OPINION OF ADVOCATE GENERAL ALBER

delivered on 18 January 2001 [1]

I — Introduction

1. In the present reference for a preliminary ruling, the House of Lords seeks from the Court an interpretation of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [2] ('the Sixth Directive') in regard to a form of purchase of goods financed by credit. Primback Ltd ('Primback') offered to its customers financing by way of interest-free credit for the purchase of furniture. The goods were indicated with the price payable by the purchaser in instalments, but the credit was not specifically indicated. The credit itself was provided by a third company. Primback received from this third company only an amount reduced by the costs of the credit — in the case given as an example, this amounted to 18%. The dispute centres on the question whether Primback must pay value added tax ('VAT') on the full price of the goods as indicated or only on the amount which it actually received.

1 — Original language: German.

2 — OJ 1977 L 145, p. 1, as last amended by Council Directive 2000/65/EC of 17 October 2000 amending Directive 77/388/EEC as regards the determination of the person liable for payment of value added tax (OJ 2000 L 269, p. 44).

II — Relevant Community law

2. The relevant provisions of the Sixth Directive are as follows:

Article 11

'A. *Within the territory of the country*

1. The taxable amount shall be:

(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies;

(b) - (d)...

2. ...

3. The taxable amount shall not include:

(a) price reductions by way of discount for early payment;

(b) price discounts and rebates allowed to the customer and accounted for at the time of the supply;

(c)...'.

Article 13

'Exemptions within the territory of the country

A. ...

B. *Other exemptions*

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:

(a) - (c)...

(d) the following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it;

2. - 6....'.

III — Facts of the case

3. Primback is a retail trader. It offers for sale furniture which may be financed by

means of interest-free credit. A customer purchasing goods by means of interest-free credit is issued by Primback with a sales invoice in respect of those goods. The sales invoice indicates the published price of the goods. Since Primback operates a retail scheme, it is not required, under English law, to issue a VAT invoice unless the customer so requests. At the same time, the customer enters into an agreement with a finance company for an interest-free loan in an amount equal to the published (cash) price of the goods.

4. Under the general conditions of the credit agreement the finance company is required to pay to the customer an amount equivalent to the 'amount of credit' as a loan and to apply the loan by paying it to Primback.

5. The legal relations between Primback and the finance company concerned were apparently based on oral arrangements at local level and thus varied from one region to another.

6. The practical operation of the transaction is illustrated by a specimen transaction involving the sale by Primback on 16 July 1992 of a three-piece suite to a customer for GBP 699 plus GBP 10 for delivery. The finance company involved was Avco Trust. This transaction is set out as follows in the order for reference, where it cites the decision of a lower court in the national proceedings:

'(i) Endorsed on the invoice were the handwritten words "24 months interest-free credit". The price was payable on delivery: the box at the foot of the invoice read "COD-Avco".

(ii) On the same day an entry for Invoice B 4834 was made in Primback's Daily Cash Sheet. £709 appeared under the heading "Sales": the entry for cash was left blank: the sum of £127.62 appears under the heading "Subsidy". A "Cash Reconciliation Record" for 16 July was produced: this showed no cash for the specimen transaction.

(iii) ...

(iv) Following payment by Avco, £581.38 (of the £709 due in respect of Invoice B 4834) was recorded as a cash receipt for that invoice in Primback's Cash Statement for 16 September 1992. The balance of the £127.62 is again referred to as a "subsidy"...'.

7. Customers were unaware of the contractual arrangements concluded between Primback and the finance companies.

8. The United Kingdom tax authorities took the view that VAT was due on the entire sum which the customer paid for the goods and not the amount which Primback received from the finance company, on the basis that the entire sum was being paid for the goods. The tax authorities accordingly concluded that Primback had underdeclared VAT in respect of the period from 12 June 1989 to 31 December 1990. They issued a VAT assessment on 27 February 1992 for payment by Primback of GBP 16 469 (subsequently reduced to GBP 15 530). The total amount at issue is GBP 53 106.

9. Primback's appeal against that assessment was unsuccessful at first and second instance. A subsequent appeal was, however, upheld at third instance and the case is at present pending before the House of Lords.

10. The VAT Tribunal, to which Primback first appealed, ruled that there were two separate transactions. On the one hand, Primback had agreed with the company providing the credit to grant the customer interest-free credit, the credit costs of which Primback would bear in the amount of the interest which would otherwise have been payable. On the other hand, the company providing the credit agreed with the customer to provide the full price of the furniture. Payment of the price was thus calculated only inclusive of the credit costs payable by Primback. VAT was therefore payable on the full sales price.

11. The High Court, to which Primback subsequently appealed, found that under the national implementing rules transactions of the type in question were to be treated as cash sales to the finance house. Primback had to include such sales in its gross takings as if it had received cash for the full amount payable by the customer. On this construction also, VAT was payable on the full purchase price.

12. The Court of Appeal, to which Primback appealed at third instance, took the view, according to the order for reference, that:

'(i) the value of what Primback supplied was not the full invoice price,

(ii) the value of Primback's supply should not include the value of the provision of credit,

(iii) if the supply of credit were to be valued its value would, prima facie, be about equivalent to the sum deducted by the finance house when paying Primback,

(iv) for the Commissioners [the respondent tax authorities] to assess the full amount of the invoiced price of the goods to VAT would mean that VAT would be charged on the supply of credit,

(v) that would conflict with the requirement in Article 13B(d)(l) of the Sixth Directive and in item 2 of Group 5 to Schedule 6 to the 1983 Act that the supply of credit was exempt from VAT, and

(vi) the words "the full amount payable" in paragraph 14 of the Notice were to be construed as meaning the amount received by Primback from the third party finance company rather than the amount stated on the invoice. Such a construction was in conformity with Articles 13B(d)(l) and 27 of the Sixth Directive.'

13. In his dissenting judgment, one judge held that the supply of furniture, being for a consideration in money, was to be valued as such amount as, with the addition of the VAT chargeable, was equal to the consideration. VAT was for that reason properly due on the full amount charged to the customer.

IV — Questions submitted for preliminary ruling

14. The House of Lords decided to refer the following questions to the Court for a preliminary ruling pursuant to Article 177 of the EC Treaty (now Article 234 EC):

'1. Where a retailer offers, at a single price, goods and the option of a period of extended credit to pay that price — the credit to be provided by a person other than the retailer, and at no additional cost to the customer — what is the taxable amount for which the retailer must account in respect of the goods supplied, having regard to Articles 11A(1)(a) and 13B(d)(1) of

Council Directive 77/388/EEC? In particular, is the taxable amount

(a) the full amount payable by the customer;

(b) the full amount payable by the customer, less the value of the credit;

(c) (if different from (b) above) the amount actually received by the retailer; or

(d) an amount calculated on some other, and if so what, basis?

2. If the taxable amount is the full amount payable by the customer, less the value of the credit (see Question 1.(b) above), how is that credit to be valued?

3. Is the answer to Question 1. above affected by the fact that

(a) the supply of goods to the customer is described as being on "interest free" credit terms;

(b) the customer signs a loan agreement with a finance house at the time of the sale transaction, the terms of which include

(i) a promise by the finance house to pay the retailer a sum equal to the loan (which was for an amount equal to the advertised price of the goods);

(ii) a statement that the interest rate applying to the loan is "0%"; and

(iii) an authorisation by the customer to the finance house for it to pay the full amount of the loan to the retailer and an agreement by the finance house to do so; and

(c) as a result of a separate agreement between the retailer and the finance house (the existence and terms of which are not disclosed to the customer), the sum received by the retailer is a sum less than the

full amount of the advertised price for the goods?'

V — Arguments of the parties

15. Pursuant to Article 20 of the EC Statute of the Court of Justice, written observations were submitted by the Federal Republic of Germany, Ireland, the United Kingdom, the Commission and Primback. These parties, with the exception of Germany, took part in the oral procedure.

16. Germany, Ireland, the United Kingdom and the Commission conclude that VAT is chargeable on the full indicated purchase price.

17. All of them invoke in this regard the judgment in *Bally*. [3] The Court ruled in that case that:

'Article 11A(1)(a) of the Sixth Directive must be interpreted as meaning that where, in the context of a transaction of sale, the price of the goods is met by the purchaser by means of a credit card and paid to the supplier by the organisation which has issued the card, after deduction of a percentage as a commission in payment for the service rendered by the latter to the supplier of the goods, the sum so deducted must be included in the taxable amount on which the supplier, as the taxable person, must pay tax to the revenue authorities.'

18. This ruling was based on the Court's finding that in the case of credit card purchases there is a purchase transaction relating to the full purchase price, in which the VAT on that amount is included, and also a service provided by the credit card company, which receives its commission exempt from VAT. In that situation the VAT on the full purchase price to be borne by the final consumer must also be paid in full. [4] The commission received by the credit card company does not represent consideration for a service rendered by the customer to the credit card company by means of the purchase price, but is consideration provided by the seller for a service provided to it by the credit card company. [5] Effecting payment through the credit card company also cannot alter the fact that the purchase price indicated to the customer is central in determining the taxable amount. [6]

19. Germany submits that in the present case the payment by the credit company to Primback is based even more clearly than in

3 — Case C-18/92 *Bally* v *Belgian State* [1993] ECR I-2871.

4 — *Bally*, cited in footnote 3, paragraph 14.
5 — *Bally*, cited in footnote 3, paragraph 16.
6 — *Bally*, cited in footnote 3, paragraph 17.

Bally on a debt relationship which is separate from the purchase transaction, since the purchaser was not informed of the amount of that payment.

20. In the view of the United Kingdom Government, the credit costs are in practical terms every bit as much commercial expenses of Primback as are advertising costs or costs of commercial premises, which also cannot be deducted from the basis of assessment for VAT.

21. The German Government, further, submits that the solution which it advocates also follows from the general principles of VAT law. VAT should as accurately as possible cover the actual charge incurred by the consumer and must therefore be calculated on the basis of the payment which he has made.

22. The United Kingdom and Irish Governments point out additionally that the covert charging of interest on credit is incompatible with the requirements of exemption from VAT under Article 13B of the Sixth Directive. Those requirements demand a clear indication of credit charges if the credit relates to a transaction that is subject to VAT. [7]

7 — Ireland refers to the Court's judgment and the Opinion of Advocate General Jacobs in Case C-281/91 *Muys' en De Winter's Bouw- en Aannemingsbedrijf* v *Staatssecretaris van Financiën* [1993] ECR I-5405.

23. Those two Governments also submit that Primback's argument amounts to deception of the consumer as to the actual conditions governing the transaction and in particular the credit components.

24. Primback refers to what it terms two fundamental principles of VAT law:

— the provision of credit is exempt from VAT

and

— the basis of assessment should not exceed the amount which the supplier has actually received.

Consequently, it submits, VAT is payable only on the amount which Primback received from the credit company.

25. It submits that it is common ground that two transactions in principle underlie the case, namely the purchase of furniture, which is subject to VAT, and the provision of credit, which is not. Both transactions

can and must be clearly distinguished one from the other.

26. Referring to Advocate General Léger's Opinion in *Madgett and Baldwin*, [8] Primback concludes that the value of the supply of credit must be regarded as a substantial share of the total price. The provision of credit is, it argues, physically and economically dissociable. [9] The supply of credit is not intended solely to enhance enjoyment or performance of the supply of goods. [10] The typical consumer is also aware of the distinction between purchase and credit, with the result that the total price taken into account does not affect the conclusion. [11]

27. Primback takes the view that the provision of credit is exempt from VAT. Nor does any other result follow from the Opinion of Advocate General Jacobs and the judgment in *Muys' en De Winter*. [12] These suggest that an advance payment is also in principle exempt from tax, in particular if it is financed not by the supplier but by a third party. The risk of the value being transferred from the taxable to the non-taxable transaction, which makes it particularly important that the transactions be transparent, does not exist if a third party provides the credit. Moreover, the United Kingdom has precisely not set appropriate requirements for rendering the individual transactions in this triangular relationship more open.

28. Even if one were to proceed on the assumption that the credit supplier receives the costs of the credit from Primback (and not from the customer), the price agreed between Primback and the customer contains one component in the amount of the costs of the credit supplier, which Primback receives for arrangement of the credit. The costs of providing credit, however, are also exempt from VAT.

29. The basis of assessment for the VAT payable by Primback must, on the basis of the Court's case-law, be calculated with reference to the amount actually received by Primback.

30. The judgment in *Bally* [13] also cannot affect this analysis. The service provided in that case to the supplier was not the supply of credit. Moreover, the trader in *Bally*

8 — Opinion in Joined Cases C-308/96 and C-94/97 *Commissioners of Customs and Excise* v *Madgett and Baldwin* [1998] ECR I-6229, at point 38.

9 — Primback refers to paragraph 33 of the judgment in Case 353/85 *Commission* v *United Kingdom* [1988] ECR 817.

10 — In this regard, Primback draws a contrast between the facts of the present case and those of *Madgett and Baldwin*, cited in footnote 8, paragraph 24, and Case C-349/96 *Card Protection Plan* v *Commissioners of Customs and Excise* [1999] ECR I-973, paragraph 30.

11 — Primback refers to paragraph 31 of *Card Protection Plan* (cited in footnote 10).

12 — Cited in footnote 7.

13 — Cited in footnote 3.

expressly calculated VAT on the full amount, whereas Primback did not calculate VAT separately.

31. Primback submits in the alternative that the present payment of goods in the form of an interest-free instalment credit amounts to a rebate. Since this too is exempt from VAT, it must be deducted in the amount of the credit costs actually arising.

VI — Analysis

32. Under Article 11A(1)(a) of the Sixth Directive VAT is assessed in terms of the consideration obtained by the taxable person. The wording of the Sixth Directive does not indicate directly how this consideration is to be determined in the present case.

33. Resolution of the questions submitted hinges on whether the value of the consideration falls to be determined by reference to the external sale arrangements, under which purchase at the full price was agreed and financed by means of interest-free credit, or whether the economic value of the transaction for Primback can be taken as the basis, that is to say, a purchase at a considerably lower price, to which the costs of the credit financing were added.

34. According to settled case-law, the consideration is the subjective value of what the person providing the goods or service has actually received, and not a 'normal' value estimated according to objective criteria. [14] Reference to the consideration actually received appears prima facie to support the contention that only the amount paid by the credit supplier to Primback can be construed as consideration. However, the Court focuses on the subjective value of a service only in order to decline any subsequent estimation of the taxable amount on the basis of objective criteria. The conclusive factor in this regard appears not to be the contrast between objective and subjective assessments but rather the reflection that the subsequent application of purely objective criteria would fail to do justice to both parties' agreement on the monetary value of the service. This agreed value is subjective only in so far as it is based on the declarations of

14 — See Case 154/80 *Staatssecretaris van Financiën* v *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445, paragraph 13; Case 230/87 *Naturally Yours Cosmetics* v *Commissioners of Customs and Excise* [1988] ECR 6365, paragraph 16; Case C-126/88 *Boots* v *Commissioners of Customs and Excise* [1990] ECR I-1235, paragraph 19; Case C-38/93 *Glawe* v *Finanzamt Hamburg-Barmbek-Uhlenhorst* [1994] ECR I-1679, paragraph 8; Case C-33/93 *Empire Stores* v *Commissioners of Customs and Excise* [1994] ECR I-2329, paragraph 18; Case C-288/94 *Argos Distributors* v *Commissioners of Customs and Excise* [1996] ECR I-5311, paragraph 16; and Case C-258/95 *Fillibeck* v *Finanzamt Neustadt* [1997] ECR I-5577, paragraph 13.

intent of two legal persons, namely the parties to the contract.

35. There is in this case (at least superficially) a clear agreement between the parties under which the consideration encompasses the full price of the goods as indicated. As a matter of contract, Primback appears to be bound to this agreement in full — as for instance in the event of revocation of the transaction.

36. There is, however, at the same time a further (subjective) agreement between Primback and the finance company which makes it possible to determine precisely the actual value of the interest-free credit at the time when the furniture was sold and to deduct that amount from the total price agreed between Primback and the person purchasing the furniture. For the purpose of considering this second agreement in regard to determination of the taxable amount of the transaction between Primback and the person acquiring the furniture, Primback presents an economic analysis of the transaction in question. The acquisition of the furniture in this case is characterised by two components — on the one hand, the transaction involving the goods and, second, that relating to the financing. The end customer pays only 82% of the amount proffered for the goods which he acquires, but pays 18% for the financing of their purchase. As counsel for the United Kingdom and Ireland acknowledged during the hearing, the resultant financing costs would in principle be exempt from VAT as being a granting of credit under Article 13B(d)(1) of the Sixth Directive [15] if the financing, including its associated costs, had been agreed on as being expressly separate from the acquisition of the goods.

37. This manner of considering the transaction in economic terms is challenged in particular by the judgment in *Bally*. [16] The issue for determination in *Bally* was whether, in the case of purchase by credit card, VAT was chargeable on the full price or whether the commission payable to the credit card company could first of all be deducted. The Court ruled in that case that the taxable amount had to be the full price. However, the judgment in *Bally* is not directly transposable to the present case. *Bally* involved a model transaction which, even if considered in economic terms, does not contain any potentially VAT-exempt components in the form of a credit transaction, but rather a service provided by credit card companies in the context of payment, in connection with which any limited credit effect would at most arise as an indirect consequence of delayed settlement. Rejection of the economic method of considering the transaction in the present case can thus find support in the *Bally* judgment only to the extent to which general principles can be derived from that judgment. In addition to the *Bally* judgment, account should also

15 — See *Muys' en De Winter*, cited in footnote 7, paragraph 13 et seq.

16 — Cited in footnote 3.

be taken in the present context of that in *Kuwait Petroleum*, [17] in which the Court also focused on how the transaction was perceived externally by the consumer.

38. The Court found as a fact in *Kuwait Petroleum* that the handing out of vouchers on sales of fuel was expressly stated to be without consideration and could therefore also not be used to reduce turnover for purposes of VAT assessment. [18] There is a parallel with the present case in so far as the credit was expressly to be granted interest-free.

39. In both *Kuwait Petroleum* and *Bally* the party liable to VAT regularly carried out two types of transaction, in which it charged the same price to customers. In the credit card transaction — as formed the basis of the case in *Bally* — [19] the same prices are typically charged between vendor and purchaser as in a cash transaction. The form of payment alone takes a different form. It is therefore consistent if VAT is charged in the same way as for a cash transaction. The Court stressed in *Kuwait Petroleum* that the price of the purchased fuel remained the same irrespective of whether or not the vouchers in question were accepted. [20]

40. There are in the present case no clear grounds for arguing that the purchase of goods on interest-free credit is based on any price other than the cash price. Counsel for Primback stressed at the hearing that cash purchasers could negotiate rebates, but conceded that rebates were not expressly offered to cash purchasers. Consequently, the facts of the present case are also in principle on a par with *Bally* and *Kuwait Petroleum*. Consumer-protection law in the United Kingdom also appears to take a critical view of any systematic application of the practice of granting rebates as indicated by Primback. [21]

41. The Court also pointed out in *Bally* that the retailer liable to VAT expressly indicated on the sales invoice the VAT for the full amount paid by the customer. [22] That in principle does not occur in the present case, since Primback does not indicate any VAT whatever on the invoice. There was, however, a dispute during the

17 — Case C-48/97 *Kuwait Petroleum* v *Commissioners of Customs & Excise* [1999] ECR I-2323, paragraph 31.

18 — Cited in footnote 17, paragraph 30.

19 — Cited in footnote 3.

20 — Cited in footnote 17, paragraph 31.

21 — Section 8 of the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125: 'A credit advertisement shall not include — ... (c) the expression "interest free" or any expression to the like effect indicating that a customer is liable to pay no greater amount in respect of a transaction financed by credit than he would be liable to pay as a cash purchaser in relation to the like transaction, except where the total amount payable by the debtor does not exceed the cash price.'

22 — *Bally*, cited in footnote 3, paragraph 14.

hearing as to whether, if it were to indicate VAT on invoices, Primback would be entitled to limit that indication to the amount received from the finance company. Counsel for Primback conceded that, in the event of a cash purchase without rebate, VAT — were it to be indicated — would in any case relate to the full price.

42. The Court went on in *Bally* to construe the arrangements of the transaction as meaning that the percentage retained by the credit card company corresponded to the value of a service provided to the supplier. In regard to this transaction the purchaser was a third party.[23] Advocate General Gulmann elaborated on this by stating that the purchaser was entirely unaware of the agreement between the credit card company and the supplier.[24] These considerations also appear applicable to the present case. The purchaser is unaware of the agreements between Primback and the finance company. Counsel for the United Kingdom Government and the Commission stated during the hearing that the commercial relations between Primback and the finance company fall to be strictly distinguished from the purchase transaction between Primback and the purchaser, which is subject to turnover tax. Under the credit agreement associated with the contract of purchase the finance company is obliged to pay the full purchase price to Primback. It is also conceivable that this sum is paid to the customer, who for his part then uses it to pay for the goods. In contrast, the assumption of the credit costs by Primback is based on a distinct transaction with the finance company and occurs only by way of a settlement which is irrelevant for VAT purposes.

43. Primback is, admittedly, correct when it argues that a separation of the two transactions in the present case is at odds with an economic assessment. Primback's assumption of the credit costs is based only formally on a discrete framework agreement with the finance company, but is directly occasioned by the sale of the goods. In economic terms, therefore, the distinction makes no sense.

44. However, the Court's case-law set out above[25] leads ultimately to the conclusion that it is not the objective criterion of an economic assessment which is determinant but rather the (subjective) agreement between the parties to the transaction subject to VAT. That case-law guarantees that the parties to that transaction will be in no doubt as to the taxable amount. This secures, on the one hand, legal certainty and, on the other, a degree of control for

23 — *Bally*, cited in footnote 3, paragraph 16.

24 — Opinion in *Bally*, cited in footnote 3, point 10.

25 — See paragraph 34.

the party receiving the service over the party liable to VAT. If, in addition to this agreement, one were to take into account a further agreement between one of those parties and a third party, but of which the second party to the original transaction is unaware, this clarity would once again be jeopardised. The parties in the present case agreed on the full purchase price and were also bound by it. From the viewpoint of this agreement the credit transaction between Primback and the finance company is one which is extraneous to the purchase of the furniture. Unexpressed reserves on Primback's part cannot lead to any different result.

45. That said, the judgment in *Argos*[26] appears to argue against drawing any legal consequences from the lack of knowledge on the purchaser's part. That case concerned VAT chargeable in the context of purchases in exchange for vouchers. These vouchers had a specified face value and the goods on offer were indicated as having fixed prices. Customers could pay using vouchers or cash. Argos had, however, previously sold the vouchers to third parties — principally the employers of its customers — and granted discounts according to the quantities of vouchers purchased. Those third parties in turn gave the vouchers mainly as incentives or similar gifts to Argos' customers. In that judgment, the fact that persons purchasing goods were unaware or even mistaken as to the actual amount of the purchase price did not stand in the way of the result that the purchase price actually paid by those third parties for the vouchers formed the basis for VAT. This situation is, however, based on a (subjective) agreement on the lower price between the third parties acquiring the vouchers and the vendor. What Argos actually received as consideration followed solely from that agreement, and not from the agreement with the person purchasing the goods. The fact that the person purchasing the goods was unaware in that particular case was irrelevant. The general rule that the agreement between the person liable to VAT and the person receiving the service is determinant is not, however, brought into question thereby.

46. Furthermore, the danger of abuse militates against allowing any reduction in the VAT burden on the basis of non-transparent arrangements such as those *in casu*. The general introduction of VAT exemptions under Article 13B of the Sixth Directive requires Member States, when implementing exemption provisions, expressly to adopt rules for the purpose of 'ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse'. Account must therefore be taken of this objective in interpreting the Sixth Directive with regard to VAT exemptions.

47. In the present case, there is admittedly none of the risk, identified by Advocate

26 — Cited in footnote 14, paragraphs 21 and 22.

General Jacobs in *Muys' en De Winter*,[27] of a credit facility provided by the vendor himself being abused through the transfer of parts of the purchase price for the transaction to the credit components. It may, however, be feared that overt or covert connections between the vendor and the finance company could invite such abuse, particularly where the situation involves the provision of credit by associated banks.

48. In conclusion, it ought to be pointed out that extending VAT liability to the full indicated price — notwithstanding the fact that tax law takes no account of the evaluations in other areas of law[28] — is in keeping with the consumer-law principle of transparency — Article 129a of the EC Treaty (now, after amendment, Article 153 EC). While application of the consumer-credit directive[29] would appear to be excluded,[30] the type of transaction engaged in by Primback none the less runs counter to the principle that the consumer should be made aware of the actual costs of the credit.[31]

49. In the case of a sale in return for interest-free credit, the determinant factor in fixing the taxable amount is therefore whether the purchaser is made aware, in the purchase contract, of the actual costs of the credit which the vendor wishes to deduct from the taxable amount.

50. This consideration also stands in the way of the alternative argument put forward by Primback, to the effect that the provision of interest-free credit constitutes a rebate which, pursuant to Article 11A(3) of the Sixth Directive, is deductible. In this regard also what is required is a subjective meeting of minds between the parties to the purchase transaction in regard to a subsequent reduction in the price or the credit costs; that is not apparent in the present case.

27 — Cited in footnote 7, paragraph 12 of the Opinion.

28 — Case C-283/95 *Fischer* v *Finanzamt Donaueschingen* [1998] ECR I-3369, paragraph 21.

29 — Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48), as last amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 17).

30 — Article 2(1)(c) of the consumer-credit directive excludes its application to credit which is granted or made available without payment of interest or any other charge.

31 — See Articles 3 and 4 of the consumer-credit directive, and the eighth recital in its preamble.

VII — Conclusion

51. I accordingly propose that the Court reply to the questions submitted as follows:

In the case where a retail trader offers goods at a single price and offers interest-free credit for payment of that price — the credit being provided by a person other than the retail trader and at no additional cost to the customer —, and thus where the true costs of the credit are not separately indicated, the taxable amount for purposes of value added tax is the full amount payable by the customer.