OPINION OF ADVOCATE GENERAL LÉGER
delivered on 11 March 2004 [1]

1. In the present case the Bundefinanzhof (Federal Finance Court) (Germany) is seeking a ruling from the Court on the scope of Article 25 of the Sixth Directive 77/388/EEC, [2] which concerns the common flat-rate scheme for farmers. The reference was made in the course of proceedings between a national tax authority and a farmer who has leased out the assets of his farm used for milk production. What is being sought is a ruling on whether the income from that leasing arrangement should be subject to the common flat-rate scheme provided for in Article 25 of the Sixth Directive or to the general scheme of value added tax, [3] or whether it should be totally exempt.

I — Law

2. In the Sixth Directive the Community legislature sought to harmonise the scope of VAT throughout the Member States by laying down a uniform basis of assessment of VAT for the entire European Community. In addition, it provided a very broad definition of the scope of that tax. The tax must therefore apply to the supply of any goods or services effected for consideration as part of an economic activity by a trader operating independently. [4] Those economic activities include agricultural activities. [5]

3. VAT is designed as a tax on final private consumption. It must therefore have a neutral effect on traders. However, it is applied by each of the traders involved in the chain of production, distribution or provision of services. In practice, this means that each trader applies VAT to the price of his goods and services and pays the Treasury, at regular intervals, the tax which he recovers by so doing, having first deducted the VAT that he has himself paid on the purchase of the goods and services required for his own economic activity. The operation

1 — Language of the case: French.

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

3 — Hereinafter 'VAT'.

4 — Articles 2 and 4.

5 — Article 4(2).

of such a scheme therefore requires every taxable person to keep accounts in sufficient detail to permit application of the value added tax and inspection by the tax authority. [6]

4. Keeping such accounts proved very difficult for some traders, such as small undertakings and the majority of farmers. In the Sixth Directive the Community legislature therefore sought to harmonise the special schemes which had been introduced by Member States for those occupational categories. [7] Article 24 of the Sixth Directive states that Member States may apply in respect of small undertakings a simplified scheme based on exemptions.

5. In Article 25 of the Sixth Directive the Community legislature also made provision that where the application to farmers of the normal VAT scheme, or the simplified scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers a flat-rate scheme tending to offset the VAT charge on inputs they have paid on their purchases of goods and services. Those farmers are called 'flat-rate farmers'. [8]

6. Article 25 of the Sixth Directive provides that that common flat-rate scheme is subject to the following rules. Member States are to fix the flat-rate compensation percentages according to the calculation procedure laid down in that directive. Those percentages must not be used to obtain for flat-rate farmers refunds greater than the VAT charge on inputs. [9]

7. Under Article 25(5) of the Sixth Directive those flat-rate percentages are to be applied to the price, exclusive of tax, of the agricultural products and agricultural services that flat-rate farmers have sold to taxable persons other than flat-rate farmers. This compensation excludes all other forms of deduction.

8. The flat-rate compensation is to be paid to flat-rate farmers either by the taxable person to whom the goods or services are supplied or by the public authorities. In the

6 — Article 22 of the Sixth Directive.
7 — Fifteenth recital.
8 — Article 25(2), third indent.
9 — Article 25(3).

first case the flat-rate farmer invoices the taxable person to whom the goods or services are supplied for the flat-rate compensation percentage set by the State and retains for himself the VAT that he has received thereby. In the second case, the public authorities pay the flat-rate farmer the amount of flat-rate compensation which results from applying that percentage to his receipts.

9. Article 25(8) of the Sixth Directive provides that where a flat-rate farmer sells his products or provides his services to persons who are not liable for VAT or to other flat-rate farmers, the VAT charge on inputs is deemed to be offset by the purchaser or customer.

10. Article 25(2), fifth indent, of the Sixth Directive defines an 'agricultural service' as being a service as set out in Annex B supplied by a farmer using his labour force and/or by means of the equipment normally available on his farm.

11. Annex B to the Sixth Directive, which contains the list of agricultural services, states that 'supplies of agricultural services which normally play a part in agricultural production shall be considered the supply of agricultural services, and ... in particular hiring out, for agricultural purposes, of equipment normally used in agricultural ... undertakings'.

12. Under German law, the flat-rate compensation mechanism provided for in Article 25 of the Sixth Directive is implemented by Paragraph 24 of the Umsatzsteuergesetz 1991.[10] Under that article the tax applied by farmers to their products and services, set at 8 %, offsets the VAT that they have had to pay on inputs, so that they do not have to pay the excess.

II — Facts

13. Detlev Harbs is a farmer who has leased to his son, from 15 November 1992 to 30 June 2005, all the assets on his farm used for milk production, that is to say, 31.2 ha of land, a cowshed, 65 dairy cows and a milk quota of over 300 000 kg. The lease was agreed at annual amounts of DEM 9 360 and DEM 10 200 respectively for the land and the cowshed and DEM 6 000 and DEM 32 136.70 respectively for the dairy cows and the milk quota. Since concluding

10 — Law on Turnover Tax, 'UStG'.

that contract Mr Harbs has continued his activity on the remaining part of his farm, comprising 61.4 ha of land, buildings, a herd of approximately 60 bulls for fattening and a stock of 120 cattle.

14. Mr Harbs considered that the leasing arrangement was covered in full by the flat-rate scheme provided for in Paragraph 24 of the UStG. The Finanzamt (Tax Office) Rendsburg (Germany), however, considered that although leasing the land and the cowshed is tax exempt under German law, payments received as a result of making available the dairy cattle and the milk quota are taxable under the normal VAT scheme. It issued a tax notice to Mr Harbs for DEM 361 for the VAT owing in respect of 1992.

15. The Finanzgericht (Finance Court) (Germany) granted Mr Harbs's appeal, considering that the income he receives from the leasing arrangement in question falls within Article 24 of the UStG. The Finanzamt Rendsburg appealed to the Bundesfinanzhof for revision of the judgment.

III — The question referred for a preliminary ruling

16. The Bundesfinanzhof, according to the arguments contained in its order for reference, considers that Mr Harbs, despite the contested leasing arrangement, has retained his status as a farmer within the meaning of Article 25 of the Sixth Directive since he has continued to farm the part of his property that has not been leased, which is a relatively large part.

17. As regards the appropriate VAT scheme, the Bundesfinanzhof considers, on the one hand, that application to the farmer concerned of two different schemes, namely the common flat-rate scheme in respect of his own farming and the normal scheme in respect of the leasing arrangement at issue, might appear to conflict with the objective of simplification underlying Article 25 of the Sixth Directive.

18. The Bundesfinanzhof states, on the other hand, that it doubts whether that leasing arrangement can be regarded as 'an agricultural service' within the meaning of Article 25 of the Sixth Directive. In addition, if the said leasing arrangement does not come under the common flat-rate scheme, it wonders whether, in view of the spirit and purpose of Article 25 of the Sixth Directive, the income from such an arrangement should not be entirely exempt so that, in the same way as the proceeds from the sale of a piece of used agricultural machinery, it is not taxable under either the flat-rate scheme or the general scheme.

19. That is why the Bundesfinanzhof decided to stay proceedings and to refer the following question to the Court of Justice:

'Where the owner of a farm:

— gives up part of his farm (the entire dairy cow operation) and leases the property necessary for that operation to another farmer;

— and continues to farm on a not insignificant scale after granting the lease,

may he treat the turnover from the lease — like the rest of his turnover — under the flat-rate scheme for farmers (Article 25 of [the Sixth Directive]), or is the turnover from the lease taxable under the general rules?'

IV — Assessment

20. In the question it has referred for a preliminary ruling, the Bundesfinanzhof is asking in essence whether Article 25 of the Sixth Directive should be interpreted as meaning that a farmer who has leased out some of the assets of his farm and who continues his agricultural activities on the rest of the farm, activities in respect of which he pays tax under the common flat-rate scheme provided for in that article, may treat the income from that leasing arrangement as being taxable under that flat-rate scheme, or whether the income from the leasing arrangement must be taxed under the general VAT scheme.

21. It is clear from the statement of reasons for the order for reference that by that question the Bundesfinanzhof intended to refer to the Court two separate questions. The first is whether or not the income from the contested leasing arrangement may be taxed under the common flat-rate scheme for farmers. The second seeks to ascertain whether, if the answer to the first question is negative, the income from the leasing arrangement should be taxed under the general VAT scheme or whether it may be completely exempt. I shall consider each of these questions in turn.

A — *Application of the common flat-rate scheme*

22. Like the German Government and the Commission of the European Communities, and unlike the defendant in the main

proceedings, I consider that the income from the contested leasing arrangement does not fall within the scope of the common flat-rate scheme provided for in Article 25 of the Sixth Directive. That conclusion stems quite logically, in my view, from an analysis of the criteria the Court usually takes into account when interpreting a provision of Community law, which are: the wording of the relevant provisions, the structure of the common flat-rate scheme and, lastly, the reasons why that scheme was introduced. [11]

1. The wording of the relevant provisions

23. As we have seen, Article 25 of the Sixth Directive provides that the common flat-rate scheme for farmers applies only to farmers who are engaged in agricultural production and the provision of agricultural services.

24. In order to ensure a uniform application of that scheme throughout the Community, the Community legislature took care to define what is covered by the term 'agricultural service'. Under Article 25(2), fifth indent, this is 'any service as set out in Annex B supplied by a farmer using his labour force and/or by means of the equipment normally available on the agricultural undertaking operated by him'.

25. It is therefore quite clear from that definition that the service referred to is one which a flat-rate farmer is in a position to provide with the labour and equipment with which he normally farms his own agricultural property. It follows that the reference in Annex B, fifth indent, to the 'hiring out, for agricultural purposes, of equipment normally used in agricultural ... undertakings' must be interpreted, in the light of the definition contained in Article 25(2), fifth indent, as meaning the hiring out by a flat-rate farmer of the equipment he normally uses to farm his own agricultural property.

26. That means that the equipment hired out can, despite the contract for hire, still be considered to form part of the equipment normally used by the flat-rate farmer to farm his own agricultural property. Whether or not that condition is met therefore depends, in my view, on two criteria, which must be taken into account jointly, one relating to the length of the hire, the other to its purpose. Thus, first of all, the length of the contract

11 — See, for an application of that method of interpretation in VAT matters, Case C-315/00 *Maierhofer* [2003] ECR I-563, paragraph 27.

for hire must be sufficiently short for the person or persons hiring the equipment concerned not to be the sole users of the equipment concerned. That condition would not be met if, for example, a flat-rate farmer hired out his combine harvester for the entire harvest and did not use it at all for his own purposes. Another requirement is that the equipment hired out should not be in addition to what the flat-rate farmer needs for his own farming purposes. That condition would not be met if a flat-rate farmer were to hire out several combine harvesters and used them in turn for his own purposes, although he needed only one in order to farm his own property.

27. It follows, in my opinion, that the term 'agricultural service', within the meaning of Article 25 of the Sixth Directive, does not cover a contract such as the lease entered into in the present case, that is to say, an arrangement whereby one flat-rate farmer gives another farmer the right to use for several years some of the assets of his own farm so that the latter may enjoy the gains produced thereby. In leasing to another farmer for a term of twelve and a half years all the assets of his farm used for milk production, that is to say, the buildings, meadows, his herd of dairy cows and his milk quota, the defendant in the main proceedings transferred to that other farmer throughout the term of the lease exclusive use of each of those assets and the opportunity to enjoy the gains produced thereby. Such an agreement cannot therefore be treated as a service provided by a flat-rate farmer using the equipment that he normally uses on his farm since, of necessity, he will not be able to use any of those assets for his own farming purposes for twelve and a half years. In other words, all those assets, from the entry into force of the lease, have ceased to form part of the assets normally used for farming his own agricultural property.

28. This analysis of the wording of the provisions of Article 25 of, and Annex B to, the Sixth Directive is supported by the fact that in some of the language versions, [12] the Sixth Directive refers expressly to the concepts of 'leasing' and 'letting' in the context of the provisions relating to cases of exemption from VAT, in Article 13B(b) and Article 13C(a). [13] As Advocate General Jacobs stated in point 76 of his Opinion in *Goed Wonen*, [14] in the Danish, Dutch, French, German, Italian and Swedish language versions those two terms refer in domestic law to agreements whose contents differ, in that 'letting' consists of granting the tenant the right to use the property of another, whereas 'leasing' consists of allowing the tenant also to enjoy the gains produced by the property. Of

12 — The Danish, German, Spanish, French, Italian, Dutch, Swedish and English versions. The Greek, Portuguese and Finnish versions use a single word.

13 — Article 13B(b) provides that, without prejudice to other Community provisions, Member States are to exempt 'the leasing or letting of immovable property', and Article 13C(a) provides that Member States may allow their taxpayers a right of option in respect of taxation in cases of 'letting and leasing of immovable property'.

14 — Case C-326/99 [2001] ECR I-6831

course, as the Court has held, the terms 'leasing' and 'letting' used in Article 13 of the Sixth Directive should not be interpreted on the basis of their meaning in national law. They must constitute independent concepts of Community law so that the basis for assessing VAT is determined uniformly. [15] However, the fact that in those same language versions the list of agricultural services that may be provided by a flat-rate farmer mentions only 'hiring out, for agricultural purposes, of equipment normally used in agricultural ... undertakings' and does not include any reference to leasing, implies that the Community legislature did not want to include among the services falling within the common flat-rate scheme agreements by which one flat-rate farmer transfers to another person, as in the present case, part of his activity or of his farming assets.

29. Consideration of the common flat-rate scheme for farmers involves a similar analysis.

15 — Ibid. (paragraph 47).

2. The common flat-rate scheme for farmers

30. As is clear from Article 25(1) of the Sixth Directive, Member States may apply a flat-rate scheme to farmers where the application of the normal VAT scheme, or the simplified scheme, would give rise to difficulties. Therefore, in principle, farmers are liable for tax under the normal VAT scheme or the simplified scheme and the flat-rate scheme is an exception which Member States may or may not decide to apply.

31. The exceptional nature of the common flat-rate scheme is also confirmed by the provisions of Article 25(9) and (10) of the Sixth Directive, which provide, respectively, that Member States may exclude from that scheme certain categories of farmers and the flat-rate farmers themselves may opt for application of the normal scheme or the simplified scheme under conditions to be laid down by each Member State.

32. As it is an exception to the principle that farmers are liable for tax under the normal scheme or the simplified scheme, the scope of the common flat-rate scheme is to be

interpreted strictly. [16] A strict interpretation is required in order to comply with the principle that VAT must be neutral, which is one of its guiding principles. That principle means that persons engaged in the same and similar operations are to be treated respectively in the same way. [17] As the fourth recital in the preamble to the Sixth Directive reaffirmed, the neutrality of VAT as regards the origin of goods and services is a precondition for the achievement of a common market based on fair competition. The definition of the agricultural services to which the common flat-rate scheme for farmers applies, and which are consequently not taxable under the general VAT scheme, must therefore be interpreted strictly. Consequently, the common flat-rate scheme must not be applied to services to which the legislature did not expressly intend it to be applied because that might undermine the abovementioned principle.

33. More specifically, we have seen that the common flat-rate scheme operates on the basis of 'flat-rate compensation percentages' that must be determined by each Member State in accordance with the method of calculation provided for that purpose in Article 25(3) of the Sixth Directive. That method of calculation is designed to prevent those percentages, which must be notified to the Commission before they are applied, having the effect of obtaining for flat-rate farmers refunds greater than the VAT charge on inputs. The common flat-rate scheme must not therefore have the effect of overcompensating flat-rate farmers for the VAT charge they incur on purchases of the goods and services needed for their farming activities. In other words, the common flat-rate scheme should be neither an advantage nor a disadvantage to flat-rate farmers because that would be contrary to the objectives of the Sixth Directive, which seek to ensure that VAT is collected fairly and to avoid distortion of competition between the different Member States applying the flat-rate scheme. I consider that those requirements, and hence the common flat-rate scheme, would be jeopardised if flat-rate farmers were able to lease out part of their farm and include the income from such an arrangement in the flat-rate scheme which continues to apply to them in respect of farming the part of their property that is not leased out.

34. We are aware that under the common flat-rate scheme a flat-rate farmer receives compensation of the VAT charge on inputs that he has paid on purchases of goods and services he has made in order to engage in his farming activities, by applying to the prices, exclusive of tax, of his own goods and services the percentage determined by the national competent authorities. By transferring some of his activities to another person the farmer is also freed of the costs he would incur in order to engage in those activities. Thus, by leasing out all the assets used in

16 — See in particular Case C-453/93 *Bulthuis-Griffioen* [1995] ECR I-2341, paragraph 19 and Case C-150/99 *Stockholm Lindopark* [2001] ECR I-493, paragraph 25.

17 — See, to that effect, Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 20.

milk production for a period of twelve and a half years, as in the present case, the defendant in the main proceedings has also freed himself from all the costs he would have incurred for such production. For example, he no longer has to provide fodder to feed the dairy herd, or to maintain it. The VAT charge on inputs is therefore reduced commensurately. However, if the income from the contested leasing arrangement falls within the scope of the common flat-rate scheme, the amount of flat-rate compensation due to the flat-rate farmer concerned will increase to reflect the application to that income of the percentage determined by the competent national authorities. That means that a flat-rate farmer will receive compensation although he is no longer paying the VAT charge on inputs for engaging in activities in connection with the part of the farm he has leased out.

35. That analysis is borne out also where, as in the present case, the leasing arrangement is entered into with a farmer who is himself liable for tax under the flat-rate scheme. As the Court held in *Commission* v *Italy*, [18] and as the defendant himself states in his written observations, [19] when a flat-rate farmer sells his goods or supplies his services to a non-taxable person or another flat-rate farmer compensation for the VAT charge on inputs is obtained by the payment of an 'all-in price' for those goods or services which is deemed to include that charge. Even in a case like that, a flat-rate farmer may therefore obtain compensation for the VAT charge on inputs by increasing the price of his goods and services if the market conditions so permit.

36. That is why I consider that if Article 25 of the Sixth Directive were to be interpreted as meaning that flat-rate farmers can lease out part of their farm and include the income from that leasing arrangement under the flat-rate scheme, there would be a serious risk of over-compensating for the VAT charge on inputs.

37. Moreover, the common flat-rate scheme is not in my view intended to cover cases in which a farmer leases out part of his farm.

3. The objectives

38. As the Bundesfinanzhof states, Article 25 of the Sixth Directive responds to the

18 — Case 3/86 [1988] ECR 3369, paragraph 21.
19 — Page 3.

need for simplification. However, it is appropriate to point out why that objective of simplification led the Community legislature to introduce the opportunity for Member States to apply a common flat-rate scheme.

39. As the wording of Article 25(1) of the Sixth Directive expressly states, that scheme was introduced for the benefit of farmers for whom the normal VAT scheme, or the simplified scheme, would give rise to difficulties. As is clear from the statement of reasons for the proposal for the Sixth Directive, submitted by the Commission to the Council on 29 June 1973, [20] that scheme, designed to be an exceptional scheme, was intended essentially to apply to small farmers who were unable to meet the requirements connected with the normal or simplified schemes. [21] It was designed as a transitional scheme to exempt those small farmers from the requirements in respect of accounts, invoices, returns and payment incumbent on other taxpayers which they were considered to be incapable of meeting at the time the Sixth Directive entered into force. [22]

40. That is why the scope of the common flat-rate scheme as regards the provision of services was defined restrictively, in such a way as to exclude all services provided regularly, or using equipment that could be regarded as being additional to the needs, size and characteristics of the farm in question. In that connection, the Commission had even proposed that the Sixth Directive should state expressly that for that type of operation a flat-rate farmer, since he is in competition with traders, industry or other service providers, should be liable for tax under the normal VAT scheme or the simplified scheme, according to a procedure to be determined by each Member State. [23] Accordingly, the Commission included only 'hiring out of agricultural machinery' in the list of agricultural services given in the fifth indent of Annex B to its proposal for a directive.

20 — Proposal for a Sixth Council Directive on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (*Bulletin of the European Communities*, Supplement 11/73).

21 — See also the First Report by the Commission to the Council on the operation of the common system of value added tax submitted under Article 34 of the Sixth Directive (COM/83/426 final).

22 — In the 1960s Community agriculture comprised a large number of farms, mostly small in size. On 1 January 1967 there were some 6.2 million farms of one hectare or more; 85% of these had an area of less than 20 ha; only 170 600 farms had an area of more than 50 ha. In addition, the majority of those farms engaged in mixed farming and a significant share of their products were consumed on the farm, as food for people or feed for animals (Ries, A., 'Application of VAT to EEC agriculture', *Revue du marché commun*, 1968, p. 560).

23 — Proposal for a directive, Article 27(12)(b).

41. It follows that the objective of simplification which underlies Article 25 of the Sixth Directive should not, in my opinion, lead to the concept of 'agricultural service' defined in that article being extended to include a contract under which a flat-rate farmer transfers part of his farm to another farmer.

B — *Application of the general scheme*

42. Nor can it be seriously argued that a farmer who, as in the present case, leases out 31.2 ha of land, a cowshed, 65 dairy cows and a milk quota of over 300 000 kg, and continues to farm the remaining part of his property, comprising 61.4 ha of land, buildings, a herd of approximately 60 bulls for fattening and a stock of 120 cattle, is incapable of applying the general VAT scheme in respect of the income from the leasing arrangement at the same time as the common flat-rate VAT scheme in respect of his own farming activities, given the accounting and administrative procedures which the farming of such agricultural property involves in a Member State nowadays.

43. I therefore consider that Article 25 of the Sixth Directive must be interpreted as meaning that a farmer who has leased out some of the assets of his farm and who continues his farming activities using the rest of that farm, activities in respect of which he pays tax under the common flat-rate scheme provided for in that article, cannot treat the income from that leasing arrangement as being covered by that flat-rate scheme.

44. The answer to the second question from the Bundesfinanzhof can be inferred already in part from the information I have set out above. We have seen that, under Article 2 of the Sixth Directive, VAT applies to the supply of all goods or services effected by a taxable person acting as such. Under Article 4 of the Sixth Directive 'taxable person' means any person who carries out any economic activity independently and, under Article 4(2), the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis is considered in particular to be an economic activity.

45. An arrangement by which a flat-rate farmer gives another person, for consideration, the exclusive use of some of the assets of his farm, under a rental agreement or lease designed to confer on that person additionally the right to enjoy the gains thereof, constitutes a priori an economic activity within the meaning of that definition. In the present case, the leasing out by a flat-rate farmer for a term of twelve and a half years of all the assets of his farm used for milk production can indeed be regarded as an

economic activity carried out independently and the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis. To take the example given by the Bundesfinanzhof in its order for reference, such a service cannot be considered to be a purely occasional or isolated operation in the same way as the sale of used agricultural equipment.

46. It is also clear from established case-law that there can be no exceptions to the general principle that VAT is to be levied on all supplies of goods or services made for consideration by a taxable person, except in those cases expressly provided for in the Sixth Directive and that such exemptions must be interpreted strictly. [24] Although, under Article 13B(b) of the Sixth Directive, the leasing and letting of immovable property are in principle exempt from VAT, no provision is made for an exception in respect of making available for consideration movable tangible and intangible property such as a herd of dairy cows and a milk quota. In that regard, it should be pointed out that the Court of Justice has ruled that a national provision extending to the letting of certain forms of movable property the exemption from VAT which, pursuant to Article 13B(b) of the Sixth Directive, is restricted to the letting of immovable property, conflicted with the provisions of that directive. [25]

47. Therefore, if the agricultural services provided by a flat-rate farmer for consideration are not covered by the definition contained in Article 25 of the Sixth Directive they must fall within the scope of the general scheme. The fact that the lessor is liable for tax, in respect of the part of his farm he continues to farm himself, under the common flat-rate scheme cannot constitute grounds for exempting the income from that leasing arrangement from tax. It follows that the income from hiring out the herd of dairy cows and the milk quota should therefore be taxable under the general VAT scheme, that is to say, the normal scheme or the simplified scheme.

48. I therefore propose that the Court should rule that the income from an arrangement whereby a flat-rate farmer leases some of the assets of his farm should be taxable under the general VAT scheme.

24 — See in particular *Goed Wonen*, cited above (paragraph 46) and Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 36.

25 — Case C-60/96 *Commission* v *France* [1997] ECR I-3827, paragraph 16.

V — Conclusion

49. In the light of the above considerations, I propose that the Court give the following answer to the question referred by the Bundesfinanzhof:

Article 25 of the 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, should be interpreted as meaning that a farmer who has leased out some of the assets of his farm and who continues his agricultural activities on the rest of the farm, activities in respect of which he pays tax under the common flat-rate scheme provided for in that article, may not treat the income from that leasing arrangement as being taxable under that flat-rate scheme. The income from the leasing arrangement must be taxable under the general VAT scheme.