OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 23 January 2001 [1]

1. By orders of 15 October 1998 and 2 September 1998, the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court) (hereinafter 'the High Court'), referred to the Court for a preliminary ruling questions (two in the first case and one in the other) concerning the interpretation of Article 13 of 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 (hereinafter 'the Sixth Directive'). [2] Specifically, the national court seeks an interpretation, in the light of the Court's decision in *Lubbock Fine*, [3] of the reference in Article 13B(b) to 'the leasing or letting of immovable property', in order to determine whether various contractual transactions before it come within the meaning of those terms and therefore qualify for exemption from VAT under that provision.

The relevant Community legislation

2. Article 13 of the Sixth Directive governs exemptions from VAT. Article 13B provides, *inter alia*:

'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 the exemptions and of preventing any possible evasion, avoidance or abuse:

...

(b) the leasing or letting of immovable property...'.

1 — Original language: Italian.
2 — OJ 1977 L 145, p. 1.
3 — Case C-63/92 [1993] ECR I-6665.

Case C-409/98 *Mirror Group*: facts and the questions referred for a preliminary ruling

3. In 1993, Mirror Group Newspapers Plc (hereinafter 'Mirror Group'), a publishing concern, was interested in leasing premises in London to which to move its operations. Given its high profile, Mirror Group commanded 'anchor tenant' status and could expect to be offered particularly favourable terms. On 20 June 1993 it entered into a series of agreements with Olympia & York Canary Wharf Ltd (in administration) (hereinafter 'O&Y'). These were contained in three separate documents and comprised:

— an Agreement for Lease ('the principal agreement') relating to five floors (Floors 20 to 24) of a building in London;

— a lease of those five floors;

— an agreement which gave Mirror Group the option, exercisable within six months, to take a lease or leases of up to four more floors of the same building and — if that option was not exercised in respect of more than two floors before that period expired — a second option, exercisable within eighteen months thereafter, to take a lease or leases of another two floors.

4. Clause 13(1) of the principal agreement provided that on or before 2 July 1993 O&Y was to pay Mirror Group, as anchor tenant, an 'inducement' of approximately GBP 12 million (plus VAT) to accept the lease. The arrangements for payment were as follows.

(a) Approximately GBP 6.5 million (exclusive of VAT) by way of inducement for the lease of the five floors already identified, was to be paid into an escrow account (an account where the money held is not released until a condition has been fulfilled). This money was to be released to Mirror Group in several instalments which would become due following the dates on which Mirror Group ceased to have a right to determine the leases. Under the principal agreement, Mirror Group had an absolute right, until 20 August 1993, to determine the lease but if that right was exercised, the inducement would have to be repaid in full. Thereafter, Mirror Group had a right until 20 December 1993 to determine the lease, but only if certain conditions were not satisfied. Again, if Mirror Group determined the lease, the whole of the inducement was repayable, subject, however, to Mirror Group's right to deduct expenditure already incurred on fitting out and moving.

(b) Approximately GBP 5.5 million (exclusive of VAT) by way of inducement to take up the option was to be paid immediately to Mirror Group which was to place it forthwith in another escrow account to secure its obligations. That money was to be released to Mirror Group, if and when it exercised its option, in an amount proportional to the area leased. Mirror Group did in fact exercise its option in respect of three further floors and was thus able to retain the entire sum of GBP 5.5 million save for GBP 1.4 million plus VAT, which had to be repaid to O&Y in consequence of Mirror Group's failure to exercise its call option over a fourth floor.

(c) Finally, the VAT of approximately GBP 2 million was to be placed in a third escrow account until payment of the VAT to Mirror Group on 26 July 1993.

5. The lease of the five floors was for a term of 25 years. Nil rent was payable for the first five years and for the 20 years thereafter the rent was to remain below the full market rent. The rent for the additional floors was to be essentially the same as that payable for the first five floors. For its part, Mirror Group entered into the tenant's undertakings and agreed to fit out the five floors at its own expense and the extra floors with some financial assistance from O&Y. Mirror Group incurred fitting-out expenditure of about GBP 7.2 million on the first five floors and GBP 4.4 million on the other floors.

6. Relying on the exemption provided for under Article 13B(b) of the Sixth Directive in respect of 'the leasing or letting of immovable property', Mirror Group sought reimbursement of the VAT (approximately GBP 2 million) paid on the inducement (GBP 12 million). The Commissioners of Customs and Excise (hereinafter 'the Commissioners') refused that claim by decision of 1 January 1997. Mirror Group thereupon appealed to the London VAT and Duties Tribunal (hereinafter 'the Tribunal').

7. By decision of 3 April 1998, the Tribunal ruled that the exemption covered the sum of GBP 6.5 million paid by way of inducement to take the lease. It took the view that, while the circumstances of the case differed from the classic situation in which a lease is granted — in that the payment was made by the landlord, not the tenant — Article 13B(b) had to be regarded as applicable in the light of *Lubbock Fine*, according to which such circumstances constitute the leasing or letting of immovable property within the meaning of that provision. However, with respect to the sum of GBP 5.5 million paid as inducement to take up the option, the Tribunal held that this was not covered by the exemption. Rather, it constituted consideration for a *separate* supply of services relating solely to the options, hence not directly related to the lease.

8. Both Mirror Group and the Commissioners appealed to the High Court against the Tribunal's decision. During the course of those appeal proceedings, doubts emerged concerning the interpretation of Article 13B(b) of the Sixth Directive, particularly in the light of *Lubbock Fine*. In substance, the High Court took the view that it was not clear from that judgment what criteria were used to define the ambit of Article 13B(b) and it was thus not possible to draw safe conclusions for the resolution of the case before it. By order of 15 October 1998, the High Court therefore referred the following two questions to the Court of Justice for a preliminary ruling:

'1. Following the decision of the Court in Case C-63/92 (*Lubbock Fine & Co* v *Commissioners of Customs and Excise*), does Article 13B(b) of Council Directive 77/388/EEC exempt from VAT a supply made by a person ("the person") who does not initially have any interest in the immovable property, where that person enters into an agreement for lease of that immovable property with a landlord and/or accepts the grant of a lease by the landlord in return for a sum of money paid by the landlord?

2. Following the decision of the Court in Case C-63/92 (*Lubbock Fine & Co* v *Commissioners of Customs and Excise*), does Article 13B(b) of Council Directive 77/388/EEC exempt from VAT a supply made by a person ("the person") who does not initially have any interest in the immovable property, where that person:

(a) enters into an option agreement in relation to leases of that immovable property in return for a sum of money being paid to the person, on terms that the money will remain in a special account as security for its obligations under the option agreement; and/or

(b) subsequently exercises the options under the option agreement and accepts the grant of leases of the immovable property in return for the release of the money in the special account to the person?'

Case C-108/99 *Cantor*: facts and the question referred for a preliminary ruling

9. On 25 March 1986 Prudential Assurance Co. Ltd ('Prudential') granted Wako

International (Europe) Limited ('Wako') an underlease of the fourth floor of a building in London. The lease was granted for a term of 15 years. Under Clause 18(d) of the lease, Wako undertook not to assign or sub-let without the landlord's consent.

10. In 1993 Wako decided to assign the lease to Cantor Fitzgerald International ('Cantor'). This was done by means of three separate instruments. By the first, executed on 12 March 1993, Wako and Cantor entered into an agreement for assignment of the lease. Under that agreement (to which Cantor Fitzgerald Securities was also a party, as guarantor of Cantor's obligations), in consideration of Cantor taking over the lease, Wako agreed to pay Cantor GBP 1.5 million on completion. Cantor, for its part, undertook to perform Wako's obligations under the lease and to indemnify Wako in respect of any losses or liabilities incurred by reason of the lease. Cantor also undertook to execute a licence to assign with Prudential.

11. That licence to assign, the second of the three instruments, was subsequently entered into on 23 March 1993 by Prudential, Wako and Cantor, with Cantor Fitzgerald Securities as guarantor. Prudential thereby gave Wako licence to assign the underlease to Cantor and Cantor covenanted with Prudential to pay the rent payable and to observe Wako's covenants under the lease. The following day, Wako and Cantor (again with Cantor Fitzgerald Securities as guarantor) executed a third instrument by which the lease was formally assigned by Wako to Cantor. Immediately thereafter, Cantor went into occupation of the premises.

12. Under the transaction described above, Cantor received from Wako the sum of GBP 1.5 million, on which it accounted for VAT. This was confirmed as the correct treatment by decision of the Commissioners of 30 July 1996. On 13 August 1996 Cantor appealed against that ruling to the Tribunal, which decided on 6 August 1997 to allow the appeal, holding that the transaction was exempt from VAT.

13. On 26 September 1997, the Commissioners appealed to the High Court, asking that the Tribunal's decision be set aside. However, in the course of those appeal proceedings, too, doubts emerged regarding the interpretation of Article 13B(b) of the Sixth Directive, again in the light of the judgment in *Lubbock Fine*. By order of 2 September 1998, the High Court therefore referred the following question to the Court of Justice for a preliminary ruling:

'Following the decision of the Court in Case C-63/92 (*Lubbock Fine & Co* v *Commissioners of Customs and Excise*), does Article 13B(b) of the Sixth VAT Directive exempt from VAT a supply made

by a person ("the person") who does not have any interest in immovable property, where the person agrees to accept an assignment of a lease of that immovable property from a lessee, and the lessee pays that person a sum of money in return for that person taking the assignment of the lease in that immovable property?'

Legal analysis

General remarks

14. By these two references for a preliminary ruling, the High Court seeks, in relation to the facts described above, an interpretation of the phrase 'the leasing or letting of immovable property' in Article 13B(b) of the Sixth Directive. It is specifically requested that such a ruling be given in the light of the Court's judgment in *Lubbock Fine*, which provided some guidance as to the scope of that notion.

15. In *Lubbock Fine* the Court was asked to determine the position of a lessee who had surrendered its rights under a lease by returning the property to the landlord in return for a payment. The issue to be decided, therefore, was whether or not that transaction came within the meaning of the phrase 'the leasing or letting of immovable property' in Article 13B(b).

16. The Court stated that '[w]here a given transaction, such as the letting of immovable property, which would be taxed on the basis of the rents paid, falls within the scope of an exemption provided for by the Sixth Directive, a change in the contractual relationship, such as termination of the lease for consideration, must also be regarded as falling within the scope of that exemption; [c]onsequently, the reply to be given to the national court is that the term "letting of immovable property" used in Article 13B(b) of the Sixth Directive to define an exempt transaction covers the case where a tenant surrenders his lease and returns the immovable property to his immediate landlord.... The relations created by a lease cannot be broken up in this way'. [4]

17. As I mentioned above, the High Court has doubts regarding the scope of *Lubbock Fine* and specifically as to whether it is an appropriate source of guidance for deciding the cases before it; nor do the parties to the dispute do anything to dispel those doubts because in their pleadings before the High Court and in the observations submitted to the Court of Justice, they use that judgment

4 — *Lubbock Fine*, paragraphs 9, 10 and 12 respectively.

as a basis for drawing quite irreconcilable conclusions.

18. To my mind, such aid as can be gleaned from *Lubbock Fine* alone cannot be conclusive for present purposes, not simply because the facts of that case are not on all fours with those at issue before the High Court, but primarily because the terms in which that judgment is couched preclude its automatic application to other cases. Accordingly — in order to determine whether and, if so, to what extent *Lubbock Fine* may be applied — rather than dwell on the wording of the judgment, we should trace the reasoning presumably followed by the Court.

19. To do so, we must take as our starting point the notion which lies at the heart of both *Lubbock Fine* and the present cases, that is to say, the phrase 'the leasing or letting of immovable property', as used in Article 13B(b) of the Sixth Directive. However, this is by no means easy to define, given that, as the Court itself has observed, 'the wording of Article 13B(b) of the Sixth Directive does not shed any light on the scope of the terms "leasing" or "letting" of immovable property'. [5]

20. Proceeding therefore by way of gradual approximations, the Community case-law yields up a first criterion of interpretation, consistent with the settled principle that exceptions to a general rule must be strictly construed. Notwithstanding the doubts expressed on this point during the current proceedings, there is no reason to take any alternative approach to the interpretation of the provision at issue here. The Court has expressly stated that '... the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that turnover tax is to be levied on all services supplied for consideration by a taxable person'. [6]

21. That said, it should also be borne in mind that 'the exemptions provided for in Article 13 of the Sixth Directive have their own independent meaning in Community law' and must therefore be given a Community definition. Moreover, that definition must certainly be 'wider in some respects than that enshrined in various national laws', given the fact that Article 13B(b) expressly mentions — albeit 'in order to exclude it from the exemption' — a contract for a hotel room, 'which ... is not considered, in some national laws, to be a contract to let'. [7]

5 — Case C-359/97 *Commission* v *United Kingdom* [2000] ECR I-6355, paragraph 65, and Case C-358/97 *Commission* v *Ireland* [2000] ECR I-6301, paragraph 53, both of which concerned road tolls.

6 — Case C-346/95 *Blasi* [1998] ECR I-481, paragraph 18. To the same effect, see also, *ex multis*, Case C-359/97, cited above, paragraph 67; Case C-358/97, cited above, paragraph 55; and, most recently, Case C-150/99 *Stockholm Lindopark* [2001] ECR I-493, paragraph 25.

7 — See Case C-359/97, cited above, paragraphs 63 and 66, and Case C-358/97, cited above, paragraphs 51 and 54.

22. However, leaving aside those finer points, it seems to me that a definition of the notion at issue will best be arrived at by applying the test normally used to construe a Community term in the absence of other legislative guidance. In other words, we must look to the 'usual' meaning of the term or, if you will, the meaning normally attributed to it in the various legal systems of the Member States. [8]

23. On this point, I would concur with Advocate General Darmon in the view that 'it is common ground that a letting is a contract by which the owner transfers in return for a rent certain rights in his property, such as the right of enjoyment of the property, whatever the nuances of national law on this point'. [9] Although implicit in that definition, it may be added, as the Court observed in the abovementioned road toll cases, that the phrase 'the leasing or letting' 'cannot be considered to cover contracts where... the parties have not agreed on any duration for the right of enjoyment of the immovable property, which is an essential element of a contract to let'. [10]

24. Stated in those terms, however, the definition of the phrase in question still does not offer any useful guidance for answering the questions raised by the national court. It is necessary to go a little further and to see whether that general definition yields further, more precise, clues.

25. In that respect, it seems to me that a particularly meaningful contribution is made by Advocate General Jacobs in his recent Opinion in *Stockholm Lindöpark*, in which he argued that in order to qualify for exemption under Article 13B(b) of the Sixth Directive, a contract must possess 'the essential characteristics of a lease or let, which include the grant of a right to occupy a defined piece or area of immovable property as one's own and to exclude or admit others, and an agreement between the parties taking account of the duration of that occupation, in particular as a criterion for determining the price; such characteristics must, moreover, predominate in the contract'. [11]

26. In my view, this idea that the characteristics of the lease or let must *predominate* in a contract in order for it to come within the exemption is highly relevant for our purposes. It would exclude from the exemption contracts which, while sharing a number of features with contracts of leasing and letting, are primarily concerned with the supply of services incidental to the occupation of the property. For precisely

8 — See the Opinions of Advocate General Alber in Case C-359/97, cited above, point 76, and Case C-358/97, cited above, point 63.

9 — Point 39 of the Opinion in *Lubbock Fine*.

10 — Case C-359/97, cited above, paragraph 68, and Case C-358/97, cited above, paragraph 56.

11 — Point 40 of the Opinion in Case C-150/99, referred to in footnote 6 above.

that reason, when considering in the same Opinion the case of contracts relating to the use of golf courses, Advocate General Jacobs pointed out the need to determine 'whether the transaction should be regarded as the occupation of the immovable property or as the supply of services for which the property is an incidental, albeit essential prerequisite'. [12] Advocate General Alber appears to be guided by the same criterion in the road tolls cases, in which he argues that the tolls paid by road-users constitute consideration not so much for the use of the property as for the provision of a service. [13]

27. In order to identify the key features of a contract, however, we must go beyond an abstract or purely formal analysis. It is necessary to find the contract's *economic purpose*, that is to say, the precise way in which performance satisfies the interests of the parties. In other words, we must identify the element which the legal traditions of various European countries term the *cause* of the contract and understand as the economic purpose, calculated to realise the parties' respective interests, lying at the heart of the contract. In the case of a lease, as noted above, this consists in the transfer by one party to another of an exclusive right to enjoy immovable property for an agreed period.

28. It goes without saying that this purpose is the same for all the parties to the contract and thus determines its content. On the other hand, it has no connection with the subjective reasons which have led each of the parties to enter into the contract, and which obviously are not evident from its terms. I have drawn attention to this point because, in my view, failure to distinguish between the *cause* of a contract and the motivation of the parties has been the source of misunderstandings, even in the cases under consideration here, and has complicated the task of categorising the contracts at issue.

29. That said, I would observe that the test under discussion is not without precedent in Community case-law. As was seen, for example, in Advocate General Alber's Opinions in the road tolls cases, it was necessary to look to the 'chief purpose of the contract between the parties' in order to ascertain whether the tolls were paid as consideration for the lease of the road surface or for a supply of services. [14] The Court, too, in its judgments in those cases, regarded the purpose which a contract serves for the parties thereto as the decisive

12 — Case C-150/99, cited above, point 31 of the Opinion.

13 — See the Opinions in Case C-359/97, cited above, point 80, and Case C-358/97, cited above, point 67.

14 — See the Opinions in Case C-359/97, cited above, point 80, and Case C-358/97, cited above, point 67.

factor. As mentioned above, the Court's conclusion turns on the fact that, in drawing up the terms of their contract, the parties gave no consideration to the duration of the right to use the immovable property. [15]

30. Arguably, the Court adopted the same approach in *Henriksen*, [16] in which it pointed out that 'the phrase "the leasing or letting of immovable property", which is the subject of the exemption laid down in Article 13B(b) of the Sixth Directive, necessarily encompasses, in addition to the letting of the property which is the principal subject of the transaction, the letting of all property which is accessory to it; [t]hus, the letting of premises and sites for parking vehicles cannot be excluded from the exemption where the letting thereof is closely linked to the letting of immovable property, which is itself exempt, so that the two lettings *constitute a single economic transaction*'. [17]

31. What is more, in my view, it is that approach also which forms the basis of the *Lubbock Fine* judgment, to which attention has been called in the present proceedings. As noted above, the Court held in that case that the phrase 'the leasing or letting of immovable property' in Article 13B(b) of the Sixth Directive covers the case where a tenant, for consideration, surrenders his lease and returns the immovable property to his immediate landlord. This is so, the Court explained, because if a letting of immovable property falls within the scope of an exemption provided for by the Sixth Directive, a change in the contractual relationship, such as termination of the lease for consideration, must also be regarded as falling within the scope of that exemption. [18]

32. Thus the Court did not attribute significance either to the fact that the parties had entered into a new contract in order to terminate the lease or the fact that the payment on that occasion was made by the landlord to the tenant. Instead, the crucial factor for the Court appears to have been that the purpose of the new contract was to pass the right to enjoy the property back to the landlord; that is to say, it served the same purpose as the original contract, even though the right in question was transferred in the opposite direction.

33. Having made those general remarks, I can now move on to consider the various questions individually.

15 — Referring to those decisions in his Opinion in *Stockholm Lindöpark*, Advocate General Jacobs rightly noted that 'the Court stressed in particular the need that the agreement between the parties should take into account the duration of the enjoyment of the property, in particular as a factor determining the consideration due' (point 23).

16 — Case 173/88 [1989] ECR 2763.

17 — Paragraphs 14 and 15; emphasis added.

18 — Paragraphs 9 and 10.

Case C-408/99 (Mirror Group)

(a) Question 1

34. By its first question, the national court asks whether the phrase 'the leasing or letting of immovable property' covers a transaction consisting in: (1) an agreement for lease of a property; and/or (2) the acceptance of the grant by the landlord of a lease of a property in return for a sum of money paid by the landlord by way of inducement.

35. On the face of it, and according to the order for reference, the transaction involves two separate contractual acts. In theory, therefore, these could attract different tax treatments according to how each is classified. In the case in point, however, none of the parties argued to that effect, even though their positions subsequently diverged as to how the issue raised in the first question should be resolved.

36. In fact I would agree that the two contractual acts should be regarded as a single transaction, since, in view of the fact that their economic purpose is identical, they are so closely related. For the same reason, I also believe that they should be exempt from VAT.

37. The key factor, in my view, is that the transaction as a whole was conceived with a view to creating a landlord-tenant relationship and thus the single, common economic purpose of the two acts was to pass the right to enjoy the property from the owner to the tenant. This view is borne out, *inter alia*, by the fact that the inducement was released in full to Mirror Group only on expiry of the period during which it had a right to determine the lease (see above, point 4), demonstrating that the inducement payment constituted an element of the landlord-tenant relationship.

38. On the other hand, in my view — as in that of the Commission — the fact that the payment was made by the landlord rather than by the tenant is irrelevant. Indeed, in *Lubbock Fine*, the same fact did not prevent the Court from finding that the transaction concerned constituted a letting within the meaning of Article 13 of the Sixth Directive.

39. If, therefore, it is found that, as I believe, the purpose of the whole transaction was to transfer the right of enjoying the immovable property from the owner to the tenant, it must perforce be concluded that the transaction falls, in its entirety,

within the meaning of the phrase 'the leasing or letting of immovable property' in Article 13B(b) of the Sixth Directive.

(b) Question 2

40. By its second question, the national court asks the Court whether the phrase 'the leasing or letting of immovable property', as used in Article 13 of the Sixth Directive, covers a supply by which a person: (a) enters into an option agreement for the lease of immovable property in return for a sum of money, on the understanding that the money will remain in a special account as security for its performance of its obligations under the option agreement; and/or (b) subsequently exercises the options and therefore takes up the lease in return for the release of the money.

41. Allow me first to point out that this question is not one that is easily grasped. The Commission assumes in its written observations that the question refers to two quite distinct scenarios. Scenario (a), in the Commission's understanding, concerns an agreement under which one party receives an inducement in return for entering into an option agreement relating to leases of immovable property and undertakes to place the money in a special bank account. Scenario (b), on the other hand, concerns an agreement under which the sum of money is paid in return for the party actually exercising the option and taking up the leases of the property.

42. As before, however, I believe that the difference between the two scenarios has no decisive bearing on the answer to be given to the national court. Even assuming that two separate acts are involved, the fact remains, here again, that the two contractual acts are closely linked by virtue of the fact that their economic purpose is identical. Once again, in other words, in order to determine whether or not this transaction is exempt from VAT, we must look to the purpose which, viewed as a whole, it is called upon to serve.

43. In that light, the fact that the inducement is not released to Mirror Group until the option has actually been exercised and, above all, the fact that the sum of money released is directly proportional to the area actually let (see above, point 4) lead me to conclude that the purpose of the agreement described at (a) was simply to combine with the lease in transferring the right to enjoy the property from the landlord to another person. However, if that is the overall purpose of the transaction, as I believe, it follows that in this case, too, the sum paid by the owner of the property must qualify for the tax exemption provided for by Article 13B(b) of the Sixth Directive in respect of the leasing or letting of immovable property.

Case C-108/99 (Cantor)

44. Let me turn finally to the question referred by the High Court in the Cantor

case, that is to say, whether the phrase 'the leasing or letting of immovable property' for the purposes of the Sixth Directive covers an agreement under which a tenant pays a sum of money to a third party in return for acceptance by that third party of assignment of the lease.

45. According to the view put forward by the United Kingdom Government, in particular, a contract of this kind falls outside the scope of the exemption. This is because it consists in an agreement between a tenant and a third party which solely concerns the third party's acceptance — in return for the payment of a sum of money — of the obligations arising under the lease. In the view of the United Kingdom Government, there is no connection here with the grant of the lease.

46. I cannot agree. The contract in question cannot be viewed separately from the entire set of agreements by which the overall transaction is effected. To my mind, even though the transaction is contained in three separate documents, these complement one another in furtherance of one and the same purpose: to transfer, with the owner's consent, the right to enjoy property from the tenant to a third party.

47. In brief, the transaction is intended to vary the original lease, in terms of the identity of the parties thereto. Accordingly, the principle laid down in *Lubbock Fine* must be applied. The Court explained in that judgment that Article 13B(b) of the Sixth Directive applies to agreements which modify existing leases, including (but not exclusively) those which provide for 'termination of the lease for consideration'. There is no reason why a different approach should be taken in respect of situations where the underlying logic is the same, that is to say, situations involving agreements, such as those at issue here, to change the identity of the parties to existing leases.

48. Nor — contrary to the view put forward by the Commission in its written observations — does it militate against this conclusion that in this case the payment was made by the tenant to a third party who had undertaken, subject to the landlord's consent, to take over the tenant's obligations under the lease. Moreover, even the Commission changed its mind on this point and at the hearing contended for an approach which has regard to the economic purpose of the transaction. In particular, the Commission pointed out that the tenant could have achieved the same economic purpose by means of other transactions which are clearly exempt from VAT (for example, by sub-letting the property to a third party and paying that party a suitable 'premium'). Thus, the Commission espouses the view that a series of different transactions, such as these, which share the same economic purpose, should be accorded the same tax treatment.

Conclusion

49. In the light of the foregoing, I propose that the Court answer the questions referred by the High Court as follows:

In Case C-409/98 *Mirror Group*:

In accordance with the judgment of the Court in Case C-63/92 *Lubbock Fine* [1993] ECR I-6665, Article 13B(b) of 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 (the Sixth Directive):

(1) exempts from VAT a transaction consisting in the grant of a lease of immovable property to a person who does not initially have any interest in the property, where that person enters into an agreement with the landlord for lease of that immovable property and/or accepts the grant of a lease of that property in return for a sum of money paid by that landlord;

and

(2) exempts from VAT a transaction consisting in the grant of a lease of immovable property to a person who does not initially have any interest in the property, where that person:

(a) enters into an option agreement in relation to the lease of that immovable property in return for a sum of money paid to the person, on terms that the money will remain in a special account as security for that person's obligations under the option agreement; and/or

(b) subsequently exercises the options under an option agreement relating to the lease of immovable property in return for the release of the money held in the special account in that person's name.

In Case C-108/99 *Cantor*:

In accordance with the judgment of the Court in Case C-63/92 *Lubbock Fine* [1993] ECR I-6665, Article 13B(b) of 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 (the Sixth Directive), exempts from VAT the assignment of a lease of an immovable property by the tenant to a third person who does not have any interest in that property, in return for the payment of a sum of money to that person by the tenant.