[2015] UKUT 0305 TCC

Appeal number: FTC/144/2013

VAT – input tax – endowment fund for benefit of university - investment activity of university not an economic activity and outside scope of VAT – deductibility of input tax on fund management fees - whether fund management fees are overheads – yes - whether fund management services have direct and immediate link with economic activity of university as a whole - yes - appeal dismissed

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Appellants

- and –

THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE

Respondents

Tribunal: Mr Justice Simon
Judge Greg Sinfield

Sitting in public in London on 17 March 2015

Sarabjit Singh, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Appellant

Andrew Hitchmough QC and Barbara Belgrano, counsel, instructed by [?], for the Respondents

DECISION

Introduction

1. This appeal concerns a claim by the Respondents ('the University') to deduct some of the VAT paid in respect of services supplied to the University by the fund managers of the Cambridge University Endowment Fund ('the Fund'). The claim related to two periods: the first from 1 April 1973 to 1 May 1997 and the second from 1 May 2006 to 31 January 2009. The Appellants ('HMRC') refused the claim and the University appealed to the First-tier Tribunal ('the FTT'). The parties agreed that the only issue in the appeal before the FTT, and before us, was whether the fees should be characterised as overhead expenditure and attributable to the University's economic activity as a whole, which would allow the University to deduct a proportion of the VAT. In a decision released on 19 August 2013, [2013] UKFTT 444 (TC), ('the Decision'), the FTT (Judge Michael Connell and Mr James Midgley) held that, although it was a separate activity, the investment activity was not carried out for its own sake but was undertaken for the benefit of the University's other activities and allowed the appeal. HMRC now appeal, with the permission of the FTT, against the Decision on the grounds that the FTT's analysis and conclusions are flawed. Save as otherwise indicated, paragraph references in square brackets in this decision are to the paragraphs in the Decision.

Background

2. The factual background to the appeal has never been disputed. We summarise the background which is more fully set out at [3] – [20] of the Decision.

3. The University is a charity whose main activity is the provision of education, which is an exempt supply for VAT purposes. The University also makes taxable supplies including commercial research, sales of publications, services to colleges, consultancy services, archaeological investigations, conservation and restoration, catering, accommodation, bar sales and the hiring of facilities and equipment.

4. The University receives donations and endowments that are invested in the Fund. The Fund invests in a range of securities including equities, property, bonds, cash deposits and other investments in the United Kingdom and elsewhere. The Fund generates income which the University uses to support all of its activities. It is common ground, as it was before the FTT, that the University's investment activity is not an economic activity in the VAT sense in its own right and thus the transactions of the Fund are outside the scope of VAT.

5. The parties agreed to treat information in relation to the yearly accounting period up to 31 July 2007 as indicative of the nature of the Fund's holdings. As at 31 July 2007, the value of the Fund was of the order of £991 million, made up of UK and overseas equities, fixed interest holdings, cash, property and private equity. The Fund generates income of more than £40 million per year which the University uses to support all of its activities. The income from the Fund meets approximately 6% of the University's operational expenditure.

6. The University instructs professional fund managers in the United Kingdom and the United States to manage the fund in order to obtain the best return on its capital. Since 1988, the Fund has been managed in the United Kingdom by Foreign and Colonial Management Limited ('F&CM'). Paragraph 3.01 of the letter of

engagement between the Fund and F&CM sets out the services that F&CM would provide:

> "The services we will provide will include management of the Fund on a full discretionary basis and, subject to the guidelines set out in Annexure 1 hereto, we shall have sole, absolute and unlimited discretion on your behalf to manage, buy, sell, retain, convert, exchange or otherwise deal in investments of any nature whatsoever as and when we shall think fit or otherwise act as we shall judge appropriate in relation to the Fund."

7. Under the terms of the letter of engagement, F&CM's fees for its fund management services are a percentage of the total value of the Fund. Some of the fees are chargeable to VAT at the standard rate.

8. A taxable person is entitled to deduct VAT incurred on supplies of goods and services ('input tax') that are used or to be used for the purposes of taxed transactions (ie supplies on which VAT is charged) and certain other transactions, not relevant to this appeal, in respect of which input tax is deductible. VAT incurred on goods and services that are used for the purposes of exempt supplies cannot be deducted. Where a taxable person makes both taxable and exempt supplies (ie is partially exempt), input tax is only deductible in so far as those goods and services are used for the purposes of taxed transactions. Input tax that is wholly attributable to taxed transactions is deductible and input tax that is wholly attributable to exempt supplies is not deductible. Where goods and services are used for both taxed and exempt transactions, the related input tax ('residual input tax') must be apportioned between exempt and taxed transactions. HMRC may agree or direct the use by a partially exempt taxable person of a method for the calculation of the deductible residual tax. This is called a partial exemption special method ('PESM').

9. As the University makes both taxable and exempt supplies, it is partially exempt. The University used a PESM, which had been agreed with HMRC, known as the Committee of Vice Chancellors and Principals Agreement ('the CVCP Agreement'). Historically, VAT incurred on the investment management fees paid to F&CM was not included in the CVCP calculation and the University did not recover any of it.

10. In 2009, KPMG LLP made a claim on behalf of the University for a repayment of input tax of £182,501 incurred on the investment management fees paid to F&CM during two periods, namely 1 April 1973 to 1 May 1997 and 1 May 2006 to 31 January 2009. The basis of the claim was that the input tax incurred on fund management charges should be treated as residual input tax and deductible in accordance with the CVCP Agreement because the income generated from the investment activities was only used to provide funds to support the normal activities (taxable and exempt) and non-business activities of the University. HMRC rejected the claim. In correspondence, both sides referred to two decisions of the Court of Justice of the European Communities, later the Court of Justice of the European Union, (together 'the ECJ'), namely Case C-465/03 *Kretztechnik AG v. Finanzamt Linz* [2005] 1 WLR 3755, STC 1118 ('*Kretztechnik*') and Case C-437/06 *Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG v Finanzamt Göttingen* [2008] STC 3473 ('*Securenta*'), which have been the focus of close analysis in this appeal.

11. We note that HMRC argued before the FTT that it was only where there is no supply capable of taxation or exemption within the VAT system that it becomes necessary to consider whether costs can be directly and immediately linked to the taxpayer's economic activity as a whole. This point was not pursued on appeal and is not discussed further.

Legislation

12. During the whole of the first period of the claim and the early part of the second period, the VAT legislation of the United Kingdom was derived from the provisions of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of Member States relating to turnover taxes - common system of value added tax: uniform basis of assessment, 77/388/EEC ('the Sixth VAT Directive'). With effect from 1 January 2007, the relevant directive was Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the Principal VAT Directive'). As there is no material difference between the relevant provisions of the Sixth VAT Directive and those of the Principal VAT Directive that apply to the different periods of the claim, we only set out the provisions of the Principal VAT Directive below.

13. Article 2(1) of the Principal VAT Directive provides that supplies of goods or services for consideration within the territory of a Member State by a 'taxable person acting as such' are subject to VAT.

14. Article 9 of the Directive defines taxable person as 'any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity'. Economic activity is also defined in Article 9 as follows:

> "Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity."

15. Article 168 of the Principal VAT Directive provides that a taxable person is entitled to deduct VAT due or paid in respect of supplies of goods or services to him from the VAT which he is liable to pay in so far as the goods and services are used for the purposes of the taxed transactions of the taxable person. There is no right to deduct VAT due or paid in respect of supplies of goods or services which are used by the taxable person for the purposes of exempt transactions.

16. Where goods or services are used by a taxable person both for transactions in respect of which VAT is deductible (eg taxable supplies) and for transactions in respect of which VAT is not deductible (eg exempt supplies), Article 173(1) of the Principal VAT Directive provides that only such proportion of the VAT as is attributable to the former transactions is deductible. The deductible proportion is determined in accordance with Articles 174 and 175 which provide a default turnover-based calculation. Article 173(2) allows Member States to adopt other measures to determine the deductible proportion. Article 173(2)(c) allows Member States to authorise or require a taxable person to make the deduction on the basis of the use made of all or part of the goods and services. The UK PESM regime is based upon Article 173(2)(c).

17. The UK has implemented the provisions of the Sixth VAT Directive and the Principal VAT Directive in the Value Added Tax Act 1994 ('VATA94') and regulations made under it. Section 24 VATA94 defines "input tax" as VAT on the supply of any goods or services to a taxable person which are used or to be used for the purpose of any business carried on or to be carried on by the taxable person. Section 24(5) provided at the time of the later part of the claim:

> "(5) Where goods or services supplied to a taxable person … are used or to be used partly for the purposes of a business carried on or to be carried on by him and partly for other purposes, VAT on supplies … shall be apportioned so that only so much as is referable to his business purposes is counted as his input tax."

18. Section 25(2) provides that a taxable person is entitled to deduct input tax allowable under section 26 from output tax due from the person at the end of each prescribed accounting period. Section 26 states that the amount of input tax for which a taxable person is entitled to credit is such input tax as is allowable by or under regulations as attributable to taxable supplies. Section 26(3) provides that where a taxable person makes both taxable and exempt supplies, HMRC shall make regulations for securing a fair and reasonable attribution of input tax to taxable supplies. Regulation 101 of the Value Added Tax Regulations 1995 ('VAT Regulations') provides that a taxable person is entitled to deduct provisionally the amount of input tax that is attributable to supplies in accordance with the Regulations. Regulation 101(2) sets out the default standard method of apportionment. Regulation 102 provides that HMRC may approve or direct the use by a taxable person of a method other than that specified in Regulation 101, ie a PESM.

The Decision

19. The FTT set out the parties' submissions fully before reviewing the principles established from the relevant case law authorities in detail. Having done so, the FTT stated their findings and conclusions succinctly at [78] - [80].

> "78. The purpose of a particular activity, and in this case the Appellant's investment activity which was not by itself an economic activity, must be looked at objectively to determine whether the costs associated with that activity qualify as overheads. If the purpose of the activity is to benefit the other economic activities then the costs of the non-economic activity can be regarded as overhead costs so that the input tax is deductible wholly or in part, depending on whether outputs include exempt as well as taxable supplies. The professional management and other costs associated with the investment activity formed part of the component parts of the Appellant's supplies. Although there were separate activities, the investment activity was effected for the benefit of the Appellant's other activities. There cannot be any other conclusion if the investment activity was not something which was carried on for its own sake. The costs of the investment activity were incurred solely for the benefit of the Appellant's economic activity in general, and objectively were not incurred for the purpose and benefit of its non-economic investment activity.
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> 79. In *BLP* the ultimate reason for the taxable supplies was the carrying out of a taxable transaction but this was only relevant because it related to an activity which the Appellant agreed was exempt. In that case the

> Appellant asked the court to "look through" an objective analysis of the cost of those taxable supplies to the ultimate intention of the taxpayer. Here they do not. We do not accept that it is necessary for the Appellant to demonstrate that the professional management fees burden *only* the cost of the economic activity. The investment activity was not an activity carried out for its own sake. Although the investment activity was a separate activity it was undertaken for the benefit of the Appellants other activities. Whether the investment activity operated as a subsidy or the costs thereof constituted an overhead is not in our view relevant.
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> 80. We agree with the Appellant that *Kretztechnik* has a wider application than that asserted by the Respondents. There is clearly a link between the Appellant's investment activity and its overall economic activity. Costs associated with the investment activity were in reality components of the price of the Appellant's research and publications on the one hand and educational and other exempt activities on the other. The fact that the investment activity may have raised, primarily, income rather than capital is in our view of no relevance."

Issue and summary of submissions

20. Both parties accepted that, in order to be entitled to deduct input tax, a taxable person must show either:

(1) a 'direct and immediate link' between a particular input transaction and a particular output transaction or transactions giving rise to the entitlement to deduct (see Case C-4/94 *BLP Group plc v Customs and Excise* [1995] STC 424 at 437 ('*BLP'*), paragraphs 18 and 19, and Case C-98/98 *Midland Bank plc v Customs and Excise* [2000] STC 501 ('*Midland Bank*') at 518, paragraph 20); or

(2) that the costs of the services in question are part of the taxable person's general costs ('overheads') and are, as such, components of the price of the goods or services that the taxable person supplies, thereby having a direct and immediate link with the taxable person's economic activity as a whole (see Case C-408/98 *Abbey National plc v Customs and Excise* [2001] STC 297 ('*Abbey National*') at 313, paragraph 35).

21. Neither party suggested that the services supplied by F&CM were directly and immediately linked to particular output transaction or transactions. The issue in this appeal is whether the fees paid by the University to F&CM for managing the Fund should be characterised as overheads and attributable to the University's economic activity as a whole, which would allow the University to deduct a proportion of the VAT paid on such fees in accordance with the CVCP Agreement, or are solely attributable to an activity that is outside the scope of VAT and thus not deductible.

22. Mr Sarabjit Singh, who appeared for HMRC, submitted that, in order to be regarded as overheads, the costs incurred in acquiring the input transactions must be cost components (in the sense of being incorporated in the price) of all the taxable person's economic activities. Putting it another way, the input transactions must 'burden' the cost of the taxable person's economic activity as a whole. Mr Singh contended that the costs of F&CM's investment management services do not burden the cost of all of the University's economic activities. He submitted that F&CM generates investment income from the Fund and that income subsidises the

University's economic activities, thereby reducing the cost to the University of making supplies of education, research, catering, bar sales and conferencing services. He submitted that, in principle, the costs of generating investment income from the Fund do not have a direct and immediate link with and cannot be cost components of the price (or burden the cost) of the University's economic activity as a whole. Mr Singh submitted that the correct analysis was that the costs of the investment management services are cost components of the price of the University's disposals of its investments for consideration and are thus directly and immediately linked with those disposals. He further contended that it is not permissible to 'look through' the disposals of investments for consideration in order to attempt to attribute the costs of the investment management services to the University's economic activity as a whole.

23. Mr Andrew Hitchmough QC, who appeared with Ms Barbara Belgrano for the University, submitted that *Kretztechnik* showed that the issue of deductibility in the case of transactions falling outside the scope of VAT (as here) is resolved by asking a simple question: for what purpose is the outside the scope activity carried out? Mr Hitchmough submitted that, in the present case, the answer is straightforward: the investment activity is not carried out for its own sake, but for the benefit of all of the University's activities. Mr Hitchmough contended that, as activity of the Fund benefited the University's activities in general, the fees paid by the University to F&CM for managing the Fund should be characterised as overheads and, 'as such', are a cost component of the University's taxable and exempt outputs.

Case law on overheads

24. We start by considering how 'overhead expenditure' has been interpreted and applied by the courts and then we discuss its application to the facts of this case.

25. The first reference to overhead costs by the ECJ in the context of VAT occurs in *BLP*. BLP was a holding company that sought to recover input tax incurred on the fees for professional services incurred in disposing of its shares in a German subsidiary. BLP argued that the VAT was deductible because the reason for the sale was to reduce debt that had arisen from its taxable transactions and that, therefore, the VAT was incurred for the purposes of its taxable transactions. The ECJ held that BLP was not entitled to deduct the input VAT paid for the services because they were used for an exempt transaction, even if the ultimate purpose of the transaction was the carrying out of a taxable transaction. One of the arguments that BLP put forward was that if it had taken out a bank loan, the VAT on the services of an accountant, required for obtaining that loan, would have been deductible in full and the principle of fiscal neutrality required the sale of shares to be treated the same way. The ECJ rejected that argument and observed, at paragraph 25, that:

> "It is true that an undertaking whose activity is subject to VAT is entitled to deduct the tax on the services supplied by accountants or legal advisers for the taxable person's taxable transactions and that if BLP had decided to take out a bank loan for the purpose of meeting the same requirements, it would have been entitled to deduct the VAT on the accountant's services required for that purpose. However, that is a consequence of the fact that those services, whose costs form part of the undertaking's overheads and hence of the cost components of the products, are used by the taxable person for taxable transactions."

26. It appears to us that, in the last sentence of paragraph 25 of *BLP*, the ECJ accepted that costs that form part of a taxable person's overheads are components of the cost of the taxable person's output transactions.

27. In *Abbey National*, a company, which was a subsidiary member of a banking group, carried on an insurance business and also held a number of let properties as investments. It sold a tenanted property in respect of which it had elected to waive exemption. The sale of the property was treated as the transfer of part of a business as a going concern which is neither a supply of goods nor a supply of services - see article 5 of the VAT (Special Provisions) Order 1995. The company, which was the representative member of the VAT group, reclaimed input tax on solicitors' fees in relation to the transfer. HM Customs and Excise (the predecessors to HMRC) issued an assessment to recover the input tax on the basis that, since a transfer of a going concern was not a supply for VAT purposes, the input tax in question could not be directly attributed to taxable supplies and had to be treated as residual input tax within the VAT Regulations. The company appealed and the High Court referred the case to the ECJ for a ruling on the interpretation of article 17(5) of the Sixth Directive.

28. The ECJ held that, as the sale of the property was not a supply, the various services acquired by Abbey National in order to sell it did not have a direct and immediate link with any output transactions giving rise to the right to deduct. That did not necessarily mean that Abbey National was not entitled to deduct the input tax on the services. The ECJ held at paragraphs 35 and 36:

> "35. However, the costs of those services form part of the taxable person's overheads, and as such are cost components of the products of a business. Even in the case of a transfer of a totality of assets, where the taxable person no longer effects transactions after using those services, their costs must be regarded as part of the economic activity of the business as a whole before the transfer. …
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> 36. Thus in principle the various services used by the transferor for the purposes of the transfer of a totality of assets or part thereof have a direct and immediate link with the whole economic activity of that taxable person."

29. The ECJ concluded at paragraph 40 that:

> "40. So if the various services acquired by the transferor in order to effect the transfer of a totality of assets or part thereof have a direct and immediate link with a clearly defined part of his economic activities, so that the costs of those services form part of the overheads of that part of the business, and all the transactions relating to that part are subject to VAT, he may deduct all the VAT charged on his costs of acquiring those services."

30. Although the ECJ in *Abbey National* left it to the national court to determine whether the criteria were satisfied in that case, the judgment shows that the costs incurred in disposing of all or part of a business as a going concern are overhead expenditure.

31. Kretztechnik AG was an Austrian company that manufactured ultrasound equipment and other medical technology products. All its supplies were chargeable to VAT and Kretztechnik was entitled to deduct all the input tax it incurred on goods and services acquired for the purposes of making those supplies. In 2000,

Kretztechnik decided to increase its issued share capital and become listed on the Frankfurt stock exchange. As a result, Kretztechnik incurred VAT on various services (advertising, agent's fees, legal and technical advice) supplied to it in connection with the share issue and admission to the stock market. Kretztechnik sought to deduct the input tax. The Austrian tax authority disallowed the deduction on the ground that the input tax was attributable to the issue of shares, which was an exempt supply. Kretztechnik appealed. The Austrian tax tribunal referred the case to the ECJ

32. The ECJ in *Kretztechnik* held that a share issue, whether or not carried out in connection with admission of the company concerned to a stock exchange, was outside the scope of VAT and was thus not a supply of services for VAT purposes. In relation to the deduction of input tax on the expenses of the share issue, Kretztechnik argued that, even if the input transactions were connected with the share issue and not with specific taxable transactions, the costs of those input transactions formed part of the overheads of the company and constituted components of the price of the products marketed by it. The Advocate General (Jacobs) accepted this argument and stated, at paragraphs 74 to 76 of his Opinion, that:

> "74. ... if the transaction with which the input is most closely linked is one which falls entirely outside the scope of VAT because it is in any event not a supply of goods or services, it is irrelevant for the purpose of determining deductibility. What matters is the link, if any, with such output supplies, and whether they are taxed or exempt.
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> 75. The question to be asked in Kretztechnik's case is therefore whether the capital raised by the share issue was used for the purposes of one or more taxed output transactions.
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> 76. It seems likely that the use of the capital – and the services connected with the raising of that capital – cannot be linked to any specific output transactions, but must rather be attributed to the company's economic activity as a whole. There can be no reasonable doubt that a commercial company which raises capital does so for the purposes of its economic activity."

33. The ECJ held at paragraphs 35 and 36:

> "… for VAT to be deductible, the input transactions must have a direct and immediate link with the output transactions giving rise to a right of deduction. Thus, the right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct …
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> 36. In this case, in view of the fact that, first, a share issue is an operation not falling within the scope of the Sixth Directive and, second, that operation was carried out by Kretztechnik in order to increase its capital for the benefit of its economic activity in general, it must be considered that the costs of the supplies acquired by that company in connection with the operation concerned form part of its overheads and are therefore, as such, component parts of the price of its products. Those supplies have a direct and immediate link with the whole economic activity of the taxable person …"

34. The ECJ held that it followed that a company which makes only taxable transactions is entitled to deduct all the VAT on the expenses and a company which

makes taxable and non-taxable transactions is entitled to deduct VAT in accordance with the partial exemption calculation in what is now Article 173 of the VAT Directive.

35. Mr Hitchmough submitted that, in *Kretztechnik*, the Advocate General and the ECJ recognised that, although the expenditure on the services in question in that case was incurred for the purposes of a transaction that was outside the scope of VAT, such transactions were irrelevant for the purposes of determining deductibility and should be ignored. In such circumstances, provided it could be established that the 'operation was carried out … for the benefit of [Kretztechnik's] economic activity in general', the expenditure was overhead expenditure and, 'as such', a cost component of Kretztechnik's taxable and exempt outputs. Mr Hitchmough contended that this meant that, in the case of transactions falling outside the scope of VAT, it was only necessary to ask what is the purpose of the outside the scope activity. If it is for the benefit of the taxable person's economic activity in general then it is overhead expenditure.

36. Mr Singh sought to distinguish the facts of *Kretztechnik* from those in this case. He submitted that Kretztechnik incurred input tax in relation to an activity (the share issue) outside the scope of VAT that raised capital for its business. That capital was used for the purposes of the company's economic activity, i.e. the making of taxable supplies which would generate income. The costs of raising the capital would be recovered from the price of the company's supplies of medical equipment and, therefore, those costs could be said to be cost components of and to have burdened all of the supplies of the business. This was to be contrasted with the position of the University and the outside the scope activities of the Fund. Mr Singh contended that the Fund generates income for the University by disposing of investments. He submitted that, unlike a capital-raising activity such as a share issue, which could not be carried out in isolation and would be in support of some economic activity, the disposal of investments could be carried out on its own, without any need for an associated economic activity. Mr Singh further contended that, unlike the costs of the share issue in *Kretztechnik*, the costs of disposing of investments held in the Fund:

> (1) could not be directly and immediately linked to the whole economic activity of the University as there was a chain-breaking event, namely the disposal of investments, between the costs and that activity; and/or
>
> (2) can be recovered from the income produced by doing so and therefore could not be said to be cost components of and to have burdened the price of all of the supplies made by the University.

37. Mr Singh stated that the costs of the share issue could be temporarily recovered from the proceeds of the share issue but contended that, in the long term, those costs would be recovered from Kretztechnik's income generating activity.

38. The reference to the chain-breaking event occurs not in *BLP* but in the Opinion of the Advocate General (Jacobs) in *Abbey National* at paragraph 35 where he said:

> "The reference to cost components in *BLP* is a reminder of the basic principle set out in art 2 of the First Directive: 'On each transaction, value added tax … shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components.' Thus, what matters is whether the taxed input is a cost component of a taxable output, not whether the most closely-linked transaction is itself

> taxable. As the Commission submitted at the hearing, the conclusion to be drawn from *BLP* … is that the question to be asked is not what is the transaction with which the cost component has the most direct and immediate link but whether there is a sufficiently direct and immediate link with a taxable economic activity. Indeed, it may be stressed that in that case the court was concerned with supplies which were not objectively linked to taxable transactions ... Nevertheless, it remains clear from *BLP* that the 'chain-breaking effect' which is an inherent feature of an exempt transaction will always prevent VAT incurred on supplies used for such a transaction from being deductible from VAT to be paid on a subsequent output supply of which the exempt transaction forms a cost component. The need for a 'direct and immediate link' thus does not refer exclusively to the very next link in the chain but serves to exclude situations where the chain has been broken by an exempt supply."

39. In referring to a chain-breaking event, Advocate General Jacobs was agreeing with the view expressed by the Advocate General (Saggio) in *Midland Bank* in paragraph 29 of his opinion when he said that there cannot be a "direct … link between two transactions where a third transaction takes place between them breaking the causal chain".

40. As *Abbey National* makes clear, the 'chain-breaking' effect of exempt supplies is that, where there is an exempt supply, input VAT on supplies that have a direct and immediate link with an exempt supply can never be deducted. The distinction between *BLP* and *Midland Bank* and the University's situation is that, in those cases, there was an exempt supply between the input transactions and the taxed transactions which broke the causal chain. In this case, the sales of investments held in the Fund are not supplies, exempt or otherwise, because the University's investment activity is not an economic activity for VAT purposes. The FTT noted this distinction at [64]. Mr Singh submitted that the FTT were wrong not to treat a non-economic activity, such as the University's investment activity, in the same way as an exempt supply. He contended that Case C-29/08 *Skatteverket v AB SKF* [2010] STC 419 ('*SKF*'), which we discuss below, shows that exempt supplies and transactions that are outside the scope of VAT, ie non-economic activities, are both chain-breaking events.

41. *Kretztechnik* was considered and applied by Blackburne J in the High Court in *Church of England Children's Society v Customs and Excise* [2005] STC 1644 ("*C of E Children's Society*"). One issue in that case was whether VAT paid by the Society on supplies of fundraising services should be treated in the same way as input tax on the Society's overheads in general, namely as residual input tax. The Society relied on *Kretztechnik*, which had been decided after the VAT and Duties Tribunal's decision in *C of E Children's Society*, to show that the Tribunal had been wrong to hold that, because the supplies of fundraising services related to the soliciting of donations which was not a taxable supply (or a supply at all) by the Society, the input tax on the fundraising services was not recoverable.

42. Blackburne J referred to various passages from the Opinion of the Advocate General and the judgment of the ECJ in *Kretztechnik* (including paragraph 36 of the judgment, set out above). He then accepted the submissions of counsel for the Society recorded at paragraph 28 as follows:

> "As *Kretztechnik* makes clear … once it is established that the transaction with which the fundraising services are most directly and

> immediately linked is not a supply at all, that link is irrelevant for the purpose of determining deductibility. What matters … is the link, if any, which the output supplies made by the Society have with the fundraising services and, if there is such a link, whether that supply is taxable or exempt. In other words, were the funds that were raised, ie the donations, used to any extent for the purposes of any taxable output transactions by the Society? If and to the extent that they were, the input tax on those services is deductible."

43. It is clear that Blackburne J in *C of E Children's Society* considered that it followed from *Kretztechnik* that input tax attributable to fund-raising services, where fundraising was outside the scope of VAT, was partly recoverable as the fundraising related to the Society's wider activities, which included the making of taxable supplies. Mr Singh submitted that this was an incorrect interpretation of *Kretztechnik*. He contended that the costs of obtaining donations could not be attributed to the Society's activities as a whole because those costs could be recovered from the increased funds and did not burden the cost of the Society's economic activities. In support of his view of *Kretztechnik*, Mr Singh relied on the decisions of the ECJ in *Securenta* and *SKF*, which we consider below. Mr Singh noted that the judgment in *C of E Children's Society* was given without the benefit of those decisions and asked us not to follow Blackburne J's decision.

44. *Kretztechnik* was also considered by Warren J in *University of Southampton v HMRC* [2006] STC 1389 ('*Southampton University*'). The issue in that case was whether Southampton University was entitled to deduct input tax incurred on the supply of goods or services to the University which were used for the purposes of publicly funded research, which was a non-business activity outside the scope of VAT. Warren J does not appear to have been referred to the judgment of Blackburne J in *C of E Children's Society* but nevertheless he cited the same paragraphs from the opinion of Advocate General and the judgment of the ECJ in *Kretztechnik*. Warren J then gave his analysis of *Kretztechnik* at paragraphs 24 to 28:

> "24. One sees in para 36, as with the Advocate General, a reference to the purpose for which the share issue was carried out. From that one can conclude, I consider, that although an objective approach must be adopted in relation to what is and what is not an economic activity, the purpose of particular activities which are not, by themselves, economic activities can be looked at to see if they qualify as overheads. If the purpose, at least if it is the sole purpose, of an activity is to benefit the other, economic, activities of the taxable person, then the costs of that first activity can be regarded as overhead costs so that the input tax is deductible (either in whole or in part depending on whether outputs include exempt, as well as taxable, supplies).
>
> 25. I will need to return to this case later. At this point, I simply observe that in *Kretztechnik* there were two factors identified in para 36 which led to the conclusion that the cost of the supplies to Kretztechnik formed part of its overheads and, as such, part of the component parts of its products: first, that the share issue was an operation not falling within the scope of the Sixth Directive (if it had done, there would have been a supply); and secondly, that that operation was carried out in order to increase its capital for the benefit of its economic activity (in the sense in which those words are used in the Sixth Directive).

26. The second factor is important: it was no doubt factually correct to describe the operation in that way (ie as being for the benefit of its economic activity) because economic activity was what Kretztechnik carried out and all that it carried out. It did not carry out other, non-commercial, activities having an object separate from that of the company's business: raising capital by issuing shares cannot sensibly be viewed as being an activity carried out, even in part, for its own sake. The costs of the operation (of issuing shares) were in those circumstances part of the company's overheads and 'therefore, as such, component parts of the price of its products' (see para 36 of the judgment). This makes perfectly good sense. If the company were asked 'Why are you spending this money on fees etc?' the answer would come 'In order to increase the capital, issue more shares and become listed'. That could prompt another question 'Why are you increasing capital, issuing more shares and becoming listed?' to which the answer would be 'Because we see that as the way to benefit our business' where the business referred to is the economic activity (in the sense of producing outputs) within the Sixth Directive. The answer would not be along the lines 'Because we see doing so as a worthwhile activity in its own right'. The position is really no different, in that sense, from internal marketing costs, for instance, the production in-house of advertising brochures. Although there is, in one sense, a separate activity - the production of brochures - that production is effected for the benefit, and only for the benefit, of the business; the cost of production is an overhead cost and therefore 'as such a component part' of the product's production. The advertising brochure is not something which is prepared for its own sake.

27. I do not read the decision in *Kretztechnik* as establishing any general proposition which goes further than this: that a cost will be an overhead where it is incurred solely (as was the case on the facts) for the benefit of the trader's economic activity in general. I add that, in principle, it should be possible to treat in the same way an apportioned part of a cost incurred partly in connection with business activities and partly in connection with non-business activities. But in that situation, the part of the overhead apportioned to the non-business activities does not come into account in the subsequent partial exemption calculations under arts 17 and 19 or reg 101.

28. The analysis, therefore, is this in relation to costs which are not directly reflected in the output (costs directly reflected in the output being eg typically costs of component parts of manufactured goods). Those costs are incurred in relation to an activity which by itself does not produce a supply but produces some other result (eg in *Abbey National*, the transfer of the going concern, in *Kretztechnik* the issue of shares and listing on the Frankfurt stock exchange). Since the purpose of achieving that result was (only) to benefit the economic activity in general of the taxable person, the cost incurred in producing that result is an overhead and therefore a component cost of the outputs. In this context, 'economic activity in general' must mean the making of taxable or exempt supplies. It is clear that the ECJ in *Kretztechnik* was using the phrase to mean economic activities which stood apart from the activities under consideration (ie the activities resulting in the share issue and listing). The question was whether the activity under consideration could be regarded as an overhead of something else (ie economic activities in general); it is meaningless to ask whether something is an overhead of itself."

45. Warren J's analysis did not assist Southampton University's case. In order to succeed in its appeal, the University needed to show that the VAT and Duties Tribunal erred in concluding that publicly funded research was a wholly distinct activity carried out its own sake. That was a finding of fact which Southampton University could only overturn on appeal on the restricted grounds set out in *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14, 36 TC 207. The University failed to do so. Accordingly, Warren J rejected the University's claim.

46. Mr Singh submitted that Warren J's approach as set out in paragraph 24 and the first sentence of paragraph 27 of *Southampton University* was wrong and should not be followed, since it failed to apply the ratio of the decision in *Kretztechnik*. Mr Singh contended that looking at whether a cost is incurred for the 'benefit' of the trader's economic activity in general is not the correct approach, as it ignores the question of whether a *BLP* chain-breaking event is present between the costs and the economic activity in general of the taxable person. He further contended that, since *Southampton University*, ECJ jurisprudence has moved on, notably in the decisions of the ECJ in *Securenta* and *SKF*, to which we now turn.

47. Securenta was a company that carried on the activities of acquiring, managing and selling real estate, securities, financial holdings and investments of all types. In order to raise the capital required to carry on these activities, Securenta issued shares and atypical silent partnerships. Securenta submitted that all the input tax that it had paid in respect of expenditure connected with the acquisition of new capital was deductible on the ground that the issue of shares increased the financial resources of the company for the benefit of its economic activity in general. The ECJ observed, in paragraph 26, that Securenta carried out three types of activities, namely: (i) non-economic activities that are outside the scope of VAT; (ii) economic activities that are within the scope of VAT but are exempt; and (iii) economic activities that are within the scope of VAT and are taxable. Having referred to *Abbey National* and *Midland Bank*, the ECJ held, in paragraphs 28 – 29:

> "28. In those circumstances, the input VAT paid in relation to the expenditure connected with the issue of shares or atypical silent partnerships can give rise to the right to deduct only if the capital thus acquired was used in connection with the economic activities of the person concerned. The Court has held that the deductions scheme laid down by the Sixth Directive relates to all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT …
>
> 29. In the main proceedings, as the national court has observed, the expenditure connected with supplies of services carried out in the context of the issue of shares and financial holdings was not solely attributable to downstream economic activities carried out by Securenta and was not therefore among the elements which, alone, go to make up the cost of the transactions relating to those activities. If, however, that had been the case, the supplies of services concerned would have had a direct and immediate link with the taxpayer's economic activities ... However, 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.
>
> 30. 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."

48. The ECJ held, at paragraph 31, that where a taxable person simultaneously carries out economic (taxable or exempt) and non-economic activities, deduction of input tax is allowed only to the extent that the expenditure is attributable to the taxable person's economic activity.

49. The FTT at [71]-[72], concluded that *Securenta* showed that even if the costs incurred by the Respondents "were for the performance of non-economic activities", that was not fatal to the University's claim to treat the input tax on those costs as residual and that such input tax was deductible to the extent that the expenditure was attributable to the University's economic activity.

50. Mr Singh submitted that there is nothing controversial about *Securenta* and it does not undermine HMRC's case in any way. He contended that the FTT's analysis was flawed. In *Securenta*, the expenditure connected with the issue of shares and atypical silent partnerships, which was a capital-raising activity, was not directly and immediately linked with any particular identifiable activity. If it had been, it would have burdened that activity and could not then have been regarded as an overhead cost directly and immediately linked with all of the company's activities both economic and non-economic. In contrast to the position in *Securenta*, the costs incurred by the University on investment management services are directly and immediately linked with a particular identifiable activity, namely the University's disposals of investments for consideration, and so it is that activity that they burden, not all of the University's activities both economic and non-economic. In other words, there is a *BLP* chain-breaking event in the University's case whereas there was no such event in *Securenta*. Mr Singh submitted that, even on the FTT's own analysis (which he did not accept), *Securenta* shows that the 'overheads' should take into account the non-economic activity and be restricted to that extent, something which the FTT failed even to acknowledge.

51. The *SKF* case concerned the deductibility of VAT incurred on services relating to the sale of shares. SKF was the parent company of an industrial group which made taxable supplies. SKF proposed to sell all of its shares in two of its subsidiaries in order to enable SKF to restructure the group. The ECJ noted, at paragraph 33, that the disposal in order to effect a reorganisation was more than a simple sale of shares, which would have been outside the scope of VAT. The ECJ held that the disposal of the shares had a direct link with the organisation of the group's activity and was therefore an extension of SKF's taxable activity. That meant that the sale of the shares was within the scope of VAT and thus an exempt supply.

52. In *SKF*, the ECJ also considered whether the input tax incurred on the services relating to the sale of shares was deductible on the ground that the costs of the services were part of SKF's general business costs, ie were overheads. At paragraphs 57-58, the CJEU said:

> "57. According to settled case-law, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct is, in principle, necessary before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement ... The right to deduct VAT charged on the acquisition of input goods or

> services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct …
>
> 58. It is, however, also accepted that a taxable person has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole …"

53. At paragraph 60, the CJEU set out how to apply the tests:

> "It follows that whether there is a right to deduct is determined by the nature of the output transactions to which the input transactions are assigned. Accordingly, 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."

54. At paragraph 62 of *SKF*, the CJEU showed the national court how it should approach the issue in that case:

> "In order to establish whether there is such a direct and immediate link, it is necessary to ascertain whether the costs incurred are likely to be incorporated in the prices of the shares which SKF intends to sell or whether they are only among the cost components of SKF's products."

55. In *SKF*, however, the referring court had described the costs as both 'directly attributable' to the disposal of shares and as forming part of SKF's general costs. Accordingly, the ECJ could not determine whether the input tax incurred on the services relating to the sale of shares was attributable to an exempt supply of shares or to SKF's economic activities in general. The ECJ left the national court to determine the issue but gave some useful guidance in paragraphs 71 and 72:

> "71. In the case in the main proceedings, while it is admittedly true … that a disposal of shares which is exempt from VAT does not give rise to a right to deduct, the fact remains that that interpretation holds true only if a direct and immediate link is established between the input services and the exempted disposal of shares as an output transaction. If, on the other hand, there is no such link and the cost of the input transactions is incorporated in the prices of SKF's products, the right to deduct VAT charged on the input services should be allowed.
>
> 72. It must, lastly, be stated that there is a right to deduct input VAT in respect of services carried out in connection with financial transactions if the capital acquired by means of those transactions is used in connection with the economic activities of the person concerned. Furthermore, the costs associated with input services have a direct and immediate link to the taxable person's economic activities in

> circumstances where they are solely attributable to downstream economic activities and consequently are among only the cost components of transactions within the scope of those activities (see *Securenta*, paragraphs 28 and 29)."

56. The ECJ concluded, in paragraph 73, that there is a right to deduct input VAT paid on services supplied for the purposes of a disposal of shares if there is a direct and immediate link between the costs associated with the input services and the overall economic activities of the taxable person. The ECJ decided that it was for the referring court to determine whether the costs incurred by SKF were likely to have been incorporated in the price of the shares sold or whether they were cost components of transactions within the scope of SKF's economic activities.

57. Mr Singh produced a translation of the decision of the Supreme Administrative Court in *SKF* on its return to Sweden. The translation had not been available to the FTT. The Supreme Administrative Court, by a majority of three to two, determined that there was no right to deduct input VAT paid on services of assisting in negotiations with the purchasers of the shares and on solicitors' services in relation to the drafting of a contract because they were directly and immediately linked to the sale of the shares. The minority view was that the VAT on the services was deductible. Mr Singh submitted that the decision of the Swedish Supreme Administrative Court is wholly supportive of HMRC's case and that we should apply the same approach. We found the decision of the Swedish Supreme Administrative Court to be of no real assistance in relation to this case. As stated above, it was a split decision and the different views appear to have arisen because different members of the Court took different views of the facts which were not rehearsed in any detail.

58. Mr Singh also referred to paragraph 32 of the opinion of the Advocate General (Kokott) in Case C-234/11 *TETS Haskovo AD v. Direktor na Direktsia* [2013] STC 243 where she said:

> "32. Moreover, the Court has consistently held that for there to be the direct and immediate link required by the Court, the costs incurred in acquiring the input transactions must be part of the cost components of the taxable output transactions, that is to say they must be incorporated into their price. The Court has also made it clear that this also covers the input transactions attributable to the taxable person's general overheads. In the case of such input transactions the required link exists not with certain output transactions but rather with the taxable person's economic activity as a whole, that is to say all of his output transactions."

59. Mr Singh submitted that this passage shows that the Advocate General considered that the costs of input transactions relating to overheads must be incorporated into the price of the output transactions. We do not understand paragraph 32 to be saying any more than the ECJ had already said in *Kretztechnik*, *Securenta* and *SKF*. In our view, the Advocate General in *TETS* was stating that where input transactions are attributable to the taxable person's general overheads then there is a direct and immediate link with the person's economic activity as a whole.

Discussion

60. HMRC's case is that the FTT should have asked whether the costs of the investment management services burdened the cost of, ie were incorporated in the price of, the University's investments or whether they burdened the cost of all the economic activities of the University. Mr Singh submitted that the costs of investment management services did not burden the University's economic activities, such as providing education, carrying out commercial research, academic publishing and supplying various services, rather the income generated by the investments subsidised those activities. The cost of the investment management services burdened the investment activity, ie the disposal of the investments.

61. We do not accept that the costs of F&CM's services burdened the investment activity in the sense that the fees were incorporated into the price of investments that were sold by the University. The services provided by F&CM were general investment management services and not merely services related to disposals of investments. Before the FTT, HMRC's case was that, on average, the Fund held shares as investments for approximately five years and that, although there might have been a small amount of trading of investments, the vast majority of the investment activity was not trading. A large proportion of the investments held in the Fund were publicly quoted securities whose value was fixed by the market. The investments were not traded but were held for substantial periods. The fees charged by F&CM were calculated as a percentage of the value of the Fund and not by reference to the number or value of disposals of investments. Those factors all point to the conclusion that F&CM's fees were not cost components of the prices charged when investments were sold. The FTT found, at [80] that the costs associated with the investment activity were components of the price of the University's various economic activities. That was a finding that the FTT was entitled to make on the facts and, in our view, it does not show any error of law.

62. Mr Singh also submitted that the cases showed that the ECJ regarded income generating and capital raising transactions differently with only inputs relating to the latter qualifying as overheads. We do not consider that there is any distinction between capital raising and income generating activities for the purpose of determining whether input tax incurred on overhead costs is attributable to the taxable person's economic activity as a whole. We do not accept that the ECJ based its decisions in *Kretztechnik*, *Securenta* or *SKF* on whether the costs of the activity falling outside the scope of VAT were met from capital or income. Although the ECJ referred to the raising of capital in *Kretztechnik*, *Securenta* and *SKF*, that does not appear to us to be part of the ECJ's reasoning but simply reflects the facts in those cases. We consider that if the ECJ had wished to draw a distinction, making increasing capital a requirement, like the need for a direct and immediate link, that had to be met before input tax could be deducted, then it would have stated so explicitly.

63. In any event, we are not satisfied that the Fund was engaged in purely income generating activities. Although the investments would presumably have produced income in the form or dividends, interest and rents, the fact that they were held for some years suggests that disposals of individual investments were capital transactions rather than income producing ones. The FTT appears, in [80], to have accepted that the investment activity may have raised, primarily, income rather than capital but considered that the distinction was of no relevance. We agree. Whether an output

transaction is capital raising and income generating is irrelevant in determining whether or not that transaction is chargeable to VAT. It would, in our view, therefore be surprising if a distinction between capital and income had any relevance to the issue of whether input tax attributable to the output is deductible.

64. In our view, the effect of paragraph 36 of the ECJ's judgment in *Kretztechnik* is reasonably clear. The ECJ was not so much concerned with the specific issue of the increase in capital that resulted from the share issue as with whether the share issue was an activity carried out for the benefit of Kretztechnik's economic activity in general. The costs of supplies acquired in connection with an activity carried out, as in *Kretztechnik*, for the benefit of the taxable person's economic activity in general is an overhead. Costs that form part of a taxable person's overheads are therefore, as such, component parts of the price of its products.

65. This is the same view of the ECJ's decision in *Kretztechnik* as was adopted in *C of E Children's Society* and *Southampton University*. We would, of course, be prepared to depart from a previous decision of the Upper Tribunal or the High Court if we thought that it was wrongly decided, but we are very far from satisfied that those cases were wrongly decided. In our view, the ECJ's decisions in *Securenta* and *SKF* do not indicate that we should adopt a different approach to *Kretztechnik* from that taken by Blackburne J in *C of E Children's Society* and Warren J in *Southampton University*. In relation to the former, we note, first, that it was not appealed and, secondly, that HMRC produced a Business Brief (19/05) which proceeded on the basis that Blackburne J had stated the law correctly and which has never been withdrawn.

66. It is clear from paragraphs 57 and 58 of *SKF* that, in order to be able to deduct input tax, there must always be a direct and immediate link between the goods or services in respect of which VAT was incurred and the supplies that give rise to the right to deduct, eg taxable supplies. The direct and immediate link can be established in two ways, namely by a link to a specific taxable supply or supplies (or other transaction that gives a right to deduct) or by a link with the taxable person's economic activity as a whole. In both cases, the link is that the costs of the input transaction are components of the cost or price of supplies by the taxable person that give rise to the right to deduct. In the case of input goods or services that are linked to a particular supply or supplies, the cost of the input transactions must be a component of the cost of the particular output transactions. Where the input goods or services are not linked to a particular supply or supplies, the necessary link to output transactions giving rise to the entitlement to deduct is established where the costs incurred to acquire the input goods or services are part of the general costs of the taxable person's overall economic activity.

67. In paragraphs 71 and 72 of *SKF*, the ECJ identified two circumstances in which VAT incurred by SKF on services relating to the sale of the shares was deductible, namely:

> (1) where there is no direct and immediate link between the input services and the exempt supply of shares, and the cost of the input transactions is incorporated in the prices of SKF's products; and
>
> (2) where the capital acquired as a result of the sale of the shares is used in connection with SKF's economic activity.

The reference in the last sentence of paragraph 72 of *SKF* to paragraphs 28 and 29 of *Securenta* shows that the costs of input services do not have to be solely attributable to downstream economic activities before they can be deductible. In *Securenta*, the ECJ held that the input transactions were linked to both economic and non-economic activities of Securenta. The ECJ in that case held that Securenta could deduct input tax to the extent that the expenditure was attributable to Securenta's economic activity.

68. Mr Singh submitted that the input tax incurred on F&CM's fees could not be directly and immediately linked to the whole economic activity of the University as there was a chain-breaking event, namely the disposal of investments, between the costs and that activity. We do not accept that there is any chain-breaking event in this case. In *BLP,* the input transactions were directly and immediately linked with a particular output transaction, the sale of shares, which was said to be an exempt supply in that case. In this case, the input transactions, the services supplied by F&CM, are not directly and immediately linked to any particular supply because the investment activities of the Fund are outside the scope of VAT and the investment activity was not an activity carried out for its own sake but was undertaken for the benefit of the University's other activities.

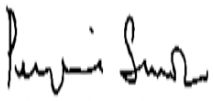
69. In our view, the University falls squarely within paragraph 36 of the ECJ's judgment in *Kretztechnik*, as applied in *SKF*. The question to be asked in this case is whether the University's investment activity through the Fund was carried out for the benefit of the University's economic activity in general. If so, the costs of that activity form part of the University's overheads and are therefore, as such, component parts of the price of its products. The University incurred costs in relation to an activity, namely investment, which was outside the scope of VAT. Accordingly, there were no supplies of investments to which the input transactions could be attributed. The FTT found, in [78] and [79], that the investment activity was not an activity carried out for its own sake but for the benefit of the University's economic activity in general. It follows that the costs associated with that investment activity were part of the University's overheads and, as such, deductible in accordance with the CVCP Agreement.

Disposition

70. HMRC's appeal is dismissed.

Costs

71. Any application for costs in relation to this appeal must be made within one month after the date of release of this decision. As any order in respect of costs will be for a detailed assessment, the party making an application for such an order need not provide a schedule of costs claimed with the application as required by rule 10(5)(b) of the UT Rules.



Mr Justice Simon

Greg Sinfield
Judge of the Upper Tribunal

Release date: 09 June 2015