direct, permanent and necessary extension of the taxable activity. One situation in which this scenario is verified occurs where the sale of shares was performed in order to obtain funds to finance economic activities of the taxable person.

- An operation with shares shall be considered a "non-economic activity" where:

  - The sale of shares does not imply the performance of a business intended to produce revenue on a continuing basis but, instead, is the consequence of the management of an investment portfolio in the same way as a private investor.

  - There is an issue of new shares with the purpose of raising capital to finance the economic activities of the taxable person.

[64] As it was acknowledged by the Court of Justice in C-465/03, "*Kretztechnik AG v Finanzamt Linz*", 26 May 2005, ECLI:EU:C:2005:320

4. Analysis of the third question: The concept of a "direct cost" and an "overhead"

4.1 Overview

The third issue that shall be addressed in our analysis is to determine the nature of the expenses incurred in connection with the sale of shares, in order to determine if the input VAT paid with respect to such expenses is deductible or not.

In this regard, the case-law of the Court of Justice makes a distinction between expenses that are considered a "direct cost" of a certain output and expenses that are considered an "overhead" of the business of the taxable person.

If the expenses are regarded as a "direct cost" of a specific output, the input VAT paid with respect to such expenses can only be deductible if the mentioned output is subject to taxation. Accordingly, the input VAT is not deductible if the expenses are considered a "direct cost" of an output which is exempt or out of scope[65]. As it was explained in the prior point, a sale of shares can only be considered an operation exempt or out of scope. Consequently, where the expenses incurred in connection with the sale of shares are considered a "direct cost" of such output the input VAT paid with respect to the mentioned expenses is not deductible.

If the expenses are regarded as an "overhead" of the business of the taxable person, the input VAT paid with respect to such expenses would be totally or partially deductible, depending on whether the expenses are attributable only to activities subject to taxation or are also connected with exempt and / or out of scope activities[66], as it will be analysed in detail below.

4.2 The alleged conflict between the consumption-based and the economic-based approach

Ramsdahl Jensen and Stensgaard[67] have identified two different approaches used by the Court of Justice in order to characterize expenses as a "direct cost" or an "overhead": The economic-based and the consumption-based approach. We will address the merit of this categories and whether there is a current conflict between them in the following points.

4.2.1 The consumption-based approach

The consumption-based approach is derived from a literal interpretation of the Article 168(a), VAT Directive, which provides that input VAT is deductible "*In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person*".

The reasoning behind the consumption-based approach is that expenses are deductible only where they are immediately consumed in connection to an identifiable and specific taxable transaction. Under this approach, an input that is consumed in order to perform a supply that is not subject to taxation would not be deductible, even if it is possible to identify an economic link between such input and an economic activity carried out by the taxable person that is subject to taxation.

This position is contained in the decision issued by the Court of Justice in the "BLP" case[68]. BLP Group plc was a company established in the UK carried out the following activities: a) Holding activities, b)

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[65] C-4/94, "*BLP Group plc v Commissioners of Customs & Excise*", 6 April 1995, ECLI:EU:C:1995:107, paragraph 28

[66] C-408/98, "*Abbey National plc v Commissioners of Customs & Excise*", 22 February 2001, ECLI:EU:C:2001:110, paragraph 42

[67] "*The direct and immediate link test regarding deduction of input VAT: a consumption-based test versus an economic-based test?*" - Dennis Ramsdahl Jensen and Henrik Stensgaard, World Journal of VAT/GST Law, (2014) Volume 3 issue 2

[68] C-4/94, "*BLP Group plc v Commissioners of Customs & Excise*", 6 April 1995, ECLI:EU:C:1995:107

Management activities, and c) Services activities. In 1989 BLP Group plc purchased the 100% of the share capital of Berg Mantelprofilwerk GmbH, a company established in Germany. In 1991 BLP Group plc sold 95% of the share capital of Berg Mantelprofilwerk GmbH and used the money raised to pay off debts. BLP Group plc paid professional services connected with the sale of the shares (merchant bankers, solicitors and accountants). The Tax Authority did not allow the deduction of the input VAT related to such services on the ground that the sale of shares was an exempt transaction and that, therefore, the services were not used for the purpose of taxed transactions. BLP Group plc argued that the input VAT paid with respect of these services shall be deductible because the services were linked to its taxed transactions. That is so because the sale of shares was made for the purpose of raising funds necessary for paying BLP Group plc's debts, which derived from its taxable transactions.

The Court of Justice decided in the "BLP" case that the expenses incurred by BLP Group plc did not give rise to deductible input VAT because the services paid were used for the purpose of an exempt transaction (i.e. the sale of the shares)[69]. In this regard, the Court argued that expenses used for exempt transactions are not deductible even if the ultimate purpose of the transaction is the carrying out of a taxable transaction. According to the "BLP" case the ultimate aim pursued by the taxable person is irrelevant in order to determine the deductibility of its expenses. The Court indicated in the paragraph 24 of its decision that if the contrary position were admitted, "*the authorities, when confronted with supplies which, as in the present case, are not objectively linked to taxable transactions, would have to carry out inquiries to determine the intention of the taxable person. Such an obligation would be contrary to the VAT system's objectives of ensuring legal certainty and facilitating application of the tax by having regard, save in exceptional cases, to the objective character of the transaction in question*".

4.2.2 The economic-based approach

The economic-based approach is based on the economic fact that suppliers of goods and services tend to incorporate the cost of the incurred related expenses in the price of the supplies that they perform. Following this criteria, where the costs are incorporated in the price of an identifiable and specific taxable transaction such costs are considered "direct cost" of such supply. On the other hand, where the costs are not incorporated in the price of an identifiable and specific taxable transaction but are costs that form part of the taxable person's economic activity, such costs are considered an "overhead".

In contrast with the consumption-based approach, under this criteria an input that is consumed in order to perform a supply that is not subject to taxation would still be deductible if such input is an "overhead" that can be attributed to an economic activity carried out by the taxable person that is subject to taxation.

The Court of Justice applied the economic-based approach in the decision issued in the "Abbey National" case[70]. Scottish Mutual Assurance plc was a life assurance company, which is a 100% subsidiary of Abbey National, which represents it for VAT purposes. In addition to its insurance activities, Scottish Mutual Assurance plc leased premises for professional or commercial use. Scottish Mutual Assurance plc. leased a building and then sub-leased it to commercial tenants. In 1992 Scottish Mutual Assurance plc sold its rights regarding the lease and the sub-lease to an independent company. The Tax Authority considered that the transfer of the rights regarding the lease and the sub-lease of the building constituted a transfer of a going concern and, therefore, it considered that no supply had taken place for VAT purposes. As a consequence of such conclusion, the Tax Authority did not allow the total deduction of the input VAT related to the professional services paid by Scottish Mutual Assurance plc for the purpose of the transfer of the lease.

In the "Abbey National" case the Court of Justice decided that the costs incurred in order to perform a transfer of going concern shall be considered part of the taxable person's overheads and thus in principle

[69] Ibid., paragraph 28

[70] C-408/98, "*Abbey National plc v Commissioners of Customs & Excise*", 22 February 2001, ECLI:EU:C:2001:110

have a direct and immediate link with the whole of his economic activity[71]. The expenses made in connection with such transfer may give rise to deductible input VAT as far as the transferred assets are linked to an economic activity subject to taxation. In the paragraph 28 of the "Abbey National" case the link between the expenses and the economic activity is determined through an economic test: "*in order to give rise to the right to deduct, the goods or services acquired must have a direct and immediate link with the taxable transactions, that the right to deduct the VAT borne by those goods or services presupposes that the expenditure incurred in acquiring them was part of the cost components of the taxable transactions. That expenditure must therefore form part of the costs of the output transactions which use the goods and services acquired*". Therefore, the expenses will be deductible if they are a cost component of an economic activity that is subject to taxation.

The situation addressed by the Court of Justice in the "Abbey National" case is similar to our subject matter. The object of study of this work are inputs consumed for the purpose of an identifiable and specific transaction (the sale of shares) which is not subject to taxation (because it is considered exempt or out of scope). In the "Abbey National" case the expenses were also consumed in connection to an identifiable and specific transaction (the transfer of going concern) which was not subject to taxation (because the Member State involved had opted to exercise the option provided by Article 19, VAT Directive).

The consumption-based approach used by the Court of Justice in "BLP" case would lead to the conclusion that the expenses connected with sales of shares would not be deductible under any circumstance. The criteria of the "BLP" case would also make impossible the deductibility of the expenses related to the transfer of going concern involved in the "Abbey National" case.

On the other hand, the economic-based approach can lead to a different conclusion: The cost will be deductible, or not, depending on whether it is a component of the price of an output (specific transaction or activity as a whole) that is subject to taxation. Thus, even if the input is consumed to perform a supply not subject to taxation (like a sale of shares or a transfer of going concern), such input shall still be deductible if it is a cost component of an economic activity as a whole that is subject to taxation.

The Court of Justice also applied the economic-based approach in the "Cibo" case[72]. Cibo Participations SA was a company established in France that acquired significant shareholdings in three undertakings. Cibo Participations SA paid certain services in connection with the acquisition of the shares. As a consequence of such acquisition the chairman of Cibo Participations SA became the chairman of the three undertakings. In addition, Cibo Participations SA provided to the three undertakings certain professional services (auditing of the companies, assistance with the negotiation of the purchase price of the shares, organising the take-over of the companies and legal and tax services). The Tax Authority did not allow the deduction of the input VAT paid by Cibo Participations SA in connection with the services used for the purpose of the acquisition of shares. In this regard, the Tax Authority argued that the services paid in connection to the acquisition of shares were not used for the purpose of a taxed transaction. The Tax Authority held that the costs of the acquisition of the shareholdings merely relates to the holding of shares and the receipt of dividends, which are activities that fall outside the scope of VAT.

In the "Cibo" case the Court of Justice concluded that the expenditure incurred with respect to the acquisition of shareholdings in the undertakings formed part of the general costs that had, in principle, a direct and immediate link with the business as a whole[73]. Consequently, the input VAT paid by Cibo Participations SA was deductible provided that it was connected with an economic activity that gave the right of deduction. Such link was described by the Court of Justice based on the economic-based approach, indicating in the paragraph 33 that the costs of the services paid by Cibo Participations SA

[71] Ibid., paragraph 41
[72] C-16/00, "*Cibo Participations SA v Directeur régional des impôts du Nord-Pas-de-Calais*", 27 September 2001, ECLI:EU:C:2001:495
[73] Ibid., paragraph 35

"*…are part of the taxable person's general costs and are, as such, cost components of an undertaking's products. Such services therefore do, in principle, have a direct and immediate link with the taxable person's business as a whole*".

The economic-based approach was also used in the already mentioned "Kretztechnik" case[74]. In this regard, the Court of Justice indicated that the issue of shares for the purpose of raising capital to finance the economic activities was made for the benefit of the economic activity of Kretztechnik AG in general and that the services consumed in order to issue the new shares constituted an "overhead" which was a component of the price of the products supplied by the company[75]. Consequently, the input VAT paid by Kretztechnik AG was at least partially deductible.

It is also important to make a reference to the "SKF"[76] case, were the Court of Justice explained in the paragraph 60 that "*…there is a right to deduct when the input transaction subject to VAT has a direct and immediate link with one or more output transactions giving rise to the right to deduct. If that is not the case, it is necessary to examine whether the costs incurred to acquire the input goods or services are part of the general costs linked to the taxable person's overall economic activity. In either case, whether there is a direct and immediate link will depend on whether the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities*".

The Court of Justice also applied this criteria in the "X BV" case[77]. Company X was owner of 30% of the shareholding of Company A and it provided management services to such company. The remaining shares of Company A were held by other three undertakings. Company X and the rest of the shareholders decided to sell their shareholdings in Company A. Company X sold its shareholding in Company A and incurred expenses in connection with such transaction. The Tax Authority did not allow Company X to deduct input VAT in connection with the sale of shares. The Court of Justice concluded that the transfer of shares performed by Company X was an exempt transaction under Article 135(f), VAT Directive[78]. Then the Court applied in the paragraph 56 of the judgement the economic-based approach in the following terms: "*Since the disposal of shares at issue in the main proceedings must be categorised as an exempt transaction under Article 13B(d)(5) of the Sixth Directive, a right to deduct will exist only if the cost of the services supplied to X in relation to that disposal is part of the general costs relating to its overall economic activity, without being incorporated in the sale price of those shares*".

4.2.3 Did the Court ever return to the "BLP" case?

It is clear that there is a clash between the two approaches. Under the consumption-based approach, expenses that are consumed to perform a sale of shares cannot give rise to deductible input VAT under any circumstance. On the other hand, following the economic-based approach, an input consumed in connection with a sale of shares can give rise to deductible input VAT where such input is a cost component of an economic activity subject to taxation.

This conflict could lead us to the conclusion that the case-law of the Court of Justice is not completely coherent regarding this issue and that, therefore, there is a current situation of uncertainty derived from a clash between the economic-based and the consumption-based approach. A possible alternative interpretation could be that one approach has been overcome by the other and that there is not a current conflict but a replacement of criteria or, in other words, an evolution in the position of the Court of Justice regarding this issue.

[74] C-465/03, "*Kretztechnik AG v Finanzamt Linz*", 26 May 2005, ECLI:EU:C:2005:320
[75] Ibid., paragraph 38
[76] C-29/08, "*Skatteverket v AB SKF*", 29 October 2009, ECLI:EU:C:2009:665
[77] C-651/11, "*Staatssecretaris van Financiën v X BV*", 30 May 2013, ECLI:EU:C:2013:346
[78] Ibid., paragraph 56

We understand that there are arguments to sustain that the consumption-based approach has been overcome by the economic-based approach and that the conflict described above is not a current contradiction of the law as it stands today. In this regard, is important to take into account that there is no clear indication that the Court of Justice has ever applied the consumption-based approach during the last two decades and that there are several cases in which the Court applied the economic-based approach during that period, which were mentioned above[79].

The Court of Justice applied the consumption-based approach to decide the "BLP" case on April, 6, 1995. It has been argued[80] that the Court used again the consumption-based approach in the decision of the "Becker" case[81]. Mr Becker was the majority shareholder of A-GmbH, a company established in Germany. A-GmbH had two directors, one of which was Mr Becker, and carried out construction works that were subject to VAT. Under domestic tax law, Mr Becker and A-GmbH were treated as one single taxable person, and Mr Becker took responsibility for the fiscal obligations of the group. Criminal proceedings were initiated against Mr Becker and the other Director of A-GmbH. The local authorities alleged that Mr. Becker had made payments that were likely to be regarded as "bribery" or "aiding and abetting". Such payments allegedly benefited A-GmbH because they allowed the company to obtain confidential information concerning tenders submitted by competing undertakings in connection with a construction contract. The legal services regarding the criminal proceedings of Mr Becker were paid by A-GmbH. The tax authority did not allow the deduction by A-GmbH of the input VAT paid in connection with the legal services provided to Mr Becker. In this regard, the tax authority argued that the legal services did not have a direct and immediate link with an output transaction that gave right of deduction.

In the "Becker" case the Court of Justice decided that A-GmbH did not have the right to deduct the input VAT paid in connection with the legal services provided to Mr. Becker regarding the criminal proceedings[82].

Did the Court of Justice arrive to the conclusion that the expenses incurred did not have a direct and immediate link with the economic activity of A-GmbH based on the consumption-based approach or the economic-based approach?

A decision founded on the economic-based approach would have held that the legal services provided to Mr. Becker were not a cost component of the price of an identifiable and specific taxable supply or of an economic activity as a whole carried out by A-GmbH. On the other hand, a judgement in accordance with the consumption-based approach would have indicated that the legal services provided to Mr. Becker were not immediately consumed in connection to an identifiable and specific taxable supply of A-GmbH.

We understand that none of these two approaches were applied by the Court of Justice to conclude that the input VAT paid in connection with the mentioned legal services was not deductible. Instead of that, the Court applied another criteria based on the reasoning that an expense cannot give the right of deduction where the taxable person would have incurred it anyway, even if he had not exercised a taxable economic activity.

In this regard, the Court mentioned in the "Becker" case that the legal expenses of Mr. Becker could not be justified on reasons connected with the economic activities of A-GmbH. The Court considered

[79] The fact that the criteria of the "BLP" case has been left behind by the Court is clearly mentioned in "*European Union - A Recipe for Chaos*" - John Watson, Tom Cartwright and Eleanor Dixon, International VAT Monitor, 2010 (Volume 21), No. 3. Published online: 03 May 2010. See point 4.3

[80] "*The direct and immediate link test regarding deduction of input VAT: a consumption-based test versus an economic-based test?*" - Dennis Ramsdahl Jensen and Henrik Stensgaard, World Journal of VAT/GST Law, (2014) Volume 3 issue 2, page 75

[81] C-104/12, "*Finanzamt Köln-Nord v Wolfram Becker*", 21 February 2013, ECLI:EU:C:2013:99

[82] Ibid., paragraph 33

that the expenses were justified on private reasons unrelated with the economic activity of the company. That is, the interests of Mr. Becker.

Accordingly, the Court argued in paragraphs that "*the supply of services by lawyers at issue in the main proceedings sought directly and immediately to protect the private interests of the two accused* (Mr. Becker and the other Director) *who were charged with offences relating to their personal behaviour*"[83]. Following the same line of thought, the Court mentioned that "*the criminal proceedings were brought against them solely in a personal capacity, and not against A* (A-GmbH), *although proceedings against A* (A-GmbH) *would also have been legally possible*"[84]. Moreover, the Court explained that "*there is no legal link between the criminal proceedings and A* (A-GmbH), *and those services must therefore be considered to have been performed entirely outside A's taxable activities*"[85].

It is apparent that the Court of Justice did not apply the economic-based approach in the "Becker" case since there is no reference regarding whether the legal services formed part, or not, of the cost components of the outputs of A-GmbH.

The straight application of the consumption-based approach is also absent in this case. The Court did not say, as it was argued in the "BLP" case, that the expenses were not deductible because it was only relevant the immediate purpose of consumption and that the ultimate aim of the expenses is irrelevant. If that were the case, the Court would have simply mentioned that the legal expenses of Mr. Becker were immediately consumed in connection to an identifiable and specific action (the criminal proceedings against Mr. Becker) that was not a taxable supply of A-GmbH and that the discussion about whether the ultimate purpose of such legal services was the performance of the economic activity as a whole of A-GmbH was of no consequence. Instead of that, the Court did expressly analyse whether there was an ultimate link between the legal services and A-GmbH's economic activity as a whole and concluded that there was not such connection in the case. The ultimate purpose of the expenses is irrelevant for the consumption-based perspective contained in the "BLP" case. If the Court analysed such element, it must mean that the Court did not follow such approach in its decision.

It is relevant to mention that, in a recent opinion, the Advocate General Kokott has acknowledged that the case-law of the Court of Justice has evolved from the purely consumption-based approach of the "BLP" case[86] and that the current case-law requires that the expenses incurred must be a cost component of taxable supplies[87]

We understand that there are arguments to conclude that the Court of Justice did not return to the criteria of "BLP" in the "Becker" case. Instead of that, what the Court did was to apply a casual test based on the idea that expenses justified in private interests which are outside the economic activities of the taxable person cannot give rise to right of deduction. This criteria works as a minimum threshold that shall be passed before the application of the economic-based test. In other words, the "Becker" case proposes a two steps deductibility test:

> - First, it is necessary to determine if the taxable person would have incurred the expenses anyway, even if he had not exercised a taxable economic activity. If the answer to this first question is affirmative, the expenses are not deductible because they are justified in private interests which are outside the economic activities of the taxable person.

[83] Ibid., paragraph 30
[84] Ibid, paragraph 30
[85] Ibid, paragraph 30
[86] C‑126/14, "*Sveda v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos*", Opinion of AG of 22 April 2015, ECLI:EU:C:2015:254, paragraphs 32 and 33
[87] Ibid., paragraph 34

- Second, if the expenses are not justified in private interests, it is necessary to determine if the expenses are a cost component of an specific supply (i.e. a direct cost) or an economic activity as a whole (i.e. an overhead).

The way in which the arguments of the "Becker" case are expressed indicates that this "private interest" test does not replace or contradicts the economic-based approach but, instead of that, it complements such criteria.

The Court began its reasoning in the "Becker" case with references to the economic-based test as it was expressed in the "Kretztechnik" case and the "Abbey National" case, among others[88]. These paragraphs are a clear indication that the Court is still acknowledging the validity of this approach. However, the Court does not move forward to decide the case based on the cost component attribution of the expenses. Instead of that, the Court makes a reference to the "Investrand" case[89].

Investrand BV, a company established in The Netherlands, owned 43.57% of the shares in Cofex BV, a clothing business. Investrand BV sold its shares in Cofex BV to Hi-Tec Sports plc. The payment of the price of the sale of shares was agreed as follows: a) A fixed sum was paid upon the sale; and b) A further sum was going to be paid latter, based on the profits made by Cofex BV in the period between 1989 and 1992. When the sale of the shares was performed, Investrand BV was a pure holding company. Only beginning in 1993 Investrand BV started to provide management services to Hi-Tec Sports plc. Investrand BV and Hi-Tec Sports plc had a legal dispute regarding the calculation of the sum based on the profits obtained by Cofex BV. Investrand BV deducted the input VAT connected with the legal expenses of such dispute.

In the "Investrand" case the Court of Justice decided that the legal expenses incurred by Investrand BV did not give rise to deductible input VAT[90]. In this sense, the Court, after making reference to the case-law in which the economic-based test was applied, argued that the expenses could not be attributed to an economic activity of Investrand BV using the "private interest" test referenced above[91]. In other words, the Court concluded that Investrand BV would have incurred the legal expenses anyway, even if such company had not exercised a taxable economic activity.

The "private interest" test is clearly exposed in the paragraph 32 of the decision, where the Court argued that "*No document in the case would support an assertion that, had it not carried out economic activities which were subject to VAT as from 1 January 1993, Investrand would not have obtained the advisory services at issue in the main proceedings. It thus appears that, whether or not it carried out such activities as from that date, Investrand would have obtained those services with a view to safeguarding the financial consideration for the sale of shares to Hi-Tec Sports which took place in 1989*". In conclusion, Investrand BV only protected its assets as a private shareholder would have done. Therefore, Investrand BV incurred the expenses to pursuit a private interest, instead of an economic activity that could give right of deduction.

This same reasoning was later applied in the "Becker" case, where the Court said in the paragraph 29 that "*the fact that the existence of the direct and immediate link between a supply of services and the overall taxable economic activity must be determined in the light of the objective content of that supply of services does not preclude that the exclusive reason for the transaction at issue can also be taken into account, since that reason must be considered as a criterion for determining the objective content. Where it is clear that a transaction has not been performed for the purposes of the taxable activities of a taxable person, that transaction cannot be considered as having a direct and immediate link with those activities within the meaning of the Court's case-law, even if that transaction would, in the light*

[88] C-104/12, "*Finanzamt Köln-Nord v Wolfram Becker*", 21 February 2013, ECLI:EU:C:2013:99, paragraphs 19 to 22
[89] C-435/05, "*Investrand BV v Staatssecretaris van Financiën*", 8 February 2007, ECLI:EU:C:2007:87
[90] Ibid., paragraph 38
[91] Ibid., paragraph 33

of its objective content, be subject to VAT". Based on this position, the Court then argued that "*the supply of services by lawyers at issue in the main proceedings sought directly and immediately to protect the private interests of the two accused* (Mr. Becker and the other Director) *who were charged with offences relating to their personal behaviour*" and that no criminal charges were brought against A-GmbH, even when that would also have been also possible.

This position lead to the conclusion that, irrespective of whether the expenses were a cost component of taxable supplies, the legal expenses would have been incurred anyway to protect the personal interest of the two partners of A-GmbH (one of which was Mr. Becker) and, therefore, the expenses do not pass the minimum threshold of the "private interest test" established by the Court of Justice in the "Investrand" case.

In conclusion, a careful analysis of the case-law shows that the Court has not returned to the consumption-based approach of the "BLP" case in the last two decades. During such period, the prevailing criteria for the attribution of deductible expenses was the economic approach, based on the cost components of taxable supplies and economic activities. The economic-based approach has been complemented with a "private interest" test in the "Investrand" and "Becker" case, which works as a minimum threshold that has to be passed before considering the attribution of the cost components of the operations performed by the taxable person.

4.3 Conclusions

Based on the above mentioned analysis, the conclusions regarding the nature of the expenses incurred in connection with the sale of shares can be summarized as follows:

In order to determine whether the input VAT paid with respect to expenses connected with a sale of shares the following tests shall be applied:

> 1) "Private interest" test: First, it is necessary to determine if the taxable person would have incurred the expenses anyway, even if he had not exercised a taxable economic activity. If the answer to this question is affirmative, the expenses are not deductible because they are justified in private interests which are outside the economic activities of the taxable person.
>
> 2) Economic-based test: Second, if the expenses are not justified in private interests, it is necessary to determine if:
>
> > a) The expenses are a cost component of the specific supply (i.e. the sale of shares). Under such scenario, the expenses shall be considered a direct cost of a supply not subject to taxation and, therefore, will not give rise to deductible input VAT.
> >
> > b) The expenses are a cost component of an economic activity as a whole. Under such scenario, the expenses shall be considered an overhead of the business of the taxable person and the input VAT paid with respect to such expenses will be totally or partially deductible, depending on whether the expenses are attributable only to activities subject to taxation or are also connected with exempt and / or out of scope activities.

5. Analysis of the fourth and fifth questions: Under which circumstances an overhead gives right to a full or partial deduction and its consequences

5.1 Overview

The fourth and final issue that shall be addressed in our analysis is to determine under which circumstances those expenses that are considered overhead can give rise to total or partial deductibility of input VAT.

As it was mentioned in the prior section, if they pass the "private interest" test, the expenses connected with a sale of shares will be considered a direct cost or an overhead. Where the expenses are considered a direct cost of the sale of shares, they will not give rise to deductible input VAT. On the other hand, those expenses that are regarded as an overhead will give rise to full or partial right of deduction, as it will be analysed below.

An overhead is a cost that forms part of a taxable person's economic activity as a whole. Therefore, the total or partial deductibility of an overhead will be determined by the nature of the activity to which is attributed.

There is no doubt that an overhead will generate total right of deduction of input VAT when it is attributable to an economic activity as a whole which is fully subject to taxation. It is also clear that an overhead will give no right of deduction when is connected with an activity that is not subject to taxation because it is out of scope or exempt from VAT.

The following paragraphs will deal with the situations in which the overhead is attributable to an activity performed by a taxable person that involves both supplies subject to taxation and supplies which are not subject to taxation.

5.2. Attribution to an activity which involves both supplies which are exempt and supplies subject to taxation

As it was mentioned before, the performance of an "economic activity" is considered a transaction within the scope of VAT which can be subject to taxation or exempt. Expenses which are attributable to an economic activity that involves both exempt and taxed supplies are partially deductible following the pro rata calculation of Articles 173 and 174, and 175 of the VAT Directive.

In this regard, Article 173.1, VAT Directive provides that "*In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170, and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible. The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person*". Article 173.2 states that Member States can establish certain specific rules to perform the pro rata (e.g. they can authorize a proportion for each sector of the business or disregard the deductibility of small amounts of input VAT, among others).

Articles 174 and 175 establish the calculation of the pro rata, according to which the deductible proportion shall be made up of a fraction in which the numerator consists of the annual turnover attributable to transactions in respect of which VAT is deductible and the denominator consists of the annual turnover obtained from all the transactions performed by the taxable person.

The Court of Justice has consistently indicated that only the turnover derived from transactions within the scope of VAT shall be considered to perform the pro rata calculation of Articles 173, 174, and 175,

VAT Directive[92], which means that the pro rata is only applicable to determine the partial right of deduction regarding expenses which are attributable to both exempt and taxed transactions, excluding transactions out of scope.

As a consequence of such position the Court has concluded that the turnover derived from a sale of shares which constitute a non-economic activity out of the scope of VAT shall be excluded from the calculation of the pro rata[93].

On the other hand, when the sale of shares is regarded as an economic activity and, therefore, exempt from VAT under Article 135, VAT Directive[94], its turnover shall be included in the pro rata calculation of Articles 173 and 174, and 175 of the VAT Directive unless the sale of shares is considered incidental[95].

We wonder under which circumstances a sale of shares shall be considered as an economic activity excluded from the pro rata calculation for being regarded as "incidental". The Court held in the already mentioned "Régie Dauphinoise" case that financial transactions are not incidental when they constitute the direct, permanent and necessary extension of the taxable activity. Such position was later referenced by the Court in the "NCC" case[96]. The Court of Justice has also indicated in the "Nordania" case[97] that transactions are "incidental" when are of an unusual nature in relation to the normal activities of the taxable person concerned and do not therefore require the use of goods or services for mixed use in a way that is proportionate to the turnover which it generates.

As it was described above, the Court of Justice has held a broad definition of a sale of shares that is an economic activity, which includes not only those transactions made in the course of a business trading in securities but also such sales of shares which constitute the direct, permanent and necessary extension of the taxable activity. In connection with this point we refer to the concept of an operation with shares as an "economic activity" or a "non-economic activity" which was analysed in the Point 2.

5.3. Attribution to an activity which involves both supplies which are out of scope and subject to taxation

As we have seen in the prior point, the pro rata calculation provided by Articles 173 and 174, and 175 of the VAT Directive is not applicable for expenses that are partially attributable to out of scope supplies. Consequently, the VAT Directive does not contain specific deduction rules with respect to these situations.

This issue was addressed by the Court of Justice in the "Securenta" case[98]. Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG ("Securenta") was a company established in Germany which activities included the acquisition, management and sale of real estate, securities, financial holdings and investments of all types. Securenta issued shares and atypical silent partnerships with the purpose of collecting the capital necessary to finance its activities. The Tax Authority did not allow the full deduction of the input VAT paid related to expenditure connected with the issue of the atypical silent partnerships. Securenta challenged such decision on the ground that these expenses were deductible because they were aimed at the reinforcement of the company's capital and that such

[92] C-77/01, "*Empresa de Desenvolvimento Mineiro SGPS SA (EDM) v Fazenda Pública*", 29 April 2004, ECLI:EU:C:2004:243 , paragraph 72
[93] Ibid., paragraph 73
[94] C-29/08, "*Skatteverket v AB SKF*", 29 October 2009, ECLI:EU:C:2009:665
[95] Article 174(2)(c), VAT Directive
[96] C-174/08, "NCC Construction Danmark A/S v Skatteministeriet", 29 October 2009, ECLI:EU:C:2009:669, paragraphs 32 to 35
[97] C-98/07, "*Nordania Finans A/S and BG Factoring A/S v Skatteministeriet*", 6 March 2008, ECLI:EU:C:2008:144, paragraph 24
[98] C-437/06, "*Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG v Finanzamt Göttingen*", 13 March 2008, ECLI:EU:C:2008:166

transaction had benefited the company's economic activity in general. In other words, Securenta argued that the expenses incurred were an overhead attributable to an economic activity as a whole.

In the context of this case, the domestic court asked the Court of Justice how to determine the right to deduct input VAT where a taxpayer carries out both economic and non-economic activities. In this regard, the Court of Justice indicated in the paragraph 29 that "*it is apparent from the documents before the Court that the costs incurred by Securenta for the financial transactions at issue in the main proceedings were, at least in part, for the performance of non-economic activities*". Therefore, the Court concluded that "*To the extent that input VAT relating to expenditure incurred by a taxpayer is connected with activities which, in view of their non-economic nature, do not fall within the scope of the Sixth Directive, it cannot give rise to a right to deduct*"[99]. In other words, the Court acknowledged that the expenses connected with the issue of silent partnerships constituted an overhead of Securenta's business as a whole but, since that business included both transactions which are inside and outside the scope of VAT, the right of deduction could not be total.

Then the Court highlighted once again that the VAT Directive do not include rules of apportionment regarding these situations. Therefore, the Member States must exercise their discretion to implement a method that objectively reflects the part of the input expenditure actually to be attributed to economic activities and to non-economic activities. Finally, the Court suggested in the paragraph 38 that "*the Member States have the right to apply, as necessary, an investment formula or a transaction formula or any other appropriate formula, without being required to restrict themselves to only one of those methods*". This suggestions made by the Court has been criticized for not being an appropriate basis to attribute expenses between economic and non-economic activities[100].

We understand that the criteria expressed by the Court in the "Securenta" case does not lead to the automatic conclusion that where a taxable person carry out economic and non-economic activities the input VAT paid in connection with an overhead must always be partially deductible following rules of apportionment. Instead of that, we think that the full or partial deduction will depend on whether the expenditure is connected with both economic and non-economic activities or it is connected exclusively with only one type of activity. In other words, even if the taxable person carry out economic and non-economic activities, there shall be a full right of deduction when the overhead is exclusively connected with a defined part of the business that only involves economic activities[101].

In the "Securenta" case the expenses were related to both economic (management services and real state activities) and non-economic activities (pure holding activities) and there was no way exclusive attribution to any particular type. Therefore, the expenses were attributable to all the business activities of Securenta because the capital raised was used to finance the totality of its activities.

The situation is, however, different when the expenses are only attributable to a defined business that is an economic activity or when the taxable person only performs economic activities, as it was highlighted by Terra and Kajus[102]. Such were the scenarios analysed by the Court of Justice in the cases "Kretztechnik" and "Cibo".

In the "Kretztechnik" case[103], Kretztechnik AG was a company limited by shares established in Austria whose objects were the development and distribution of medical equipment. Kretztechnik increased its

[99] Ibid., paragraph 30

[100] "*Calculation of the (Pre-) Pro Rata under EU VAT Law*" - Mandy Gabriël - Herman van Kesteren, International VAT Monitor, 2011 (Volume 22), No. 5. Published online: 06 September 2011

[101] This fundamental distinction has been clearly made in "*European Union – The Right To Deduct under EU VAT*" - Ad van Doesum and Gert-Jan van Norden, International VAT Monitor, 2011 (Volume 22), No. 5. Published online: 06 September 2011. See point 4.1

[102] "*Introduction to European VAT (Recast)*" - Ben Terra - Julie Kajus, IBFD (Last Reviewed: 1 January 2015).- Ben Terra - Julie Kajus, Ch. 17.7, p. 1075

[103] C-465/03, "*Kretztechnik AG v Finanzamt Linz*", 26 May 2005, ECLI:EU:C:2005:320

capital and made a public offer of the new shares in the Frankfurt Stock Exchange. The Court of Justice concluded that the expenses connected with the sale of shares were an overhead that benefited the business activity of Kretztechnik AG as a whole[104]. Such expenditure gave rise to fully deductible input VAT because all the transactions undertaken by the taxable person in the context of his economic activity constituted taxed transactions.

In the "Cibo" case, Cibo Participations SA was a company established in France that acquired significant shareholdings in three undertakings. Cibo Participations SA paid certain services in connection with the acquisition of the shares. As a consequence of such acquisition the chairman of Cibo Participations SA became the chairman of the three undertakings. In addition, Cibo Participations SA provided to the three undertakings certain professional services (auditing of the companies, assistance with the negotiation of the purchase price of the shares, organising the take-over of the companies and legal and tax services). The Court of Justice concluded that the expenses connected with the acquisition of a shareholding in a subsidiary forms part of its general costs and therefore has, in principle, a direct and immediate link with its business as a whole.

There is an important distinction between "Cibo" and "Securenta": Cibo Participations SA acquired the shareholding of companies regarding which provided professional services, that is, an economic activity. Securenta, on the other hand, issued the silent partnerships in order to finance, at least partially, pure holding activities.

In the "Cibo" case, the Court, after acknowledging the expenses under analysis as an overhead, mentioned in the paragraph 35 that "*if the holding company carries out both transactions in respect of which VAT is deductible and transactions in respect of which it is not, it follows from the first paragraph of Article 17(5) of the Sixth Directive* [current Article 174, VAT Directive] *that it may deduct only that proportion of the VAT which is attributable to the former*". However, such reference does not modify the full deductibility of the expenditure incurred by Cibo Participations SA because we know that the apportionment method of Articles 173, 174, and 175, VAT Directive is only applicable to apportion expenses between taxed and exempt transactions and we also know that Cibo Participations SA did not perform exempt transactions.

In contrast with the "Securenta" case, the expenses paid by Cibo Participations SA were exclusively attributable to an activity as a whole of economic nature (the professional services rendered to the undertakings acquired). Therefore, such expenses gave right to fully deductible input VAT despite the fact that the taxable person also carried out non-economic activities (holding activities).

This criteria was already contained in the paragraph 39 of the "Abbey National" case[105] where the Court indicated that an expenditure is deductible where are "*costs of the goods and services which form part of the overheads relating to a part of a taxable person's economic activities which is clearly defined and in which all the transactions are subject to VAT, since those goods and services thus have a direct and immediate link with that part of his economic activities*".

This interpretation is also supported by the opinion issued by the Advocate General Mengozzi in the case in progress "Larentia + Minerva"[106]. The facts of these joined cases are similar to those involved in the "Cibo" case, as it is described below.

Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG ("Minerva") was a company established in Germany which held 98% of the shareholding of two subsidiaries, each of which operated a vessel.

[104] Ibid., paragraph 38

[105] C-408/98, "*Abbey National plc v Commissioners of Customs & Excise*", 22 February 2001, ECLI:EU:C:2001:110

[106] Joined cases C-108/14, "*Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG v Finanzamt Nordenham*" and C‑109/14, "*Finanzamt Hamburg-Mitte v Marenave Schiffahrts AG*", Opinion by AG of 26 March 2015, ECLI:EU:C:2015:212

Minerva provided administrative and business services to its subsidiaries and received a remuneration in consideration for such services. Minerva incurred expenses in connection with the collection of capital necessary to fund the acquisition of the above mentioned subsidiaries. The Tax Authority did not allow the full deduction of the input VAT paid with respect to such expenses on the ground that such expenses were in part attributable to the holding activities performed by Minerva, which is a non-economic activity.

On the other and, Marenave Schiffahrts AG ("Marenave") was a company established in Germany which issued shares with the purpose of raising capital that was used to acquire shares in four "limited shipping partnerships". Marenave incurred expenses in connection with the issue of new shares and paid VAT regarding such expenditure. Marenave provided business management services to such partnerships and received a remuneration for such services. The Tax Authority did not allow the deduction of the input VAT with respect to the expenses connected with the issue of new shares.

The Advocate General Mengozzi concluded, based on the criteria of the "Cibo" case, that where a mixed holding company incurs expenditure to raise funds to finance the acquisition of shares in subsidiaries regarding which the mixed holding company provides management services, the input VAT paid in connection with such expenditure shall be fully deductible because it has a direct and immediate link with that holding company's economic activity as a whole. In this regard, the Advocate General Mengozzi argued in paragraph 37 of his opinion that the approach taken in the judgment in "Cibo" "*means, first, that expenditure incurred by the holding company in respect of the acquisition of shareholdings in its subsidiaries is connected only with the holding company's economic activity and not, even partially, with its non-economic activity, which consists in managing shareholdings and, second, that the holding company is, in principle, permitted to deduct all the VAT paid on input transactions*".

Then the Advocate General explained in the paragraphs 38 and 39 that the reference made by the Court of Justice regarding the apportionment rules does not modify the analysis: "*This assessment is confirmed by paragraph 34 of the judgment in Cibo Participations, in which the Court refers to the system of deduction provided for in the first subparagraph of Article 17(5) of the Sixth Directive, the application of which relates only to the apportionment of VAT on input transactions used both for economic transactions, in respect of which VAT is deductible, and for transactions in respect of which VAT is not deductible, hence VAT on expenditure connected exclusively with economic activities. The expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management, within the meaning of the Court's case-law, is therefore attributed to that holding company's economic activity. Consequently, VAT paid on that expenditure will be subject to full deduction pursuant to Article 17(2) of the Sixth Directive unless the input economic transactions are exempt from VAT under the Sixth Directive, in which case the right to deduct will be based on the proportion method under Article 17(5) of that directive. (12) In my view, that is the proper interpretation of Cibo Participations*".

In conclusion, where the taxable person carry out economic and non-economic activities, the possible scenarios regarding the deductibility of overheads incurred would be as follows:

- If the overhead is attributable to the business activities of the taxable person in its totality and such business includes both economic and non-economic activities, an apportionment shall be made following the criteria of the "Securenta" case.

- If the overhead is attributable to the business activities of the taxable person in its totality and such business includes only economic activities, the input VAT paid is fully deductible, according to the "Kretztechnik" case.

- If the overhead is attributable exclusively to a defined part of the business that only involves economic activities of the taxable person, like the provision of professional services to other undertakings, the input VAT paid is fully deductible, even if the taxable person also carry out

non-economic activities, based on the “Cibo” case and the opinion issued by the Advocate General Mengozzi in the case in progress “Larentia + Minerva”.

6. Conclusion

As it was mentioned in the introduction, although the operations involved are relatively simple and recurrent, there is no simple and short answer to address the VAT treatment of expenses connected with transactions with shares.

The conclusion of this work is that there is no short or simple answer, but it is still possible to issue a coherent answer to our research question: It is possible to interpret the law as it stands today to obtain a coherent and cohesive legal framework for the treatment of expenses connected with the sale of shares. Such framework can be summarized as follows:

Question 1: Is the person that perform the sale of shares a "taxable person"?

If the person is a pure holding company, it will not be considered a "taxable person" and will not be able to deduct input VAT. If the person is a mixed holding company, it may be able to deduct input VAT depending on the features analysed below.

Question 2: Is such sale of shares an "economic activity", or a "non-economic activity"?

If the sale of shares is considered an "economic activity", it will be an exempt supply. If the sale of shares is considered a "non-economic activity", it will be a supply out of the scope of VAT.

Question 3: Would the taxable person have incurred the expenses anyway, even if he had not exercised a taxable economic activity?

If the taxable person would have incurred the expenses anyway, even if he had not exercised a taxable economic activity, the expenses cannot be attributed to an economic activity and the input VAT will not be deductible. If the taxable person would not have incurred the expenses if he had not exercised a taxable economic activity, the input VAT may be deductible, depending on the features analysed below.

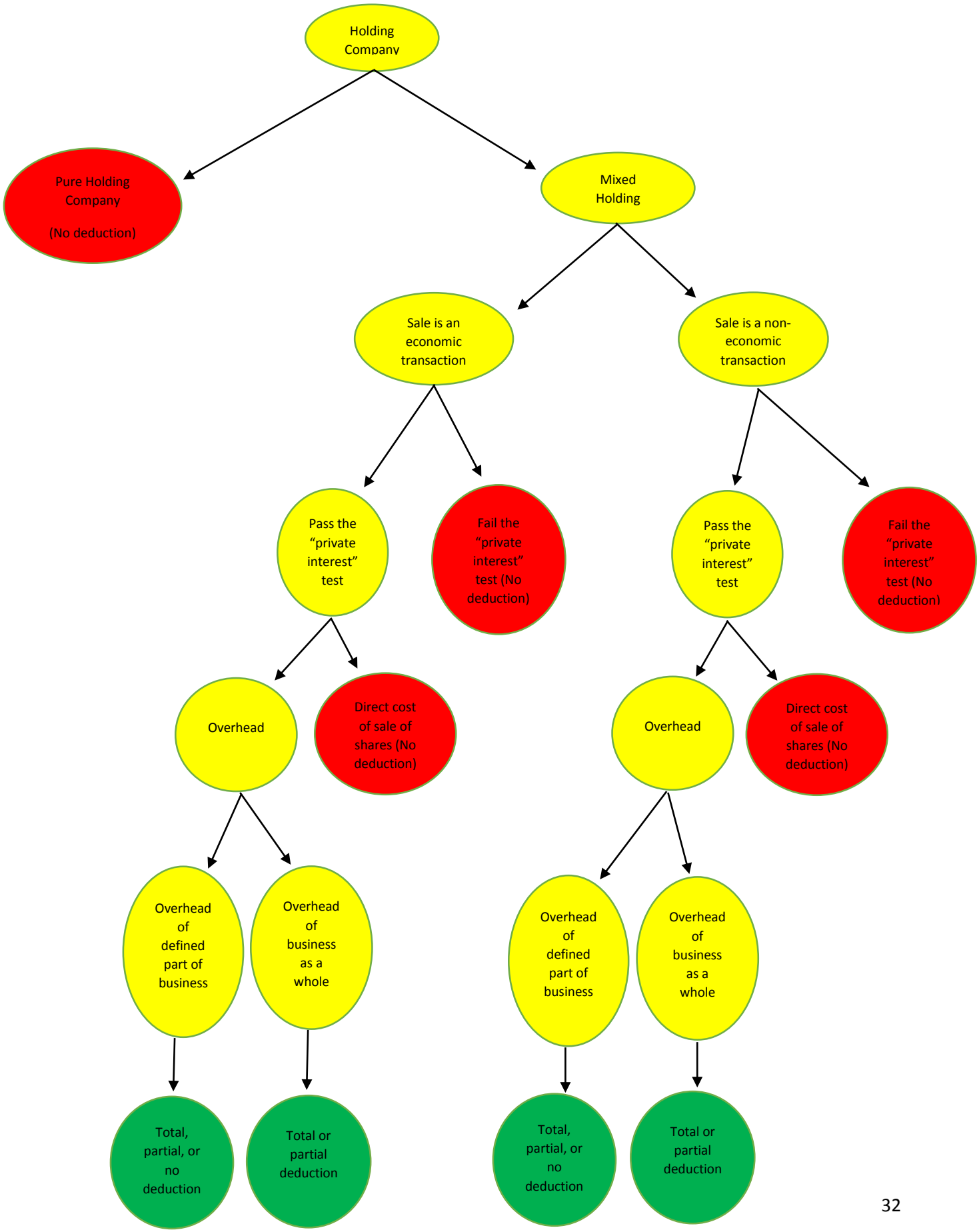
Question 4: In case that the answer to the prior question is negative, are the expenses derived from the sale of shares directly linked with the output of the sale of shares or are part of the overheads of the taxable person?

If the expenses are linked with the output of the sale of shares, they will be a direct cost of a supply not subject to taxation and, therefore, they will not give rise to deductible input VAT. If the expenses are part of the overheads of the taxable person, the input VAT may be deductible, depending on the features analysed below.

Questions 5 and 6: In case that the expenses derived from the sale of shares are part of the overheads of the taxable person, is such overhead attributable to the business as a whole or is an overhead of a clearly defined part of the business? Does the business as a whole or the clearly defined part of the business referenced in the prior question involve economic activities, non-economic activities or both?

The right of deduction will be total, partial or none depending on whether business regarding which the overhead is attributable includes economic, non-economic activities, or both. In case of mixed attribution, the pro-rata of Articles 173, 174 and 175, VAT Directive (in case of partial attribution to exempted supplies) or a specific calculation of attribution decided by the Member State (in case of partial attribution to out of scope supplies) will be applicable.

7. Graphic summary of the proposed framework of the law as it stands today



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