OPINION OF ADVOCATE GENERAL BOT
delivered on 9 December 2010[1]

1. The purpose of this reference for a preliminary ruling is to assess once again the compatibility with Community law of the tax legislation of a Member State which grants an entitlement to a benefit to resident taxpayers only.

2. It relates to German legislation according to which only resident taxpayers are entitled to deduct from their taxable income the annuity payable to a relative following the transfer of ownership in immovable property, by transfer or anticipated succession *inter vivos*. In accordance with that legislation, non-resident taxpayers who receive rent for such property in Germany, where such rent constitutes only a small portion of their overall income, are not entitled to deduct such an annuity from their taxable rental income in Germany.

3. In fact, the German tax authorities consider that that annuity should not be viewed as expenses directly linked to rent received in Germany, but as a personal burden, to be included in the calculation of the tax payable by a taxpayer in his Member State of residence.

4. In this Opinion, I will begin by indicating that in the circumstances of the case in the main proceedings, the conformity of the legislation in question with Community law must be assessed with regard to the free movement of capital. I will then outline the reasons why, to my mind, an annuity payable to a relative following the transfer of ownership in immovable property, when the chargeable event is that transfer of ownership, should be regarded as expenditure directly linked to the rent generated by that property, with the result that non-resident taxpayers are in the same position as resident taxpayers, with regard to that annuity.

5. I will thus infer that the legislation concerned constitutes indirect discrimination which, in the absence of justification, is contrary to the free movement of capital.

1 — Original language: French.

I — Legal framework

6. In accordance with Article 56(1) EC, all restrictions on the movement of capital between Member States are to be prohibited.

7. Article 58(1)(a) EC provides that Article 56 EC is without prejudice to the right of Member States to apply relevant provisions of their tax legislation which make a distinction between taxpayers who are not in the same situation with regard to their residence.

8. Pursuant to Article 58(3) EC, such provisions must not, however, constitute either a means of arbitrary discrimination or a disguised restriction on the free movement of capital defined in Article 56 EC.

II — The facts of the main proceedings and national law

9. The applicant, a German national, is resident in Belgium and is employed in that Member State. In 2002, he was paid a gross salary of EUR 67 679.03.

10. In 1992 and 2002, the applicant acquired from his parents, or received from them by way of anticipated succession *inter vivos*, full ownership or joint ownership with his brother of various properties, following which he and his brother each had to pay a monthly annuity of EUR 1 000 as of 1 December 2002.

11. Those transactions are described by the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony) (Germany) in the following manner:

'By notarial deed of 27 April 1992, the applicant acquired from his parents the property in Hameln, located at Wilhelmplatz 7, with the encumbrance of a right of usufruct in favour of his parents. By another deed of 2 December 2002, other properties were transferred by the mother to the applicant and his brother Hermann, by way of anticipated succession *inter vivos*. The plot in Hameln, located at Pyrmonter Str. 28, was transferred to the applicant's brother. The obligation to pay a monthly annuity amounting to EUR 1 000 was agreed upon. The transfer of ownership and burdens took place on 1 November 2002. The applicant's brother was joint owner of the properties located in Pötzen, Dorfen and Höxter 1, 1A. On 1 November 2002, the applicant also purchased his brother's share. The rights of usufruct held by the mother until that time in respect of various properties were converted into an annuity, by virtue of which the applicant, like his brother, had to

pay a monthly sum of EUR 1 000 to the mother as of 1 December 2002.'

12. In 2002, the applicant received, by way of rental income for the letting of those properties, the sums of EUR 2 785 and EUR 749.50. In the context of taxation of that rental income in Germany, the annuity of EUR 1 000 paid by the applicant was not deducted.

13. In accordance with the applicable German law, that annuity may be deducted as special expenditure within the meaning of Article 10(1)(1a) of the Law relating to income tax.[2] Nevertheless, according to the fourth sentence of Paragraph 50(1) of the EStG, that deduction does not apply to persons with limited income tax liability in the Federal Republic of Germany, namely non-resident taxpayers.

14. The referring court explains:

'The sole residence of the applicant is in Belgium. Therefore, he can be taxed in … Germany only on income originating in Germany. By application of Paragraph 49(1)(6) of the EStG, both the rental income derived from properties held in joint ownership as well as that from the property located at Wilhelmplatz 7, of which the applicant is the sole owner, are subject to taxation in … Germany. However, in contrast to the taxpayer with unlimited tax liability in … Germany, in accordance with the fourth sentence of Paragraph 50(1) of the EStG, the applicant is not entitled to deduct the annuity from that income as special expenditure incurred within the meaning of Paragraph 10(1)(1a) of the EStG …'

15. The German Government has provided the following supplementary information.

16. According to the first and fourth sentences of Paragraph 50(1) of the EStG:

'Persons with limited tax liability may deduct business expenses (Paragraph 4(4-8)) or occupational expenses (Paragraph 9) only to the extent that those expenses are economically linked to income of German origin. … The other provisions of Paragraph 34 and Paragraphs 9a, 10, 10a, 10c, 16(4), 20(4), 24a, 32, 32a(6), 33, 33a, 33b and 33c are not applicable.'

17. Business expenses are defined in Paragraph 4(4) of the EStG as 'expenses incurred in the course of business'. Occupational expenses are, according to the first sentence

2 — BGBl. 2002 I, p. 4245, ('the EStG').

of Paragraph 9(1) of the EStG, 'expenses incurred in the acquisition, safeguarding and maintenance of income'.

18. Special expenditure is defined in Article 10(1)(1a) of the EStG as follows:

'The following expenses shall constitute special expenditure where they are not business or occupational expenses:

…

1a. annuities and permanent burdens based on specific obligations, which have no economic link to income which is not taken into consideration in the assessment of tax.'

19. Annuities towards personal needs (annuities or permanent burdens) are recurring payments relating to the transfer of one or more assets by way of anticipated succession *inter vivos* (transfer of assets). The payments do not constitute consideration for a transfer or for acquisition expenses, but, where appropriate, constitute special expenditure within the meaning of Paragraph 10(1)(1a) of the EStG.

20. In that context, the transferee should be granted, in accordance with the intention of the parties, at least in part a gratuitous benefit (donation). The annuity or permanent burden should be established in accordance with the personal needs of the transferor.

21. In the case of transfers between relatives, it is assumed, unless there is evidence to the contrary, that recurring payments have been fixed independently of the value of the asset, based solely on the personal needs of the beneficiary and the general economic capacity of the debtor. Relatives represent the typical scenario of 'personal solidarity' required in that regard.

22. The Bundesfinanzhof (German Federal Finance Court) has defined transfers by means of personal annuities as follows:

'In civil law, the contract of transfer is an agreement by which relatives, with regard to a future succession, transfer their estate, in particular their company or their own property, to one or more heirs, while retaining … sufficient means to support themselves. The contract of transfer is characterised by the fact that it enables the next generation to benefit, prior to succession, from an economic unit allowing them, at least partly, to provide for their material needs while still ensuring, at least in part, the subsistence of the transferor by use of the assets transferred. To the extent that the contract of transfer is also a donation, it differs from an agreement according to which promises of payments towards personal needs are made in the context of an exchange of obligations regarded as

equivalent (BFHE 161, 317, 326 et seq., BStBl. II 1990, 8472 (C. II. 1.a))'.

23. Moreover, the case-law of the Bundesfinanzhof provides that annuities towards personal needs which are objectively linked to a transfer are classified as special expenditure (Article 10(1)(1a) of the EStG) and recurring payments (Article 22(1) of the EStG) when the transferor in fact retains, in the form of annuities towards personal needs, income arising from his property which in future is to be generated by the transferee of the property. Those payments differ from the maintenance payments referred to in Article 12(1) of the EStG, since they are considered to be reserved income arising from the property. As annuities towards personal needs do not constitute consideration by the transferee, they need not be fixed on the basis of the value of the property transferred (BFHE 161, 317, 328 et seq., BStBl. II 1990, 8472(C. II. 1.c)).

III — Reference for a preliminary ruling

24. The referring court raises the question of compatibility with Community law of the difference in treatment under national law of resident and non-resident taxpayers. It states that the obligation to pay an annuity is an expense which constitutes an identical burden on the income both of the applicant and that of his brother, who is a resident taxpayer, to the extent that each of them is obliged in the same manner to declare their income derived from properties located in Germany for tax purposes.

25. The Niedersächsisches Finanzgericht therefore decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is a situation where a relative with limited tax liability in the Federal Republic of Germany, unlike a person with unlimited tax liability, may not deduct from his total income, as special expenditure, annuities paid in connection with income from letting or leasing, contrary to Articles 56 [EC] and 12 EC?'

IV — Analysis

A — *Admissibility of the reference for a preliminary ruling*

26. The German Government argues that the present reference for a preliminary ruling is inadmissible. It argues, first, that the referring court did not sufficiently define the factual context with regard to the method of transfer of property to the applicant, the termination

of existing rights of usufruct and the payment of the monthly annuity. Second, it did not provide sufficient information about the content and interpretation of the national legislation relating to special expenditure and how such expenditure differs from business and occupational expenses.

27. I do not share the objections of the German Government.

28. Of course, as that government noted, it has been consistently held that the need to provide an interpretation of Community law which will be of use to the national court makes it necessary for the national court to define the factual and legislative context of the questions that it is asking or, at the very least, to explain the factual circumstances on which those questions are based. It is also agreed that the information provided in orders for reference must not only enable the Court to reply usefully but also enable the Governments of the Member States and other interested parties to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union. As a result, it is the Court's duty to ensure that that possibility is safeguarded, bearing in mind that, by virtue of that provision, only orders for reference are notified to the interested parties. [3]

29. It is also true that the order for reference for a preliminary ruling does not provide very detailed information about the conditions under which the property transfers were carried out and the rights of usufruct that were converted into a monthly annuity. Its description of national law is also less detailed than that provided by the German Government in its written observations.

30. Nevertheless, I take the view that the information contained in the order for reference with respect to the legal and factual context of the main proceedings is sufficient both to enable the parties entitled to take part in the present proceedings to submit their observations to the Court and to enable the latter to provide the referring court with a useful response to help determine the outcome of the case.

31. That information therefore made it possible to understand that the national legislation concerned allows only resident taxpayers the possibility of deducting from their taxable income an annuity payable to a relative following the transfer of immovable property by means of transfer or anticipated succession *inter vivos*. The description of the facts also indicates that the amount of the contested annuity does not correspond to the economic value of the property transferred or granted.

3 — Case C-67/96 *Albany* [1999] ECR I-5751, paragraphs 39 and 40; and Case C-293/03 *My* [2004] ECR I -12013, paragraph 17 and the case law cited).

Finally, it is clear that the referring court is seised of a case in which the result depends on whether such a difference in treatment of a resident and non-resident taxpayer is compatible with Community law.

32. Moreover, it should also be noted that, in addition to the applicant and the German Government, the French Government and the European Commission have submitted written observations which show that those interveners were able to understand the factual and legal context of the main proceedings.

33. We therefore hold the view that the present reference for a preliminary ruling, despite its inaccuracies, should be declared admissible.

B — *Substance*

34. The referring court raises the question whether the legislation concerned is compatible with Articles 56 EC and 12 EC. It thus asks, in essence, whether those articles should be interpreted as precluding legislation of a Member State by virtue of which a child with limited income tax liability in that Member State, who pays its parents an annuity following the transfer of ownership in those properties, may not deduct that annuity from the rental income generated by those properties, whereas persons with unlimited tax liability may do so.

35. I will show, first of all, that the compatibility of that legislation with Community law must be assessed from the perspective of the provisions of the EC Treaty on the free movement of capital alone. I will then set out the reasons why the legislation in question constitutes, in my opinion, a restriction on that freedom of movement.

1. The freedom of movement in question

36. As a preliminary point, it must be borne in mind that, while the Member States at present retain their powers in the field of direct taxation, they must nevertheless, according to settled case-law, exercise those powers in compliance with their European Community

obligations and, in particular, with the principles and freedoms provided for in the Treaty. [4]

37. As regards the application, in the present case, of Article 12 EC, which sets out as a general principle the prohibition against any discrimination on grounds of nationality, it follows from the case-law that that article applies independently only to situations governed by Community law for which the Treaty lays down no specific rules of non-discrimination. [5]

38. Article 56 EC, also cited by the national court in the question referred by it for a preliminary ruling, which prohibits discrimination in the specific area of movement of capital, can be applied to the present case. It is apparent from the case-law that the legislation of a Member State on the taxation of rental income received by a non-resident taxpayer falls within the scope of the free movement of capital. [6]

39. That case-law is based on the fact that investments in real estate are included among the capital movements listed in the nomenclature in Annex I to Council Directive 88/361/EEC, [7] which continues to have an indicative value for determining the scope of Article 56. [8] The acquisition by the applicant, who is resident in Belgium, of property situated in Germany thus constitutes a movement of capital. [9]

40. It also follows from that nomenclature and from the case-law that the transfer of ownership in immovable property by inheritance or gift to a Union citizen residing in another Member State also constitutes a movement of capital. [10] It can be logically inferred from that case-law that the transfer of ownership in buildings by means of anticipated succession *inter vivos* where, as in this case, there is a cross-border dimension caused by the fact that the beneficiary resides in a Member State other than that in which the property in question is situated, falls within the scope of Article 56 EC.

4 — Case C-279/93 *Schumacker* [1995] ECR I-225, paragraph 21, and Case C-101/05 *A* [2007] ECR I-11531, paragraph 19 and the case-law cited.

5 — Case C-443/06 *Hollmann* [2007] ECR I-8491, paragraph 28 and the case-law cited.

6 — Case C-386/05 *Centro di Musicologia Walter Stauffer* [2006] ECR I-8203, paragraph 24.

7 — Directive of 24 June 1988 for the implementation of Article 67 of the Treaty [Article repealed by the Treaty of Amsterdam], (OJ 1988, L 178, p. 5).

8 — Joined cases C-463/04 and C-464/04 *Federconsumatori and Others* [2007] ECR I-10419, paragraph 20, and Case C-11/08 *Eckelkamp and Others* [2008] ECR I-6845, paragraph 38.

9 — Case C-364/01 *Barbier* [2003] ECR I-15013, paragraph 58.

10 — See, as regards inheritances, Case C-513/03 *van Hilten-van der Heijden* [2006] ECR I-1957, paragraph 42, and Case C-256/06 *Jäger* [2008] ECR I-123, paragraph 25 to 27. As regards gifts, see Case C-318/07 *Persche* [2009] ECR I-359, paragraph 27.

41. As a consequence, that article clearly applies to the present case, as all parties to the action agree, and I therefore propose that the Court limit its examination of the question referred to it to providing an interpretation of that article.

2. The existence of an unjustified restriction

42. The question at the heart of the present case is whether the annuity payable by the applicant must be regarded as an expense directly linked to the rental income which he receives in Germany, or whether it should be deemed to be a personal burden.

43. That question arises because Articles 56 EC to 58 EC prohibit Member States from treating resident and non-resident taxpayers differently where those two categories of taxpayers are in the same situation.

44. Yet, as the French Government reminds us, in principle it is possible, in the area of direct taxation, for resident and non-resident taxpayers to be in different situations. [11] Thus, the income received by a non-resident taxpayer is in most cases only a part of his total income, which is concentrated at his place of residence. Moreover, the Member State in which the taxpayer resides is best placed to know the latter's personal and family situation and to determine his personal ability to pay tax. A non-resident taxpayer is thus not, in principle, in a position to reproach the Member State in which he receives only a small part of his income for not granting him a tax benefit that depends on his personal and family situation, such as the deduction of an annuity towards personal needs which he is obliged to pay, since to make such a determination is the responsibility of the Member State where he resides. [12]

45. In keeping with settled case-law, the State in which the income originated is not required to take account of the personal and family situation of a non-resident taxpayer unless the taxpayer derives all or almost all of his taxable income in the latter State. [13]

46. In the present case, it is not disputed that the rents received by the applicant in Germany constitute only a small portion of his taxable income, since, according to the information provided by the referring court, he receives more than 90 % of his income in Belgium, where he resides. It follows, therefore, that if the disputed annuity were regarded as

11 — The judgments in the *Schumacker* case (paragraph 31), and in Case C-440/08 *Gielen* [2010] ECR I-2323, paragraph 43.

12 — The aforementioned judgments in the *Schumacker* case (paragraph 32), and Case C-385/00 *de Groot* [2002] ECR I-11819, paragraphs 99 to 102.

13 — Judgments of *Schumacker* (paragraph 36), and Case C-527/06 *Renneberg* [2008] ECR I-7735, paragraph 61, cited above.

a personal burden, similar to maintenance payments, the applicant could not reproach the German tax authorities for failing to deduct it from his rental income in Germany.

47. However, the applicant would be justified in asking for such a deduction if that annuity could be regarded as constituting an expense linked directly to the rental income. It appears from the case-law that, as regards such expenditure, resident and non-resident taxpayers are in a comparable situation and must therefore be treated identically. [14]

48. The German and French Governments maintain that that case-law does not apply to the disputed annuity for reasons that may be summarised as follows.

49. The German Government argues that its national law implements the criterion of a direct link. Under the first sentence of Paragraph 50(1) of the EStG, a person with limited tax liability is entitled to deduct business expenses, that is, expenses incurred by the business, as well as occupational expenses, that is, expenses incurred for the acquisition, protection and maintenance of income.

50. Yet in the present case, it is beyond dispute that the annuity in question does not constitute an occupational expense but special expenditure within the meaning of Paragraph 10 of the EStG. That annuity, they argue, does not constitute consideration for the acquisition of the immovable property. Its amount was apparently set independently of the value of that property, on the basis of the personal needs of the beneficiary and the general economic capacity of the debtor to pay taxes. The payment was apparently the result of a family arrangement. The order for reference thus suggests that the applicant's mother wished to dispose of the property in question while ensuring she retained sufficient means to live on.

51. The German Government infers from the above that, in the present case, there is no direct link between the rental income received by Mr Schröder and the annuity he paid his mother, since the annuity is not inextricably linked to that income within the meaning of paragraph 25 of *Centro Equestre da Lezíria Grande*.

52. The German Government further notes that in paragraph 22 of the aforementioned *Conijn* judgment, the Court held that costs involved in obtaining tax advice, also regarded as special expenditure within the meaning

14 — Case C-234/01 *Gerritse* [2003] ECR I-5933, paragraph 27; Case C-346/04 *Conijn* [2006] ECR I-6137, paragraphs 20 to 24; and Case C-345/04 *Centro Equestre da Lezíria Grande* [2007] ECR I-1425, paragraphs 23 to 25.

of Article 10 of the EStG, were directly linked to the receipt of income taxed under limited tax liability rules. In the case that gave rise to that judgment, there was, however, a necessary link in so far as the expense was almost unavoidable in order to receive that income, and was closer in nature to occupational expenses than to special expenditure. By contrast, the annuity in question in the main proceedings is not a natural or legal consequence of receiving rental income, but is based on Mr Schröder's family ties.

53. The French Government likewise disputes the existence of a direct link between the annuity paid by the applicant and his rental income.

54. It maintains that, in the light of the objective and the content of Paragraph 10(1)(1a) of the EStG, an annuity based on that provision may not be considered the direct economic consideration for the applicant's mother's renunciation of the usufruct of the immovable property let out. The French Government also states that the amount of the annuity paid by the applicant has no direct correlation with the amount of that rental income. According to that government, there is no direct economic link between the amount of the annuity paid by the applicant and the rental income received, because the property in question could have yielded no such revenue or a much higher sum, without any relationship to the amount of the annuity in question.

55. I do not share the position of those governments. Like the Commission, I take the view that the annuity paid by the applicant to his mother following the transfer of ownership in several buildings situated in Germany may be considered as directly linked to the rental income generated by those buildings, and for the following reasons.

56. An examination of the judgments cited by the parties in their written submissions shows that the Court determined that there was a direct link between the income and the expenses of a non-resident taxpayer in the following circumstances.

57. In the aforementioned *Gerritse* judgment, the case concerned occupational expenses incurred by a musician of Dutch nationality, in the course of a performance at a radio station in Germany which were taxed in that Member State. The Court held that those occupational expenses were 'directly linked to the activity that generated the taxable income in Germany, so that residents and non-residents are placed in a comparable situation in that respect.' [15]

58. In the aforementioned *Conijn* judgment, the Court extended that analysis to tax

15 — Paragraph 27 of that judgment.

consultancy fees incurred by a taxpayer who was not resident in Germany in order to draw up his tax return in respect of his income received in that Member State. The Court held that the obligation to file a tax return arose from the fact that that person received income in that Member State. It inferred therefrom that the expenditure was directly linked to the income taxed in Germany, so that it was a burden on the income earned by all taxpayers, residents and non-residents alike. [16] The Court added that both resident and non-resident taxpayers were in a comparable situation faced with the complexity of national tax law, and that the right to a deduction intended to compensate for the costs incurred in respect of a tax consultation, allowed to resident taxpayers, should apply equally to non-resident taxpayers who face the same complexities of the national tax system. [17]

59. Finally, in *Centro Equestre da Lezíria Grande*, the Court held that the notion of 'operating expenses directly connected to the income received in the Member State in which the activity is pursued' should be understood to refer to expenses which have a direct economic link with the services that gave rise to the taxation in that State and which are thus inextricably linked to those services, such as travel and accommodation costs, irrespective of the time and place when they were incurred. [18]

16 — Paragraph 22 of that judgment.
17 — Ibid. (paragraph 23).
18 — Paragraph 25 of that judgment.

60. Upon examining that case-law, I take the view that the decisive factor for the purpose of determining whether expenditure should be considered a personal burden or even expenses related directly to taxable income is the chargeable event that gives rise to the said expenditure. The latter must be regarded as a cost linked directly to that income where the chargeable event with regard to that expenditure is the activity that made it possible to obtain that income and not the personal situation of the taxpayer.

61. In the present case, as the Commission states, the rental income could not have been obtained by the applicant except by the transfer of the immovable property in question and that transfer could not have happened other than as consideration for the payment of the annuity in question.

62. Certainly, the amount of that annuity, as it appears from the case-file, does not correspond to the economic value of the property transferred. As the German Government states, the amount could have been set by mutual consent among the parties within the family setting, based both on the needs of the recipient and of the economic capacity of the donor. However, that circumstance does not detract from the indispensable nature of the undertaking by the recipient of the donation to pay the said annuity in order to be able to obtain ownership of his parents' properties and, as a consequence, to receive the rental income generated by those buildings.

63. In other words, without paying the annuity, the applicant would not have been able to obtain ownership of the property let out and thereby the rental income generated by it.

64. The decisive factor in the present case is therefore, in my view, the fact that the chargeable event with regard to the annuity in question is the transfer of the ownership of the buildings that produce the taxable rental income in Germany, and not only the duty of children to help their parents. Since the chargeable event regarding the disputed annuity is the transfer of ownership of the property let out, which is for the national court to establish, it is my opinion that the annuity should be considered as expenditure linked directly to the rental income generated by that property.

65. That analysis, in my opinion, is not contradicted by the fact that, unlike in the case of occupational expenses and tax consultancy fees referred to in *Gerritse* and *Conijn*, the disputed annuity would be payable even if the applicant had not let out the properties and thus received no taxable income in Germany.

66. What matters, in my view, is that where non-resident taxpayers receive rental income, they be taxed as resident taxpayers and that, without the undertaking to pay an annuity to the donor of the property, they would not have been able to obtain ownership of those properties and thus to let them out.

67. It follows that, if the Court agrees with that analysis, non-resident taxpayers such as the applicant are in the same situation, with regard to such an annuity, as resident taxpayers. National legislation, by confining the possibility of deducting that annuity from taxable income in Germany to resident taxpayers, thus appears to be contrary to Article 56 EC.

68. Moreover, the German Government has not presented any justification for that different treatment.

69. As a consequence, I propose that the answer to the question put by the referring court is that Article 56 EC must be interpreted as meaning that the legislation of a Member State, by virtue of which a child with limited income tax liability in that State who pays its parents an annuity following the transfer of ownership of immovable property, by way of transfer or anticipated succession *inter vivos*, may not, unlike a resident taxpayer, deduct that annuity from the rental income generated by that property, is contrary to the provisions of that article where the chargeable event in relation to that annuity is that transfer of ownership.

V — Conclusion

70. In light of the above considerations, I propose to respond as follows to the question raised by the Niedersächsisches Finanzgericht:

Article 56 EC must be interpreted as meaning that the legislation of a Member State, by virtue of which a child with limited income tax liability in that State who pays its parents an annuity following the transfer of ownership of immovable property, by way of transfer or anticipated succession *inter vivos*, may not, unlike a resident taxpayer, deduct that annuity from the rental income generated by that property, is contrary to the provisions of that article where the chargeable event in relation to that annuity is that transfer of ownership.