OPINION OF ADVOCATE GENERAL KOKOTT
delivered on 17 March 2005 [1]

I — Introduction

1. The High Court of Justice of England and Wales, Chancery Division, seeks an interpretation by the Court of Justice of the provisions of Sixth Council Directive 77/388/EEC [2] (hereinafter 'the Sixth Directive'). The main proceedings concern the assessment of a series of transactions involving the Harrington Building which the University of Central Lancashire Higher Education Corporation ('the University') had built.

2. Since the University to a considerable extent provides services free of VAT it was able only to a very limited extent to deduct as input tax the VAT on the costs of erecting the building. The building was therefore transferred and let through several intermediaries between the University and private companies, including the appellant in the main proceedings whose sole shareholder, either directly or indirectly, is the University.

Whether these transactions result in input tax after all being deducted is specifically dependent on an interpretation of Article 20 (3) of the Sixth Directive which governs the adjustment of input tax in the case of a supply of a capital good during the period of adjustment ('supply' for the purposes of Article 20(3) and Article 5(1) of the Sixth Directive).

3. Consequent upon three currently pending sets of proceedings [3] the Commission has also proposed in these proceedings that the principle of abuse of rights should be applied.

1 — Original language: German.

2 — Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)

3 — Cases C-255/02 (Halifax), C-419/02 (BUPA Hospitals) and C-223/03 (University of Huddersfield).

II — Legal framework

A — *Relevant provisions of the Sixth Directive*

4. Under Article 2(1) 'the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such' is liable to VAT.

5. Article 4(3) gives the Member States the possibility of treating as a taxable person anyone who carries out,

'on an occasional basis, a transaction relating to the activities referred to in paragraph 2 and in particular one of the following:

(a) the supply before first occupation of buildings or parts of buildings and the land on which they stand; Member States may determine the conditions of application of this criterion to transformations of buildings and the land on which they stand.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply or the period elapsing between the date of first occupation and the date of subsequent supply, provided that these periods do not exceed five years and two years respectively. ...'

6. The concept of supply is defined in Article 5(1) as 'the transfer of the right to dispose of tangible property as owner'. In that connection, under Article 5(3) the Member States may also consider the following to be tangible property:

'(a) certain interests in immovable property;

(b) rights in rem giving the holder thereof a right of user over immovable property;

(c) shares or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or part thereof'.

7. Article 13 contains a comprehensive list of exemptions within the territory of the country:

— Under Article 13A(1)(i) university education and the supply of services and goods closely related thereto are exempt.

— Article 13B(b) exempts the leasing or letting of immovable property subject to certain exclusions to which the Member States may add others.

— Article 13B(g) exempts 'the supply of buildings or parts thereof, and of the land on which they stand, other than as described in Article 4(3)(a)'.

8. Article 13C provides that Member States may allow taxpayers a right of option for taxation in certain cases, in particular the letting and leasing of immovable property.

9. The right to deduct is governed by Article 17 extracts of which provide as follows:

'(1) The right to deduct shall arise at the time when the deductible tax becomes chargeable.

(2) In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

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

...

(5) As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible, only such proportion of the value added tax shall be deductible as is attributable to the former transactions.

This proportion shall be determined, in accordance with Article 19, for all the transactions carried out by the taxable person.

...'

10. Central to the present case are the provisions in Article 20 concerning the adjustment of deductions in respect of input tax in the case of capital goods:

'2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

By way of derogation from the preceding subparagraph, Member States may base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods the adjustment period may be extended up to 20 years. [4]

3. In the case of supply during the period of adjustment capital goods shall be regarded as if they had still been applied for business use by the taxable person until expiry of the period of adjustment. Such business activities are presumed to be fully taxed in cases where the delivery of the said goods is taxed; they are presumed to be fully exempt where the delivery is exempt. The adjustment shall be made only once for the whole period of adjustment still to be covered.

...'

B — *National law*

11. The relevant national provisions are to be found in the VAT Act 1994 and the VAT Regulations 1995 SI 1995/2518. Part XV of

4 — The possibility of extending the adjustment period in the case of buildings to 20 years was introduced only by Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them (OJ 1995 L 102, p 18). Previously provision was made in the Sixth Directive for only 10 years.

the latter instrument (Regulations 99 to 111) makes provision for input tax and partial exemption, whilst Part XVI (Regulations 112 to 116) makes provision for adjustment of the deduction of input tax. On property such as that in the main proceedings Regulation 114 provides for adjustments over a 10 year period. The details of the adjustment are laid down in Regulation 115 in accordance with the provisions of Article 20 of the Sixth Directive.

III — Facts, question referred and proceedings

12. The University arranged for the construction of the Harrington Building. That property subsequently formed the subject-matter of various transactions between the University and private companies connected with it. The University's shareholdings are organised as follows: the University is the sole shareholder of Centralan Holding Ltd. For its part that company has two subsidiary companies, Centralan Properties Ltd (Centralan) which is the appellant in the main proceedings and Inhoco 546 Ltd (Inhoco).

13. On 14 September 1994 the University sold the Harrington Building to Centralan for GBP 6.5m and VAT of GBP 1 370 500. For the University the disposal was a taxable transaction in accordance with Article 4(3) of the Sixth Directive which was not exempt under Article 13B(g) of the Sixth Directive. Centralan leased the building back to the University ('the Lease') for a term of 20 years at an annual rent of GBP 300 000 plus VAT. [5]

14. Subsequently, Centralan disposed of the building by two preordained and connected transactions. First, on 22 November 1996 it granted a 999 year lease to Inhoco at a premium of GBP 6.37m and a nominal rent, if demanded. This second lease was granted subject to the 20-year lease in favour of the University, which remained unaffected. Accordingly, Inhoco acquired the right to payments of rent and to use of the building from year 21 to year 999. That is why the transaction is also known as a reversionary lease. Although Centralan had opted for taxation of the letting of the building, the supply constituted by the 999 year lease was an exempt supply because Centralan and Inhoco were connected persons within Paragraph 2(3A) Schedule 10 VAT Act 1994. [6]

15. Three days later, on 25 November 1996, Centralan transferred to the University the freehold reversion in respect of the building

5 — In that connection Centralan appears to have made use of its option under Article 13(C) of the Sixth Directive with the result that, by way of exception from Article 13 B(b) of the Sixth Directive, it was not tax-exempt.

6 — This provision was in force only between 30 November 1994 and 26 November 1996.

for GBP 1 000 and VAT. In respect of this transaction tax exemption in favour of connected undertakings was not applicable. Rather it was a taxable supply of a new building within the meaning of Article 4(3) of the Sixth Directive; under United Kingdom legislation a building is deemed still to be new if it is not more than three years old.

16. Following disposal of the building differences of opinion arose between Centralan and the Commissioners of Customs and Excise ('Customs') concerning the adjustment of the deduction in respect of input tax. Customs took the view that the relevant supply was the 999 year lease and that the subsequent transfer of the reversionary title was to be regarded as de minimis. In the alternative they claimed that there should be an apportionment, based on the respective values of the supplies constituted by the two transactions. The first contention would give rise to a liability of Centralan to Customs of GBP 796 250, the second to a liability of GBP 796 090. Conversely, Centralan took the view that it had disposed of its whole interest in the Harrington Building by the transfer alone so that its liability did not exceed GBP 943.93.

17. The VAT and Duties Tribunal upheld the second solution propounded by Customs. Centralan appealed against that decision to the High Court of Justice (Chancery Division) which, by order for reference received on 13 February 2004, referred to the Court of Justice the following question for a preliminary ruling:

'Where:

During the period of adjustment provided for in Article 20(2) of the Sixth VAT Directive a taxable person disposes of a building which is treated as a capital good; and

The disposal of the building is effected by way of two supplies, being (i) the grant of a 999 year lease of the building (an exempt transaction under article 13 B(b) of the Directive) for a premium of GBP 6 million, followed three days later by (ii) the sale of the freehold reversion (a taxable transaction under Article 13 B(g) and Article 4(3)(a) of the Directive) for a price of GBP 1 000 plus VAT and which either are or not preordained in the sense that once the first had been carried out there was no chance that the second would not be, is Article 20(3) of the Sixth VAT Directive to be interpreted so that:

(a) that capital good is regarded until the expiry of the period of adjustment as if it had been applied for business activities which are presumed to be fully taxed;

(b) the capital good is regarded until the expiry of the period of adjustment as if it had been applied for business activities which are presumed to be fully exempt; or

(c) that capital good is regarded until the expiry of the period of adjustment as if it had been applied for business activities which are presumed to be partly taxed and partly exempt in the proportion of the respective values of the taxed sale of the freehold reversion and the exempt grant of the 999 year lease?'

18. On 16 February 2005 the hearing took place before the Court. At the hearing Centralan requested the reopening of the written procedure should the Court wish to apply the principle of abuse of rights to the case. The referring court had made no submissions concerning that principle. It had been introduced into the proceedings only by the Commission in its written observations.

IV — Submissions of the parties

19. In the proceedings Centralan, the United Kingdom Government and the Commission submitted observations.

20. *Centralan* takes the view that, according to the clear wording of Article 20(3) of the Sixth Directive, the adjustment is dependent solely on the disposal of the reversionary title. It is only through that second procedure that the taxable person completely gives up his rights to the property. There is no justification for a view which, in the case of several successive disposals to various recipients, focuses on the economically predominant transaction and disregards one transaction as de minimis. Under the provision there is an alternative only as between taxable supply and tax exempt supply. Depending upon the type of the disposal input tax is either completely or not at all deductible. There was no basis in Article 20 (3) for an apportionment as between several supplies.

21. The *United Kingdom Government* is of the view that an apportionment is required if the delivery of the good in the words of Article 20(3) of the Sixth Directive has been prearranged to be effected in two transactions of which one is taxable and the other tax exempt. The solution advocated by Centralan entails regarding the disposal as a whole as taxed although transfer of the freehold reversion accounts for less than 0.02% of the value of the item.

22. In the *Commission's* view, the 999 year lease cannot be regarded as a supply within the meaning of Article 20(3) of the Sixth Directive. Under English law it is only the transfer of the freehold reversion that gives the acquirer the right to dispose of the property as an owner. It would give rise to practical difficulties to regard both transactions as a supply, in particular if the two transactions were not completed in the same adjustment period. However, the Commission considers that it must be examined whether there is a case of abuse of rights. [7] It is true that the Sixth Directive contains no provision concerning abuse of rights; it is however a principle of law which is recognised in many areas of Community law. Under that principle transactions are to be disregarded which have no business justification but are entered into by a group of taxpayers in order to create an artificial situation whose sole purpose is to create the conditions for the recovery of input tax. [8]

V — Legal appraisal

23. The question to be determined is the manner in which the deduction in respect of input tax is to be adjusted under Article 20 (3) of the Sixth Directive where a 999 year lease of a property is granted at a premium and title thereto is then transferred to another person in which connection the first transaction is VAT exempt and the second liable to VAT.

24. The referring court submits to the Court three possible interpretations: (a) regard should be had solely to the last (taxable) transaction; (b) regard should be had solely to the first (tax exempt) transaction forming the economic focus of the transaction or (c) regard should be had to an apportionment as between both transactions in accordance with transaction value. Prior to an examination of which variant best complies with the requirements of the directive, it is appropriate to give a brief account of the rules concerning adjustment of the deduction for input tax in this connection.

A — *Preliminary observation on the rules concerning adjustment of the deduction in respect of input tax*

25. The right to deduction of input tax is an integral part of the VAT machinery. [9] Deduction of input tax is intended to relieve the trader entirely of the VAT for which he is

7 — The Commission refers to the cases pending in relation to VAT (cited in footnote 3).

8 — The Commission relies chiefly on the definition of abuse of rights laid down in the judgment in Case C-110/99 *Emsland-Stärke* [2000] ECR I-11569, paragraphs 52 and 53. However, that judgment relates to export refunds for agricultural products.

9 — See judgments in Case C-62/93 *BP Supergas* [1995] ECR I-1883, paragraph 18, Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 43, and Case C-90/02 *Bockemühl* [2004] ECR I-3303, paragraph 38.

liable or which he has paid in the course of his economic activities. Accordingly the common system of VAT ensures that, irrespective of their purpose and their result, all economic activities are charged to tax in a neutral way provided that those activities themselves are subject to VAT (principle of the neutrality of VAT). [10]

26. Thus, the right to deduction presupposes that the person concerned is a taxable person within the meaning of the Sixth Directive and that the goods and services in question have been used for the purposes of his taxable transactions. [11] The right may not be restricted and can be exercised immediately in respect of all the taxes charged on transactions relating to inputs. [12] Under Article 10(2) of the Sixth Directive the right to deduct arises as soon as the goods are delivered or the services are performed. [13]

27. If an item is used only in part for taxable transactions then Article 17(5) of the Sixth Directive, in conjunction with Article 19 thereof, becomes applicable. Under those provisions a deductible proportion is to be determined reflecting the proportion of the taxable supplies by the person concerned. In accordance with this apportionment inputs are attributed only proportionately to taxable transactions with the result that there is only a proportionate claim to deduction of input tax. Article 17(5) and Article 19 of the Sixth Directive thus bring about a correspondence between the extent of the economic activity and the claim to deduction of input tax. [14]

28. The claim to deduction of input tax arises at a very early stage, that is to say on delivery of the goods or performance of the service constituting the input. Accordingly, an adjustment of the deduction may subsequently become essential under Article 20 of the Sixth Directive if the proportion of the undertaking's taxable supplies has changed from what it was at the time of receipt of the input.

29. The requirement for an adjustment is particularly important in the case of capital goods because such goods remain part of the

10 — Cf. inter alia judgments in Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19, Case C-37/95 *Ghent Coal Terminal* [1998] ECR I-1, paragraph 15, and judgments in *Gabalfrisa*, cited in footnote 9, paragraph 44, and *Bockemühl*, cited in footnote 9, paragraph 39.

11 — Judgment in case C-137/02 *Faxworld* [2004] ECR I-5547, paragraph 24.

12 — Cf. judgments cited in footnote 9 as well as judgments in Case C-97/90 *Lennartz* [1991] ECR I-3795, paragraph 27, and Case C-409/99 *Metropol and Stadler* [2002] ECR I-81, paragraph 42, and judgment in Case C-152/02 *Terra-Baubedarf* [2004] ECR I-5583, paragraph 35.

13 — Cf. judgment in Case C-400/98 *Breitsohl* [2000] ECR I-4321, paragraph 36, and the judgment in *Terra Baubedarf* (cited in footnote 12, paragraph 31).

14 — Cf. opinion of Advocate General Lenz of 15 February 1996 in Case C-306/94 *Régie Dauphinoise* [1996] ECR I-3695 (at point 37).

undertaking's assets over a long period. [15] In respect of those goods, therefore, Article 20 (2) of the Sixth Directive provides that over a period of five years in every year of use a fresh determination is to be made as to whether the goods have been used for taxable purposes to the extent intended on their acquisition. In the case of immovable property the Member States may extend the adjustment period to 20 years. If there are discrepancies between the extent of use for taxable supplies in the year of acquisition and in the reference year the deduction in respect of input tax is to be adjusted. Depending on the case, the taxable person must therefore refund a proportion of input tax in respect of the reference year or may deduct a further part.

30. Article 20(3) of the Sixth Directive makes provision for the special case where a capital good is transferred to a third party before expiry of the adjustment period, that is to say is removed from the undertaking's assets. In place of the annual adjustment there is then a one-off adjustment for the remaining period of adjustment. In such a case deduction in respect of input tax is dependent on whether the supply to the third party was taxable or not.

15 — Cf. on the corresponding provisions of the Second VAT Directive, judgment in Case 51/76 *Verbond van Nederlandse Ondernemingen* [1977] ECR 113 (paragraphs 12 and 13).

31. In summary it may be stated that the rules on deduction of input tax seek to ensure that inputs remain free of tax in so far as they are used for the provision of taxable supplies. The entire value is taxed once only on the supply to the consumer. There should not be any additional taxation of inputs. However, tax losses must also be avoided by not allowing deduction for input tax on items which are not actually (entirely) used in order to effect taxable supplies.

32. The provisions concerning the deductible proportion of input tax and the adjustment of such deduction seek as far as possible to ensure the neutrality of VAT (not to say to uphold the principle of a single charge to tax). In the words of the representative of Centralan, they increase the degree of accuracy of the deduction.

33. On the other hand the rules on deduction of input tax must be clear and practicable. Thus, for example, regard is not had to the extent to which each individual good is used in connection with taxable supplies. Rather, the deductible proportion in respect of input tax is ascertained in relation to the taxable person's total supplies and then applied uniformly to the deduction of input tax in respect of all inputs. Also it is only in

the case of capital goods that use of a good acquired with deduction of input tax is observed over a long period with a view to adjustment of the tax deducted.

B — *Interpretation of Article 20(3) of the Sixth Directive*

34. In light of the objectives of the provisions concerning deduction and its adjustment, it must now be examined which of the interpretative variants is best able to meet these objectives. In that connection the starting point is the wording of the provision.

1. Concept of supply

35. A precondition of the application of Article 20(3) of the Sixth Directive is that the capital good is *supplied* to a third party during the adjustment period. According to Centralan and the Commission, only disposal of the freehold reversion constitutes a supply. If that were true, interpretive variants (b) and (c) would be eliminated *ab initio*. For they are based on the assumption that the 999 year lease likewise constitutes a supply within the meaning of Article 20(3) of the Sixth Directive.

36. Supply is defined in Article 5(1) as of the Sixth Directive as 'the transfer of the right to dispose of tangible property as owner'. By reference to English law, the Commission considers that only upon transfer of the freehold reversion is there a transfer of property rights.

37. This view cannot be upheld. For, as the Court held in its judgment in *Shipping and Forwarding Enterprise Safe*, it follows from the wording of Article 5(1) of the Sixth Directive:

'that "supply of goods" does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were the owner of the property'. [16]

38. Underlying that case was a device analogous to that in the present case. First, the right was transferred freely to dispose of the property in question (economic ownership). The (legal) ownership was then transferred separately form the economic

16 — Case C-320/88 *Shipping and Forwarding Enterprise Safe* [1990] ECR I-285, paragraphs 7 and 8. See also judgment in Case C-185/01 *Auto Lease Holland* [2003] ECR I-1317, paragraph 32.

ownership. The Court already considered the transfer of economic ownership to constitute a supply within the meaning of Article 5(1) of the Sixth Directive.

39. Accordingly, the grant of a 999 year lease to Inhoco may already constitute a supply if Inhoco thereby receives authorisation to dispose of the property as an owner. In favour of that view is the fact that, in return for a one-off payment, Inhoco acquires rights of user for a very long period as well as the right to payments of rent under the 20 year lease with the University. The 999 year lease therefore approximates very closely to the transfer of economic ownership which was involved in *Shipping and Forwarding Enterprise Safe*. However, in the final analysis this is a matter to be established by the referring court which is competent to apply the law in the main proceedings.

40. It might even be wondered whether only the 999 year lease constitutes a supply since the freehold reversion transfers such a bare title that it cannot be described as the transfer of genuine property rights. In that case only interpretative variant (b) would apply. Against that, however, is the fact that it is scarcely possible for a demarcation line to be drawn between cases in which the title is bare to the extent that there is no supply and cases in which there is a sufficiently substantive title. Is the demarcation line to be drawn at a 99 year lease, a 199 year lease or a 999 year lease? In order in this connection to avoid arbitrary demarcations, in a case such as this, transfer of the reversionary title should in principle still be regarded as a supply.

41. None the less the Commission objects that property rights cannot be conferred on two persons. However, that objection cannot be upheld. For example, property can very well be transferred in co-ownership to a plurality of persons. Thus, owners of apartments as a rule acquire co-ownership shares in the common parts of the house, such as for example the stairs and passageways, as well as a notional share in the plot on which the house was built. Thus, if several persons can at the same time have property rights in relation to the same property, that must apply *a fortiori,* when the different legal rights are temporally demarcated. First, Inhoco can for 999 years claim rights under the lease. Only subsequently thereto do the rights arising out of the freehold reversion become current; these are essentially confined to the claim to surrender of the property on expiry of the lease.

42. As an interim conclusion it may be stated that both the first transaction, the 999 year lease, and the second transaction, namely transfer of the freehold reversion, may constitute supplies within the meaning of Article 5(1) of the Sixth Directive. Since the same concept of supply may be presumed to underpin Article 20(3) of the Sixth Directive, both transactions may be significant in the context of the adjustment of input tax. Thus, none of the interpretative variants is precluded solely on the ground that one of the transactions does not meet the requirements of a supply for the purposes of that provision.

2. Relevant transaction in the case of several supplies

43. It remains to clarify which supply is relevant for the adjustment of input tax if the item is supplied in several transactions to various persons. This could be: the last transaction by which the taxable person definitively cedes his interest in the item, the economically most significant transaction or all transactions together.

44. The wording appears to suggest that there is only one supply. Under that wording business activities are presumed to be fully taxed 'where *the* delivery of the said goods is taxed; they are presumed to be fully exempt where *the* delivery is exempt'. [17]

45. However, it cannot be inferred solely from that wording that regard is to be had to only one transaction where delivery is effected in several transactions. The drafters of the directive had in contemplation the normal case where the item is delivered in one transaction. If by means of that formulation they had meant to say that, in the case of supplies comprising several transactions, only one transaction is relevant it would have been necessary to state which is the relevant transaction in such a case. It is rather the case that, in relation to situations in which delivery is effected by means of several transactions, Article 20(3) of the Sixth Directive contains a regulatory lacuna. That lacuna is to be filled by a supplementary interpretation of the provision in light of the regulatory context and its meaning and purpose.

46. The rules on deduction of input tax seek to render inputs free of tax exactly in the proportion in which they are required in order to effect taxable transactions. That aim is best achieved by means of interpretative

17 — Emphasis added

variant (c). Use partly for taxable and partly for exempt activities is most accurately reflected by apportionment as between the two transactions for the purposes of the adjustment of input tax.

47. Neither of the other two interpretative variants achieve that objective to the same extent. It is true that in the case of variant (b) adequate regard is had to the emphasis on use. The fact that the taxable transfer of the freehold reversion is disregarded is not serious in light of the minimal value of that transaction in the present case. However, inherent in this method of proceeding is a lack of precision which in other situations, where there is not such a wide discrepancy between transaction values, can lead to incoherent results.

48. Interpretative variant (a) completely fails to meet the objective of ensuring a connection between the deduction of input tax and the extent of use of the item concerned for taxable transactions. Although the taxable transfer of the freehold reversion constitutes only delivery of a negligible right in the building, variant (a) would result in a total deduction of input tax.

49. The fact that in certain situations an apportionment is appropriate, even if not expressly provided for by the wording of the relevant provision of the Sixth Directive, is borne out by the following examples from the case-law.

50. For example in the *Armbrecht* judgment the Court held that, where a taxable person sells property part of which he had chosen to reserve for his private use, he does not act with respect to the sale of that part as a taxable person within the meaning of Article 2(1) of the Sixth Directive. [18] Thus, the Court interpreted Article 2(1) as meaning that a supply is taxable in so far as a taxable person carries out the transaction acting as a taxable person. For its part, the wording refers only to supplies made by a taxable person acting as such.

51. In *Enkler* [19] the Court was called on to reply to questions in connection with a motor caravan which was used partly for business purposes and partly for private purposes. In order to determine the taxable amount for the purposes of Article 11A(1)(c) of the Sixth Directive it required an apportionment of the expenses of the motor caravan corresponding to the amount of time of the non-business use. [20]

18 — Case C-291/92 *Armbrecht* [1995] ECR I-2775, paragraph 24.
19 — Case C-230/94 *Enkler* [1996] ECR I-4517.
20 — *Enkler* (cited in footnote 19, paragraph 37).

52. However, Centralan objects in the case of interpretative variant (c) that only on transfer of the freehold reversion is the building completely removed from the undertaking's assets. Only then is the adjustment to be carried out.

53. All that may be inferred from Article 20 (3) of the Sixth Directive is that the adjustment is to be effected at the time of delivery. However, the provision contains no indication that, in the case of two transactions which occur in swift succession and are both to be categorised as supplies, only the last transaction is to be relevant for the purposes of the adjustment of input tax.

54. Yet, if regard is had solely to the last supply transaction, that can lead to entirely arbitrary consequences, as elucidated by the United Kingdom Government on the basis of an example of a piece of agricultural land initially acquired with deduction of input tax, subsequently split into two parts and then sold on. In that connection it is assumed that the sale of one part attracts tax because that part has in the meantime been turned into building land whilst the sale of the other part which continues to be used for agricultural purposes is tax exempt. If one declines to take an overall view of all sales transactions and instead has regard only to the last transaction, the taxable person could influence adjustment of input tax at will by concluding one or other transaction first. To have regard only to the last supply transaction would thus afford to the taxable person possibilities of making arrangements which run counter to the objectives of the directive.

55. That is also illustrated by the present case. Although by means of a tax-exempt supply (the 999 year lease) the building is to a very great extent separated from Centralan's assets, the deduction of input tax would be maintained in full if one were to focus solely on the second merely symbolic transfer of the freehold reversion.

56. Finally, Centralan and the Commission point to the practical difficulties which are alleged to stem from interpretative variant (c). However, it cannot be established why apportionment of the taxable supply is not practicable on adjustment of the deduction of input tax. In ascertaining the deductible proportion under Article 17(5) and Article 19 of the Sixth Directive the calculations to be made are in any event more demanding. Moreover, the adjustment is to be made only in connection with capital goods disposed of during the adjustment period.

57. According to Centralan and the Commission, specific problems would arise if the supplies in respect of which an apportionment was to be made were not all effected in the same adjustment periods. However, that is a hypothetical situation which does not arise in the present case.

58. Irrespective of that fact, in such a case there are in fact no insuperable difficulties. Where in one year a capital good is partly removed from the business assets, under Article 20(3) of the Sixth Directive, the final adjustment of the input tax deduction in respect of that part must be effected for the remainder of the adjustment period. As regards the remaining part, the value of which is to be assessed on the basis of appropriate methods, the adjustment is spread over subsequent periods under Article 20(2) until that part is removed by a further supply within the meaning of paragraph 3 and in that regard final adjustment is effected.

59. Thus, in the present situation, Article 20 (3) of the Sixth Directive must be interpreted as meaning that the capital good is regarded, until the expiry of the period of adjustment, as if it had been used for business activities which are partly taxed and partly exempt in the proportion of the respective values of the taxed sale of the freehold reversion and the tax exempt grant of the 999 year lease.

C — Abuse of rights

60. In view of that solution it does not need to be examined whether and to what extent there is a prohibition on the abuse of rights in the area of VAT, the circumstances in which that prohibition applies and the legal consequences flowing therefrom. Nor is there any ground for reopening the written procedure.

61. It is true that the transactions have an artificial effect and are aimed solely at affording the University the possibility of deducting the VAT paid on the construction of the Harrington Building, even though the University to a great extent provides tax exempt services. The interpretation of the Sixth Directive which I am here advocating, however, precludes these artificial transactions from giving rise to a tax exemption which would run counter to the objectives of the directive and would have to be remedied by recourse to unwritten principles such as the prohibition on the abuse of rights.

VI — Conclusion

62. In light of the foregoing considerations, I propose that the Court should reply as follows to the question referred by the High Court of Justice (Chancery Division):

Where a building is disposed of by means of two preordained and independent supplies, that is to say by a tax exempt grant of a 999 year lease over the building and, three days later, by a taxable sale of the freehold reversion, Article 20(3) of Sixth Council Directive 77/388/EEC of 17 May 1977, on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, is to be interpreted as meaning that the capital good is regarded until the expiry of the period of adjustment as if it had been used for business activities which are partly taxed and partly exempt in the proportion of the respective values of the taxed sale of the freehold reversion and the tax exempt grant of the 999 year lease.