OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER delivered on 25 March 2004 [1]

1. Airlines which operate international passenger services usually also operate on their domestic markets. The Vestre Landsret (Western Regional Court), [2] Denmark, is not sure that, in such cases, the services provided to aircraft used on a country's domestic routes should be exempt from value added tax (hereinafter 'VAT').

2. In order to resolve that doubt, it seeks from the Court of Justice a preliminary ruling on the interpretation of Article 15(6), (7) and (9) of the Sixth Directive. [3] To that end, it formulates two questions which concern the scope of the exemptions laid down in those provisions, and the appropriate criteria for deciding whether a company's principal activity is to provide air travel services between different countries.

I — The facts, the main proceedings and the questions referred to the Court for a preliminary ruling

3. Cimber Air A/S (hereinafter 'Cimber Air') is part of the Cimber Air Group, which is owned by a holding company of the same name, and the company SAS. Its principal activity consists of operating regional air services in Europe, in cooperation with SAS and Lufthansa. It operates domestic flights in Denmark and international flights between Denmark and other countries; it also covers routes with departure and arrival points outside Danish territory. [4]

4. The company has a fleet of 10 aircraft, [5] which it uses in such a way that the same aircraft may be used for all kinds of flights.

1 — Original language: Spanish.

2 — The Vestre Landsret is a court with jurisdiction at first instance to hear civil and criminal cases, and challenges to certain administrative acts, including those relating to tax revenue.

3 — 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 (OJ 1977 L 145, p. 1).

4 — The cooperation arrangement with SAS covers domestic routes in Denmark and international routes out of the cities of Copenhagen, Karup and Sønderborg. The arrangement with Lufthansa provides connections within Germany and regional European routes out of Berlin and Hamburg.

5 — Two of the aircraft are hired out to other companies, while Cimber Air leases another five.

5. Cimber Air's activity in the air traffic sector can therefore be divided into a 'national' portion and an 'international' portion. An assessment of the volume of each depends on the unit of measurement selected. If the calculation is based on turnover or on 'available seat-kilometres' and 'revenue passenger-kilometres', international travel is slightly higher. However, the 'national' component is higher when the criterion applied is the number of passengers or the frequency of flights. [6]

6. Cimber Air claimed from the Skatteministeriet (Danish Ministry of Fiscal Affairs) a refund of the VAT paid for the period from 1 May 1996 to 30 April 2001 on goods and services supplied for commercial domestic passenger flights, and sought recognition that, from the latter date, both operations are VAT exempt, since it operates chiefly on international routes. The defendant contested those claims.

7. The dispute in the proceedings before the Vestre Landsret has focused on the scope of the exemptions provided for in Article 15(6), (7) and (9) of the Sixth Directive and, more particularly, on the question whether paragraphs 7 and 9 include transactions concerning aircraft operating on domestic routes.

8. The Danish court is not sure how to interpret those provisions — on which the decision to be given in the case depends — and has therefore referred the following questions to the Court of Justice:

1. Are Article 15(6), (7) and (9) of the Sixth Directive to be interpreted as meaning that a Member State is entitled to refuse to exempt from VAT supplies to aircraft operating on a domestic route, regardless of the fact that the company using the aircraft operates chiefly on international routes, or as meaning that the Member State is bound to exempt such operations?

2. If the latter is the case, which criteria in the form of, for example, turnover, available seat-kilometres, numbers of

6 — Whichever parameter is used, the differences are not large, with a maximum of 62.24% for domestic traffic, on the basis of the number of passengers (for the two-year period 1996-1997), and a minimum threshold of 32.41%, if the 'revenue passenger-kilometres' ratio is used (two-year period 2000-2001). In any event, the turnover in this part of the company's activity is always lower (49.37%, 48.90%, 39.51%, 41.51% and 33.60% for the periods 1996-1997, 1997-1998, 1998-1999, 1999-2000 and 2000-2001 respectively).

passengers or flights, are decisive under Article 15(6) for determining whether an airline can be said to be operating 'chiefly' on international routes?

II — Procedure before the Court of Justice

9. Written observations have been submitted in these proceedings, within the period prescribed for the purpose by Article 20 of the EC Statute of the Court of Justice, by the Danish Government, Cimber Air and the Commission.

10. At the hearing, which was held on 4 March 2004, those which took part in the written stage and the German Government presented oral argument.

III — The Community legislation to be interpreted

11. Title X of the Sixth Directive governs exemptions. After establishing the exemptions concerning operations within the country (Article 13) and on imports (Article 14), it lists, in Article 15, the exemptions for exports from the Community, like transactions and international transport.[7] In this last category, it distinguishes between sea travel and air travel, which the paragraphs of which an interpretation is sought in these proceedings specifically concern; it is worded as follows:

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

...

6. the supply, modification, repair, maintenance, chartering and hiring of aircraft used by airlines operating for reward chiefly on international routes, and the supply, hiring, repair and maintenance of equipment incorporated or used therein;

7 — Title X ends with Article 16, which is entitled 'Special exemptions linked to international goods traffic'.

7. the supply of goods for the fuelling and provisioning of aircraft referred to in paragraph 6;

...

9. the supply of services other than those referred to in paragraph 6, to meet the direct needs of aircraft referred to in that paragraph or of their cargoes;

...'.

IV — Deduction and refund under Danish law of VAT on services supplied to aircraft

12. A knowledge of the rules of Danish law, particularly those relating to the taxation of supplies and services to aircraft used for commercial flights, is not essential in order to answer the Vestre Landsret's questions but it does provide a fuller understanding of the underlying problems in the main action.

13. The *lov om mervœrdiafgift* (hereinafter 'the momsloven') governs VAT. The currently applicable version is found in consolidated Law No 804 of 16 August 2000, which replaced with effect from 1 July 1994 the previous legislation.

14. Paragraph 34(1) declares exempt: (1) supplies of goods and services for the equipping and provisioning of aircraft engaged in international transport (point 7); (2) the sale and hiring of all kinds of aircraft and their fixed equipment, except pleasure craft, and also repairs, maintenance and modification of those aircraft (points 8 and 9); and (3) purchases for the fuelling and provisioning of aircraft, for use on board or for sale to passengers, in accordance with customs legislation (point 16). The application of the exemption therefore depends on the nature of the journey, except in the case of the activities covered by points 8 and 9, which are always exempt, save in the case of pleasure craft.

15. On the other hand, the momsloven exempts the transport of passengers on domestic and international flights from VAT (Article 13(1)(15)) so that, under Article 37(1), airlines are not entitled to deduct VAT on purchases of goods and services for that commercial activity. However, on international routes, if the transac-

tion is not excluded by Article 34, deduction is possible, because Article 45(3) allows for the refund of the portion paid in Denmark on transactions relating to the transport of passengers to other countries.

16. In short, Cimber Air cannot obtain a refund of the tax it pays on purchases of goods and services for flights within Denmark.

V — Assessment of the questions referred to the Court for a preliminary ruling

A — *A few clarifications which are more than merely terminological*

17. International goods traffic is governed by the principle of taxation at the place of destination or final consumption. For that reason, if it is wished to avoid the 'exportation' of indirect taxes from the country of origin — which would involve double taxation — a system must be agreed for the exemption of foreign transactions. [8] In other words, as the Court of Justice pointed out in its judgment in *Lange*, [9] the aim of the exemptions in Article 15 is to ensure that consumers from non-Member States are not subject to VAT (paragraph 20).

18. The Sixth Directive was amended by Directive 91/680/EEC, [10] the main aim of which, after the abolition of fiscal controls at internal frontiers, is to facilitate transition to a definitive system for the taxation of intra-Community trade under the common system of value added tax, by taxing trade in the Member State of origin. However, since the required conditions could not be completely brought about by 31 December 1992 (the day before that abolition), it made provision for a transitional phase during which it retained the rule of taxation in the country of destination. [11] Until the matter is definitively settled, the tax remains payable, on a temporary basis, on intra-Community acquisitions of goods by taxable persons or by non-taxable legal persons; the taxable event is deemed to take place in the Member State in which the goods are at the time when dispatch or transport to the person acquiring

8 — Pérez Herrero, L.M., *La Sexta Directiva Comunitaria del IVA*, Cedecs Editorial S.L., First ed., Barcelona, 1997, p. 236.

9 — Case C-111/92 *Lange* [1993] ECR I-4677.

10 — Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

11 — I have recently set out this position in the Opinion I delivered on 13 January 2004 in Case C-68/03 *Lipjes* ECR I-5879, I-5881.

them ends (Article 28a(1)(a) and Article 28b(A)(1) of the Sixth Directive). Conversely, those transactions are not subject to VAT if the purchaser is a private individual.

19. The rule contained in Article 15 was amended, with the aim of establishing that the exempt exports are those effected 'outside the Community'. It was logical to clarify the point because intra-Community purchases made by a private individual are not subject to tax, as I have just pointed out, and do not therefore need to be regarded as exempt, [12] and also because those which are made for a taxable person or non-taxable legal person are always subject to tax. At the same time, in the latter case, the corresponding supply in the Member State of origin is exempt (Article 28c(A)(a)), in order to avoid double taxation.

20. However, the aforementioned amendment of 1991 does not affect the transport of persons and, so far as concerns the transport of goods, it treats it as an ancillary matter, an essential means of carrying out the legal transactions referred to in Article 28a. [13] Accordingly, passenger transport services are deemed to be supplied in the place where the journey ends (Article 9(2)(b) of the Sixth Directive), so that a Member State may charge VAT on a journey made within its territorial limits, even where part of the journey is made outside those limits, provided that it does not encroach on the tax jurisdiction of other States. [14] As a result, in its judgment in *Reisebüro Binder*, [15] the Court of Justice held that, in the case of the supply of cross-frontier passenger transport, the total consideration for that service must be allocated on a *pro rata* basis, having regard to the distances covered in the different Community countries.

21. Two conclusions may be drawn from the foregoing observations:

(1) The term 'international routes' used in Article 15(6) refers to routes which pass through the territory of more than one Member State, and (2) the new version does not alter that definition. [16]

12 — Exemption presupposes previous subjection to tax, so that, where there is no subjection to tax, there is no need to speak of exemption.

13 — In respect of the supply of services in the intra-Community transport of goods, the taxable event occurs, as a rule, in the Member State of departure (Article 28b(C)(2) of the Sixth Directive).

14 — Case 283/84 *Trans Tirreno Express* [1986] ECR 231, paragraph 21, and Case C-30/89 *Commission* v *France* [1990] ECR I-691, paragraph 18.

15 — Case C-116/96 *Reisebüro Binder* [1997] ECR I-6103.

16 — The Community legislature of 1991, when it thought it necessary, made the requisite amendments to Article 15 (it amended, as well as the Article cited, Articles 1, 2, 3, 10, 12, 13 and 14).

22. However, when that expression is used in the framework of the Sixth Directive, once the 1991 amendment came into force, there is a risk that, by a process of mimesis, its meaning may be extended to journeys made outside the Union. The clarifications I have just given are therefore necessary in order to avoid misunderstandings so that, in the following lines of this Opinion, that expression or other similar expressions must be understood to refer to travel outside the territory of a Member State, even though the destination may not be in a non-member country; these terms seem to have caused the Danish court to have doubts.

B — *Criteria for interpretation*

23. In the Opinion I delivered in *CSC Financial Services*, [17] I set out the guidelines for interpreting the provisions exempting certain legal transactions from VAT.

24. I pointed out, first, that all exemptions from liability for VAT are to be interpreted strictly, as the Community case-law has indicated, [18] since they constitute exceptions to the general principle of liability for tax laid down in Article 2(1) of the Sixth Directive.

25. I also stressed the principle of neutrality that governs the common system of VAT, which the tax exemption scheme infringes in that it undermines the rule that tax charges must be of general application so as to uphold competition in a single market.

26. Both views are particularly relevant to the present proceedings because, as the Commission and the Danish Government point out, the provisions referred to in the questions submitted severely detract from the impartiality of the fiscal charge, which is necessary for practical reasons associated with the difficulties involved in collecting the tax. Furthermore, in the distinction I drew, in footnote 11 to my Opinion in that case, between the objective and subjective exemptions, those contained in Article 15(7) and

17 — Case C-235/00 *CSC Financial Services* [2001] ECR I-10237.

18 — Case C-185/89 *Velker International Oil Company* [1990] ECR I-2561, paragraph 19; Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 20; Case C-359/97 *Commission v United Kingdom* [2000] ECR I-6355, paragraph 64; and Case C-240/99 *Skandia* [2001] ECR I-1951, paragraph 32. Recently, the Court of Justice has reiterated the principle that exemptions must be interpreted strictly in three judgments delivered on 20 November 2003: Case C-8/01 *Assurandør-Societetet*, Case C-212/01 *Margarete Unterpertinger*, and Case C-307/01 *Peter d'Dambrumenil*, paragraphs 36, 34 and 52 respectively, ([2003] ECR I-13711, I-13859 and I-13989).

(9) of the Sixth Directive belong, as explained below, to the former category, and, because they reflect pragmatic and short-term factors unconnected with fundamental principles of the legal order, require more rigorous application of the principle of strict interpretation.

C — *The exemptions for transactions relating to aircraft*

27. Article 15 of the Sixth Directive includes three kinds of activities relating to aircraft used for commercial purposes: [19]

1. The supply, modification and chartering of aircraft, and the repair, maintenance and hiring of the aircraft and of equipment incorporated or used therein (paragraph 6).

2. The supply of goods for the fuelling and provisioning of aircraft (paragraph 7).

3. The supply of other services to meet the direct needs of aircraft or of their cargoes (paragraph 9).

28. The connecting factor for deciding whether the tax exemption should be applied in respect of the first kind is the company providing the transport, so that, if it operates for reward 'chiefly' on international routes, the tax advantage takes effect, whether the aircraft are used for domestic flights or for flights outside the country. There is no disagreement on this point in these proceedings.

29. The controversy arises over the interpretation of paragraphs 7 and 9. The Commission and the Danish Government consider that the exemptions for which they provide exempt only taxable events relating to aircraft used on international flights, whereas Cimber Air and the German Government believe that they have the same scope as paragraph 6 and that the connecting factor is also the airline, so that, if its 'international component' predominates, the services referred to in those paragraphs are not subject to tax, even where they are supplied to aircraft which operate on domestic routes.

30. The arguments put forward by Cimber Air and the German Government are thought-provoking and, on an initial exam-

19 — Paragraph 2, which refers to private and leisure craft, is irrelevant in this case.

ination of the matter at issue, their view seems the more appropriate. The literal interpretation of paragraphs 7 and 9, in relation to paragraph 6, leads to the conclusion that the aircraft to which they refer are those 'used by airlines operating for reward chiefly on international routes' and that the kind of route they fly is therefore irrelevant. Simplicity in the application of the tax and economic realities, which are treated in Community case-law as valid criteria, [20] militate in favour of that approach, since it is difficult for suppliers to distinguish provisions and services on a domestic flight from those used for an international flight. [21] In short, a systematic approach to Article 15 would support their view, because the 'like' transactions to which its provisions refer could include those relating to aircraft used on domestic flights by companies operating chiefly on international routes.

31. However, a more in-depth examination of the aforementioned provisions and a closer look at the common system of VAT dissolve the arguments of the claimant in the main action and of the German Government like sugar lumps in a cup of tea and demonstrate that, whereas in paragraph 6 the exemption is linked to the airline, rendering it subjective in nature, the other two provisions make its application depend on the kind of route actually flown by the aircraft, rendering it unquestionably objective in nature.

32. Indeed, the criterion for interpretation of the structure of Article 15 leads to a different result from the one proposed by Cimber Air and the German Government. That provision sets out the exemptions for exports out of the Community, like transactions and international transport. The first category includes the first three paragraphs, which provide for a general exemption for international trade, and an exemption for goods carried by passengers in their personal luggage and on certain work on movable property which is to be removed from the territory of the Community.

33. The group of exemptions for transactions similar to the dispatch of goods to other countries comprises those for purchases of goods and services made, under diplomatic and consular arrangements, by international organisations and aid bodies (paragraphs 10 and 12). The same applies to supplies of gold to Central Banks (paragraph 11), services connected with export and import of goods benefiting from special provisions, and services supplied by intermediaries, where they form part of international transactions which are exempt (paragraphs 13 and 14).

20 — The Court of Justice on some occasions resorts to settled and simple guidelines in applying the rules of the Sixth Directive (one example is Case C-429/97 *Commission* v *France* [2001] ECR I-637, paragraph 49). On others, it has taken the realities of the economic situation into account (Case C-260/95 *DFDS* [1997] ECR I-1005, paragraph 23). Article 15 of the Sixth Directive itself calls, in the introductory paragraph, for a correct and straightforward application of the exemptions.

21 — It is even more difficult if it is borne in mind that an aircraft which today flies beyond national frontiers may, tomorrow, operate on a domestic route.

34. The remaining paragraphs of Article 15 (paragraphs 4 to 9) [22] relate to the international operations of ships and aircraft. Therefore, the provisions analysed in these preliminary ruling proceedings, far from concerning activities assimilated to exempted exports, refer to international air travel. [23]

35. Those provisions relate, therefore, to supplies of goods and services on aircraft assigned to operations of that kind. However, it happens that, because in practice the same aircraft are used indiscriminately on domestic flights and flights bound abroad, it is not feasible to differentiate, in some operations, between the parts which relate to one kind of route or the other. This applies to the supply of the aircraft and their equipment, and also to the modification, repair, maintenance, chartering and hiring thereof, referred to in paragraph 6. The fact that it is impossible to differentiate makes it so difficult to administer the tax that it is necessary to resort to a legal fiction whereby exemption is available for the aforementioned legal transactions when the recipient is a company which operates 'chiefly' for reward on international routes, that is to say, it uses its fleet mainly for transport abroad.

All the participants in these proceedings are unanimous on this point.

36. However, there appear to be fewer problems with regard to the supply of provisions and services included in paragraphs 7 and 9 respectively. Unlike the activities I mentioned in the previous point, which, in practical terms, are indivisible, the supply of provisions and services to meet the direct needs of the aircraft and their cargo (for example, cleaning, take-off and landing fees, the use of facilities for receiving passengers or goods, for parking and accommodating aircraft or for handling luggage) [24] are transactions which may be attributed to a particular flight. Other supplies, such as fuel, cause greater complications, but, because of their nature, may be split up and divided *pro rata* between the various flights. [25] It is true that this is sometimes not an easy task, but the problems which may arise are not important enough to justify an exception to

22 — These are, specifically, the paragraphs not amended by Directive 91/680, so that they retain their original wording.

23 — The reason for considering them to be VAT exempt is the same as that which justifies the exemption of exports and like transactions (see paragraph 20 of the judgment in *Lange*, cited above), but that fact does not permit the three categories to be combined.

24 — The Danish Government explains in its written observations that, as regards the aforementioned takeoff and landing fees, provisioning for on-board catering and the baggage handling, suppliers invoice VAT only when the aircraft is operating on a domestic route.

25 — With regard to fuel, under the Danish system tax is always included in invoices, but the company prepares a monthly consumption statement, dividing it between domestic and international flights. Thus it is able to recover the tax corresponding to international flights.

the principle of the general application of VAT.[26] The rule of strict interpretation, which I have already mentioned, comes very much into play here to the effect that the opinion of Cimber Air and the German Government should be rejected. It should not be forgotten that, as the Court of Justice pointed out in *Velker International Oil Company*, a strict interpretation is especially necessary for provisions which contain exceptions to the rule that VAT is payable on transactions carried out within the country (paragraph 20).

37. Otherwise, the lynchpins of the common system of VAT would be jeopardised.

38. VAT, as I pointed out in my Opinion in *Lipjes*, to which I have already referred, is a tax on consumer transactions, as an expression of the economic capacity of persons. The aim pursued is achieved by subjecting to tax the transactions of businessmen and professionals who pass the charge on to the final consumer, thereby rendering the tax 'neutral'. For that reason, any fiscal measure which, like the objective exemptions, exempts from VAT transactions that in principle are taxable, breaks the chain and destroys neutrality, so that it must be interpreted and applied restrictively. Consequently, the chain must be broken on an egalitarian basis: supplies of goods and services of the same kind must all, without exception, be either subject to the tax or exempt from it.[27]

39. The interpretation suggested by Cimber Air takes no account of that essential rule even though, as explained above, there are no sound reasons for disregarding it.

40. If exemption were granted for the activities referred to in Article 15(7) and (9) of the Sixth Directive, relating to aircraft flying domestic routes and used by companies engaged mainly in international air passenger transport, those companies would, for no reason, have an advantage over companies operating only within the

26 — In its judgment in Case C-74/91 *Commission* v *Germany* [1992] ECR I-5437, the Court of Justice stated that the technical difficulties regarding the classification of air transport services as between Community and non-Community territory do not justify the non-application of the Sixth Directive (paragraph 12). It confirmed this view, in relation to sea cruises, in Case C-331/94 *Commission* v *Greece* [1996] ECR I-2675, paragraph 12. Those difficulties are, precisely, the basis for Cimber Air's arguments, as its agent acknowledged in reply to my questions at the hearing. On the other hand, the problems are not as insuperable as it claims, since, according to the Danish Government's Agent, the system introduced in his country, in relation to the claimant, has worked satisfactorily for both parties for more than 30 years.

27 — In Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 20, and Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 30, the Court of Justice pointed out that the principle of fiscal neutrality precludes economic operators carrying out the same transactions from being treated differently as far as the levying of VAT is concerned.

national borders or in which the domestic component predominated. There is no reason to exempt from tax transactions effected within the country, [28] which can be individually identified and, therefore, may be attributed to a particular route. The opposite course of action would disregard the general application of the tax, destroy its neutrality and become a serious obstacle to establishing real competition in the single market.

41. The answer which I suggest is based on the structural requirements of the Community legal order and leaves aside the legislations of the Member States, in view of the fact that they offer various alternatives. [29] Thus, a system like the Danish one, after granting a general exemption on the supply, modification, repair, maintenance, chartering and hiring of aircraft, refers, as regards the supply of goods, provisioning and other services, to the aircraft used on international routes. [30] This is also the case of the Value Added Tax Act 1994 (section 30(6)(b)) which exempts supplies of provisions for flights to destinations outside the United Kingdom.

42. However, other legal systems adopt a different position. Article 43(1)(h) of the Luxembourg Law of 12 February 1979 on value added tax [31] exempts — without going into further detail — transactions catering for the transport needs of aircraft used by companies operating chiefly for reward on international routes. In Belgium, the Law of 3 July 1969, which created the Code de la taxe sur la valeur ajoutée [32] after exempting the supply of aircraft and associated services when they are used by a company of that kind (Article 42(2)(1), (2) and (3)) applies the

28 — It must be remembered that, under Article 2(1), the aim of the Sixth Directive is to levy tax 'on the supply of goods or services effected for consideration *within the territory of the country* by a taxable person acting as such' (emphasis added).

29 — On many occasions and in various factual circumstances, the Court of Justice has used the expression 'concept of Community law' to indicate that a specific term in a rule introduced by the Institutions of the Union is to be interpreted not from the particular viewpoints of the national systems but in the light of the requirements of the Community legal order. In the field of VAT, by way of example, I may cite the concept 'leasing or letting of immovable property' (see Case C-275/01 *Sinclair Collis* [2003] ECR I-5965, paragraph 22, and the cases cited therein), which I shall be considering soon in Case C-284/03 *Temco Europa*.

30 — Article 34(1)(7) of the momsloven exempts only the supply of goods and services for equipping and provisioning aircraft and ships on international routes.

31 — *Mémorial A* 1979, p. 451 et seq.

32 — *Moniteur belge* of 17 July 1969.

same rule to the provisioning of the aircraft used by them (Article 42(2)(4)).

43. A third group of Member States follows the same course as the Sixth Directive, so, in principle, the interpretation of their provisions raises the same doubts as the Community legislation. Examples are the Code général des impôts (Article 262(II)(4), (5), (6) and (7)) in France, the Umsatzsteuergesetz (§ 8) in Germany [33] and the Ley del impuesto sobre el valor añadido (Article 22(4), (6) and (7)) in Spain. [34] However, in Spain, the Reglamento del impuesto (Tax Regulations) [35] makes it clear that the activities concerned are those relating to aircraft which operate on international routes, [36] and that is the way it has been construed in legal literature. [37]

44. In short, no common guideline is to be found in the legislation of the Member States such as to resolve the doubts entertained by the Vestre Landsret. The solution must therefore be arrived at on the basis of the principles governing the common system of VAT, from which it may be inferred, as I have already said, that the tax advantages contained in Article 15(7) and (9) of the Sixth Directive relate to transactions associated with flights made outside the national frontiers by aircraft used by an airline, irrespective of whether its main activity consists of operating international transport services for reward.

45. The reply I suggest for the first question makes it unnecessary to examine the second.

33 — Law of 9 June 1999 (BGBl. I 1999, p. 1270).

34 — Law 37/1992, of 28 December (Boletín Oficial del Estado — 'the BOE' — of 29 December 1992, p. 44247). Article 22(4) exempts 'entregas, transformaciones, reparaciones, mantenimiento, fletamento total o arrendamiento de las siguientes naves: 1. Las utilizadas exclusivamente por compañías dedicadas esencialmente a la navegación aérea internacional en el ejercicio de actividades comerciales de transporte remunerado de mercancías o de pasajeros' ('the supply, modification, repair, maintenance, full chartering or hiring of the following aircraft: 1. those used exclusively by commercial companies operating for reward chiefly in the transport of goods or passengers on international routes'). Further on, in paragraphs 6 and 7, it applies the same rule to the supply of provisions and other services to aircraft covered by the exemptions laid down in paragraph 4. The previous law governing that tax (Law 30/1985 of 2 August) was clearer and, in Article 10(4), referred to 'las aeronaves que realicen navegación aérea internacional' ('aircraft which operate on international routes').

35 — These regulations were approved, the day after the Law, by Royal Decree 1624/1992 (BOE of 31 December 1992).

36 — Article 10(3) states: '1. La exención se extenderá a los transportes de ida y vuelta con escala en los territorios situados fuera del ámbito territorial de aplicación del impuesto. 2. La exención no alcanzará a los transportes de aquellos viajeros y sus equipajes que, habiendo iniciado el viaje en el territorio peninsular o en las Islas Baleares, terminen en estos mismos territorios, aunque el buque o el avión continúen sus recorridos con destino a puertos o aeropuertos situados fuera de dicho territorio' ('1. The exemption shall extend to round trips with stopovers in territories situated outside the territorial scope of the tax. 2. The exemption shall not affect the transport of those passengers and their luggage who begin their journey in the territory of the Peninsula or of the Balearic Islands and end it in those territories, even if the ship or aircraft goes on to ports or airports situated outside that territory').

37 — Serrano Sobrado, in J.A., *El IVA en el comercio exterior*, published by Banco Exterior de España, Madrid 1987, considers that the exemption relates to aircraft which actually fly international routes (p. 38). That opinion is shared by Castellano Montero, L., *El IVA en el comercio internacional: intercambios de bienes y servicios*, published by the Cámara Oficial de Comercio e Industria de Madrid (Madrid Chamber of Commerce and Trade), Madrid 1997, p. 43. It must be acknowledged, however, that the Spanish authorities take a quite different view, since the Dirección General de Tributos (Revenue Authority), in a non-binding decision of 27 April 1993 (Case 496/93), stated that 'las entregas de los productos de avituallamiento están exentas, con independencia de que dichos productos se utilicen o consuman durante vuelos internacionales o nacionales de las referidas aeronaves' ('supplies of provisions are exempt, irrespective of whether the products are used or consumed on international flights or national flights made by the aforementioned aircraft'). However, interpreting Article 7(6) of the Rules implementing the Law of 1985 (approved by Royal Decree 2028/1985 of 30 October — BOE of 31 October 1985 –) it maintained that 'están exentas del impuesto las entregas de productos destinados a avituallamiento de aeronaves que realicen navegación aérea internacional o asimilada' ('supplies of products for the provisioning of aircraft operating on international or similar routes are exempt from the tax') (decision of 23 December 1986, published in the BOE of 26 January 1987).

VI — Conclusion

46. In the light of the foregoing considerations, I propose that the Court of Justice reply as follows to the questions referred to it by the Vestre Landsret:

'Article 15(7) and (9) 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 are to be interpreted as meaning that the Member States are not bound to exempt from VAT the transactions to which those provisions refer if they relate to aircraft flying on domestic routes, even if the aircraft are used by companies whose principal activity consists of operating international air transport services for reward'.