OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 25 October 2001 [1]

I — Introduction

1. These proceedings concern the taxation in one Member State of a second-hand motor vehicle which a private individual bought in another Member State. The questions referred for a preliminary ruling relate to the car tax levied in Finland and the value added tax payable on that tax. While reference is made in these proceedings to importation into Finland, strictly speaking the facts of the case do not concern an 'importation' in the Community law sense, that is, importation into the Community. Rather, the main proceedings concern only the moving of Community goods from one Member State to another, namely Finland. For reasons of simplicity, however, the transfer to Finland will be described below as an importation.

1 — Original language: German.

II — Legal background

A — *National law*

2. The present proceedings concern two Finnish tax laws, the Autoverolaki (Motor vehicle tax law) and the Arvonlisäverolaki (Value added tax law).

1. The Autoverolaki

3. Under Paragraph 1(1) of the Autoverolaki (1482/1994), for cars (class M 1), vans (class N 1) and other motor vehicles with an unladen weight of up to 1 875 kg, motor cycles (classes L 3 and L 4) and other

vehicles in class L, car tax is to be paid to the State in accordance with that law before registration or bringing into use of the vehicle in Finland.

4. Paragraph 3 governs the taxation of vehicles at least 50% of whose parts have been replaced. Imported used vehicles are re-taxed if at least 25% of their parts have been replaced.

5. Under Paragraph 4(1), the importer of a vehicle or the manufacturer of a vehicle manufactured in Finland is liable to pay car tax.

6. Under Paragraph 5, a person who is liable to pay car tax is also liable to pay value added tax on the car tax up to the amount laid down in the Arvonlisäverolaki. The authorities who levy the car tax determine the value added tax liability in accordance with the relevant provisions of the Autoverolaki on car tax.

7. Under Paragraph 6(1), car tax is payable in the amount of the taxable value of the vehicle less FIM 4 600. The tax must always, however, be at least 50% of the taxable value.

8. Under Paragraph 7, the tax levied in respect of an imported used vehicle is that on an equivalent new vehicle, but reduced in accordance with that provision.

For vehicles in respect of which the tax is determined on or after 15 January 1999, Paragraph 7 applies in the version of Law 1160/1998. Under the version of Paragraph 7(1) previously in force and applicable to the main proceedings, the tax on the equivalent new vehicle was reduced by 0.5% for each complete calendar month, calculated from the date on which the vehicle had been registered or in use for six months. The tax was reduced for the first 150 months only.

If a new vehicle equivalent to the used vehicle cannot be identified, the tax is determined, under Paragraph 7(2), on the basis of the tax on a new vehicle whose technical and other characteristics are closest to those of the imported vehicle. If the period for which the vehicle has been in use is shorter than the period calculated in accordance with subparagraph 1, the tax may be determined according to the actual period of use. If the tax according to the taxable value for an imported used vehicle is greater than the tax ascertained under subparagraph 1, the tax is determined according to the taxable value of the vehicle.

9. Under Paragraph 10, a vehicle is regarded as a used vehicle on import if, according to reliable evidence, it has been driven for more than 10 000 km and has been registered abroad for longer than six months. The requirement as to kilometres driven was abolished by the Law of 30 December 1998 (1160/1998).

10. Under Paragraph 11, the basis of the taxable value of an imported vehicle is its acquisition value to the taxpayer less the amounts mentioned in Paragraph 16.

Paragraph 11 further provides that:

'The acquisition value of an imported vehicle is:

1. the customs value within the meaning of the Customs Code of the European Community (Council Regulation (EEC) No 2913/92 of 12 October 1992) and Commission Regulation (EEC) No 2454/93 on the implementation of the Customs Code for a vehicle imported as other than Community goods in accordance with the Customs Code; and

2. the value of a vehicle imported as Community goods, which is determined in accordance with the provisions of point 1 as far as applicable.

All costs directly or indirectly incurred by the taxpayer before taxation in respect of the vehicle in bringing it to Finland or to the taxpayer's first place of storage in Finland, and also customs duty if payable in respect of the vehicle, are to be included in the taxable value.

The taxable value of a vehicle manufactured in Finland, if the manufacturer is a taxpayer, is the price of the vehicle at the place of manufacture defined on the basis of the costs of manufacture of the vehicle.

Not included in the taxable value, however, are the value of a normal service of the vehicle for sale or the value of accessories worth a maximum of FIM 500 added to the vehicle in that connection. The vehicle's registration fee and the fee for registration plates are not included in the taxable value.'

11. Under Paragraph 12, the value added tax which the taxpayer has paid for the vehicle under the Arvonlisäverolaki is not included in the taxable value which is the basis of the car tax.

12. Paragraph 37 requires the taxpayer to make a car tax declaration and regulates the content of the declaration.

13. The Autoverolaki applies to the facts of the main proceedings in the version (1482/1994) before its amendment by Law 1160/1998.

2. The Arvonlisäverolaki

14. The basic law on value added tax in Finland is the Arvonlisäverolaki (1501/1993). It was amended by Laws 1483/1994, 1486/1994 and 1767/1995.

15. Under Paragraph 1(1), value added tax is payable to the State in accordance with this law. Under Paragraph 1(5), the charging of value added tax on car tax is regulated separately in the Autoverolaki (1482/1994).

16. Under Paragraph 102(1)(4), the taxpayer is entitled to deduct the value added tax charged on car tax pursuant to the Autoverolaki.

17. Paragraph 102b makes the right to deduct the value added tax charged on car tax subject to an assessment decision which discloses the amount of the tax to be paid.

18. Under Paragraph 141(5), the deductions referred to in Chapter 10 relate to the calendar month in which the tax due under Paragraph 102(1)(4) has been paid.

B — *Community law*

19. Relevant provisions of Community law are Article 90 EC concerning the prohibition of discriminatory domestic charges and the Sixth Council Directive 77/388/EEC of 17 May 1977 on the har-

monisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ('the Sixth Directive'). [2]

20. Article 2 of the Sixth Directive provides:

'The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.'

21. Since 1 January 1993, it is only the introduction of goods into the Community, and no longer the introduction from another Member State, which counts as importation. Similarly, throughout the Community, the acquisition of a used vehicle is no longer subject to the value added tax of the State of destination.

22. Article 28a of the Sixth Directive contains special provisions for new cars.

23. Article 28a(1)(b) provides:

'1. The following shall also be subject to value added tax:

...

(b) intra-Community acquisitions of new means of transport effected for consideration within the country by taxable persons or non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of (a) or by any other non-taxable person.'

24. Article 28a(2) provides, in part:

2 — OJ 1977 L 145, p. 1.

'2. For the purposes of this Title:

...

(b) the means of transport referred to in (a) shall not be considered as "new" where both of the following conditions are simultaneously fulfilled:

— they were supplied more than three months after the date of first entry into service. However, this period shall be increased to six months for the motorised land vehicles defined in (a),

— they have travelled more than 6 000 kilometres in the case of land vehicles, sailed for more than 100 hours in the case of vessels, or flown for more than 40 hours in the case of aircraft.

Member States shall lay down the conditions under which the above facts can be regarded as established.'

25. Article 33 of the Sixth Directive allows Member States to maintain or introduce certain taxes which cannot be characterised as turnover taxes and do not give rise to formalities connected with the crossing of frontiers.

III — Facts

26. On 2 March 1998 Mr Siilin, one of the appellants before the national court, bought a car of the Mercedes Benz 190 2.0 Diesel make from a car dealer in the Federal Republic of Germany for DEM 7 350. The car had been built on 1 January 1986 and registered on 13 November 1986. As accessories it had an automatic transmission and a manually operated sliding roof. On 20 April 1998 Mr Siilin imported the vehicle into Finland (with 180 000 km on the clock) and made a car tax declaration.

27. The Helsingin piiritullikamari (Helsinki District Customs Office) took the value of a new car of the same type as DEM 41 100 and added DEM 3 880 for the accessories. The result was a value, converted into Finnish marks, of FIM 136 851. A flat-rate deduction of FIM 4 600 and a deduction for age of FIM 85 963 were made. The car tax was determined at FIM

46 288 and the value added tax thereon at FIM 10 183. According to Mr Siilin, the list price excluding tax was based on the selling price of the Finnish official importer. On 21 April Mr Siilin paid the entire amount.

28. However, Mr Siilin appealed against the tax decision to the competent administrative court, the Uudenmaan lääninoikeus.

29. With respect to the value added tax, he sought for the tax decision to be set aside. With respect to the car tax, he asked for the matter to be remitted to the District Customs Office. He submitted on this point, relying on the judgment in *Nunes Tadeu*, [3] that the car tax could not exceed the residual amount of tax in the value of a car on the Finnish market which corresponded to his used car in age, characteristics and condition.

30. The Administrative Court found that the District Customs Office had assessed the car tax without examining the actual depreciation and without examining whether the car tax determined for Mr Siilin's vehicle exceeded the residual amount of tax in the value of an equivalent used car of the same make and year registered in Finland. It therefore quashed the decision as regards the car tax and remitted the case to the District Customs Office to redetermine the amount.

31. As regards the Finnish value added tax, the Administrative Court decided that in view of its characteristics this was not value added tax within the meaning of the Sixth Directive and was also not a turnover tax prohibited by Article 33 of that directive. Levying such a tax did not therefore infringe the Sixth Directive. However, since the tax decision had to be retaken with respect to the car tax, the amount of the value added tax thereon also had to be redetermined by the District Customs Office.

32. Both the Tulliasiamies (Customs Agent) and Mr Siilin thereupon applied to the Korkein hallinto-oikeus (Supreme Administrative Court) for leave to appeal against the Administrative Court's decision. While the Customs Agent's appeal attacked the decision in relation to the value added tax and the car tax, Mr Siilin's appeal was limited to the value added tax point.

3 — Case C-345/93 *Nunes Tadeu* [1995] ECR I-479.

IV — The questions referred for a preliminary ruling

33. On 15 March 2000 the Korkein hallinto-oikeus decided to make a reference to the Court for a preliminary ruling on the following questions:

'*Car tax*

1. Under Paragraph 11 of the Autoverolaki, in determining the car tax on a vehicle imported as Community goods, the basis of the taxable value is the transaction value of the vehicle for the taxable person. The transaction value is the customs value within the meaning of the Customs Code and Implementation Regulation so far as applicable.

   May Article 90 EC (formerly Article 95 of the EC Treaty) be interpreted as meaning that such national legislation relating to the determination of the taxable value for car tax purposes is not discriminatory, taking into account in particular that the taxable value of a vehicle will be a different amount depending on which commercial level the importer of the vehicle operates at, that is, whether he operates as a wholesaler, a retailer or a consumer?

2. Under Paragraph 7(1) of the Autoverolaki the basis of the tax levied on an imported used car is the tax on an equivalent new vehicle, with the reductions as laid down in that provision. Under the old law 1482/1994, the tax charged on an imported second-hand car was the tax on an equivalent new car reduced by 0.5% for every complete calendar month calculated from the time when the vehicle had been registered or had been in use for six months, and the tax was reduced for only the first 150 months of use. Under the current law 1160/1998, the tax charged on an imported second-hand car is the tax on an equivalent new car reduced by 0.6% per month of use for the first 100 months of use and then for the next 100 months by 0.9% per month of use of the residual value calculated at the end of each preceding month, and for subsequent months of use by 0.4% of the residual value calculated at the end of each preceding month. Months of use are taken as complete calendar months from when the vehicle was first taken into use or registered.

   May Article 90 EC (formerly Article 95 of the EC Treaty) be inter-

preted as meaning that such national tax legislation is not discriminatory, taking into account in particular that

— the starting point is the tax on an equivalent new car,

— under the previous law the tax was reduced only after a period of six months, and

— under both the previous and current law the tax is reduced linearly as described above?

3. In addition to using the bases of calculation prescribed in the national tax legislation, is it always necessary to establish a vehicle's individual characteristics to ensure that the levying of car tax does not lead, in the individual case, to discrimination contrary to Article 90 EC (formerly Article 95 of the EC Treaty)?

Value added tax on car tax

4. May the Sixth Directive be interpreted as meaning that the tax called value added tax payable on car tax under Paragraph 5(1) of the Autoverolaki and Paragraph 1(5) of the Arvonlisäverolaki is value added tax within the meaning of the Sixth Directive, taking into account that under national legislation the tax is levied exclusively on the basis of car tax?

5. If the answer to Question 4 is in the negative, may such a tax nevertheless be regarded as a tax or charge the levying of which is permitted under Article 33 of the Sixth Directive?

6. If such national tax provisions are not regarded as contrary to the Sixth Directive, may Article 90 EC (formerly Article 95 of the EC Treaty) be interpreted as meaning that that those tax provisions are not discriminatory within the meaning of that article?'

V — The questions relating to car tax

34. The first three questions concern various aspects of the provisions of the Autoverolaki applicable to the facts at issue in the main proceedings. They will therefore be examined together.

A — *Submissions of the parties*

35. According to *Mr Siilin*, the car tax discriminates against imported vehicles and therefore infringes Article 90 EC. He submits that, to ascertain the basis of assessment of an imported used car, the tax-free price of a new car is used. In most cases the car tax is greater than the residual amount of tax contained in the value of a similar used car registered in Finland.

36. Application of the Finnish tax system leads to a used car imported by a private individual being burdened with at least twice as much tax as a used car which was originally imported when new by an official importer.

37. Under Paragraph 7(1) of the Autoverolaki, the tax on an imported used car corresponds to the amount charged on a similar new car, but with reductions in accordance with the provisions of that law. In the case of the importation of a used car by a private individual, the tax payable on a similar new car corresponds to the tax on a vehicle whose basis of assessment includes the seller's margin and other associated amounts. By contrast, an official importer who imports a new car into Finland pays tax on the purchase price, that is, without his margin and miscellaneous costs being included. The tax on new cars imported into Finland by an official importer is therefore less than in the case of the importation of a new or used car by a private individual.

38. Mr Siilin takes the view that in those circumstances the monthly reductions laid down in the law have only a slight effect on the residual amount of tax contained in the value of a similar vehicle. The used car and the similar new car imported by an official importer have different bases of taxation. The percentage reductions do not eliminate the discrimination.

39. Mr Siilin argues from the *Nunes Tadeu* judgment that, to ascertain the residual amount of tax contained in the value of the vehicle, the tax charged on the occasion of the first registration of the comparable vehicle must be taken into account. That residual amount must then be reduced in proportion to the real depreciation of the used car.

40. As regards the linear nature of the reduction in tax, Mr Siilin refers to the judgment in *Commission* v *Greece*[4] as showing that such a reduction is not permissible.

41. Finally, Mr Siilin submits that it follows from the *Outokumpu*[5] judgment that even tax discrimination which occurs only in certain cases, namely a higher burden on imported products than on products of domestic origin, conflicts with Community law.

42. The *Finnish Government* assumes that car tax does not infringe Article 90 EC. That article does not prohibit the Member States from taxing goods differently, where the tax is calculated on the basis of objective criteria without discrimination against imported goods. To examine the discriminatory character of a tax system for imported vehicles, the tax levied on vehicles imported from other Member States must be compared with the tax levied on used cars which are already on national territory. If in a Member State used cars are not subject to tax on the occasion of a change of owner, the first charging of tax on a vehicle imported from another Member State must be compared with the residual amount contained in the value of a vehicle already in the country.

43. To ascertain the equivalent products which form the basis for the comparison, in the opinion of the Finnish Government, the economic context must be taken into account, in addition to the essential characteristics of the vehicle such as make, model and age. That makes it possible, in order to determine the discriminatory effect of a tax levied on imported used cars, to take as the basis of comparison the residual amount of tax contained in the value of a vehicle which is already in the Member State and was imported at the same commercial level and with the same characteristics. Discrimination exists only if the tax levied on used cars exceeds the residual

4 — Case C-375/95 *Commission* v *Greece* [1997] ECR I-5981, paragraph 22.

5 — Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraph 41.

amount contained in the value of a similar vehicle which is already on the market and was taxed as a new car at the same commercial level.

44. Car tax is thus determined by applying objective criteria and does not infringe Article 90 EC, since the value used as the basis of assessment may vary according to the economic circumstances of the acquisition of the vehicle.

45. As regards the Finnish rules that the starting point is the tax on an equivalent new car and a linear reduction is carried out, such rules do not conflict with Community law. A reduction according to the age of the vehicle corresponds to the real depreciation. Moreover, the real depreciation of a used car is also linear.

46. As to the question whether it is necessary to take account of the individual characteristics of the vehicle, the Finnish Government submits that an individual evaluation of every vehicle is not required by Community law.

47. According to the *Commission*, the provisions of the Autoverolaki under which the tax is to be ascertained on the basis of the value of an equivalent new car do not as such infringe Article 90 EC, provided that the new car corresponds to the imported used car in all respects and that the tax thus ascertained does not exceed the residual amount of tax contained in the value of a used car already registered in the Member State.

48. The Commission is further of the view that the basis of assessment is excessive. Because of frequent changes of models, it is difficult subsequently, that is, at the time of taxation, to find an identical vehicle of the same category. If such a vehicle is no longer on sale at the time of taxation, the only possible reference is a vehicle of the same model which was previously on sale. Inflation could be taken into account by correcting the value of that vehicle.

49. Other features of the Finnish tax provisions could constitute a breach of Article 90 EC. That applies to the taking into account of different commercial levels, which leads to the amount of tax on a used

car differing from the residual amount contained in the value of a used car already present on the domestic, that is, Finnish market and already taxed.

51. The Commission adds that a tax system in which individual features are not taken into account infringes Article 90 EC if the result is that the tax levied on an imported used car exceeds the residual amount contained in the value of an equivalent used car already registered in the Member State concerned.

52. Finally, the car tax is discriminatory because it places dealers in other Member States at a disadvantage.

50. Article 90 EC further precludes a provision under which a linear reduction of 0.5% a month is carried out without taking the vehicle's real depreciation into consideration. The Commission considers that it is not possible to take account of depreciation in a general way, since it depends on numerous factors such as the country, type or model. The Finnish Government has indeed produced a study of depreciation from 1998, but the Commission has no information available as to what depreciation in 1998 actually was. In *Commission* v *Greece* the Court stated that annual depreciation is normally greater than 5% and that depreciation is greater in the first few years in particular.

B — *Opinion*

53. The first three questions concern various aspects of the Finnish Autoverolaki in the version applicable to the main proceedings. The aspects addressed in the questions all fall within the scope of Article 90 EC, which according to the Court's settled case-law [6] covers not only the rate of tax but also the details of how the tax is levied and the basis of assessment.

54. The Finnish provision concerning the tax treatment of repairs and the question whether that provision is discriminatory,

6 — See only Case 74/76 *Iannelli* v *Meroni* [1977] ECR 557 and Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, paragraph 18.

which have been raised by the parties, are not the subject of the questions referred, and so not the subject of the present proceedings.

55. When assessing measures of the Member States in the light of Article 90 EC, it must be noted that Article 90 EC prohibits a basis of assessment which exceeds the actual value of the object being taxed. [7] In taxing used cars, their actual depreciation must therefore be taken into account. [8]

56. Moreover, it is settled case-law [9] that, in assessing tax provisions such as those at issue in the main proceedings, it must be taken into account that the upper limit for taxes is the residual amount contained in the value of the goods being taxed. With a used car, that corresponds to the residue of the tax which was levied on its registration as a new car and is still contained in its value as a used car. This residual amount is directly proportional to the depreciation, [10] in that it decreases in the same proportion as the value of the car.

57. Article 90 EC promotes tax neutrality between goods already on the domestic market and imported goods. The article may not, however, be understood as aiming at equality of the final selling price. Its purpose is rather the competitive neutrality of the tax provisions of the Member States, in so far as it precludes rules which eliminate the competitive advantages [11] of an imported product.

58. The individual aspects of the Finnish system will be examined below.

1. Commercial level of the purchaser

59. The problem of the commercial level, addressed in the first question referred, essentially relates to the question whether Article 90 EC permits taking into account the commercial level of the goods to be taxed. That constitutes a point of law in that the basis of assessment may vary in size according to the commercial level.

7 — *Commission* v *Denmark*, cited in note 6, paragraph 22.

8 — *Nunes Tadeu*, cited in note 3, paragraph 20, and Case C-393/98 *Gomes Valente* [2001] ECR I-1327, paragraph 23.

9 — *Commission* v *Denmark*, cited in note 6, paragraph 20.

10 — *Gomes Valente*, cited in note 8, paragraph 41.

11 — As Advocate General Jacobs said in his Opinion in *Nunes Tadeu*, cited in note 3, point 17; see also the recent judgment in *Gomes Valente*, cited in note 8, paragraph 43.

That, however, leads to different amounts of tax, so that taking the commercial level into account could ultimately be discriminatory.

60. (a) The starting point is that Finnish law refers to the Community customs legislation with respect to the value of a used car at each commercial level. The varying taxable value thus results from the application of the Community rules on customs value in the Customs Code and its Implementing Regulation.

61. As regards the Commission's doubts as to whether it is compatible at all with the internal market to apply there rules which apply to external trade, the judgment in *Dounias* [12] should be referred to, in which the Court held that the mere reference to the regulation on customs value for the purpose of determining the taxable value is not in principle contrary to the Treaty.

62. (b) The question then arises whether the commercial level of the goods is once of the characteristics of the goods and must actually thus necessarily be taken into account.

63. It is decisive for the assessment of a tax provision in the light of Article 90 EC whether the domestic and foreign goods to be compared are equivalent goods. [13] Equivalence is determined by the characteristics of the goods, in this case the used car, and by the requirements of the consumer. [14] Although both aspects are composed of a multitude of elements, which will have to be considered further, there is one thing they have in common: they are aspects which all relate to the vehicle itself. That is not the case, however, for the commercial level at which the used car is situated.

64. (c) According to the Court's case-law, it would not be permissible for a national tax provision to be structured in such a way that turnover tax is not taken into account in the same way for determining the basis of assessment for domestic used cars as for imported used cars, [15] just as it would not be permissible to leave certain costs out of

12 — Case C-228/98 *Dounias* [2000] ECR I-577, paragraph 45.

13 — Case C-265/99 *Commission* v *France* [2001] ECR I-2305, paragraph 41.

14 — *Commission* v *France*, cited in note 13, paragraph 42, and Case C-421/97 *Tarantik* [1999] ECR I-3633, paragraph 28.

15 — *Dounias*, cited in note 12, paragraph 48.

account for domestic used cars or to provide for no possibility of deduction for imported used cars as opposed to domestic used cars. [16]

65. So even if it is correct that taking the commercial level into account has the effect — as the Commission asserts — of increasing the value of used cars, that taken alone would not be discrimination. Discrimination lies rather in the fact that taking commercial levels into account leads in principle, as may be seen from the calculations submitted, to the amount of tax for a used car being greater in proportion to the value of the car than the amount of tax contained in the value of a new car.

66. The Court has consistently held that a tax provision already infringes Article 90 EC if it does not exclude in any event or exclude 'any possibility of imported products being taxed more heavily' than domestic products. [17] If, then, it is only in certain cases that imported used cars are taxed more heavily than used cars already on the domestic market, even that would not be permitted. Under the Finnish system that would be the case, for example, if a higher basis of assessment were used than for an equivalent domestic used car.

67. In the present case different bases of assessment apply to the different commercial levels, so that a used car imported at a 'higher value' commercial level is taxed more heavily than one imported at a 'lower value' commercial level or already on national territory. Since some domestic used cars at least are among the less heavily taxed used cars and some imported used cars at least are among the more heavily taxed ones, there is discrimination to that extent.

68. That effect makes it clear that a tax provision which provides for different taxation for different commercial levels at least does not exclude the possibility of higher taxation of imported goods in certain cases.

16 — Case C-68/96 *Grundig Italiana* [1998] ECR I-3775, paragraphs 17 to 21.

17 — See on this point *Commission* v *Greece*, cited in note 4, paragraph 29 and the case-law referred to there; see also *Gomes Valente*, cited in note 8, paragraph 37.

2. Valuation criteria

69. The second question concerns certain aspects of the criteria for valuing used cars. The answer should be confined to those circumstances, provisions of national law in particular, which are of importance for deciding the main proceedings.

(a) Reference: equivalent new car

70. A national provision under which the starting point for ascertaining the basis of assessment is the value of a new car is permissible under certain conditions. Thus only an equivalent vehicle may be used as reference vehicle.

71. Whether the vehicle is (as far as possible) equivalent is to be determined on the basis of the essential characteristics of the vehicle. These include at any event the model, type and certain characteristics such as age, kilometrage, equipment, condition and method of propulsion.

(b) Reduction only after six months

72. It should be noted to begin with that the old legal position, that is, the position before 15 January 1999, governs the present case.

73. Starting from the principle that the real depreciation is what matters, it appears doubtful whether reducing the value of a new car, for the purpose of ascertaining the value of a used car, only after six months from when it is brought into use or registered complies with the requirements of Article 90 EC.

74. Moreover, such a delayed reduction also does not correspond with the results of the study cited by the Finnish Government.

75. The Court's case-law contains express statements only on annual depreciation, but it may be deduced from the fact that depreciation in the first few years in

particular — according to experience — is much greater than 5% p.a. [18] that the depreciation for the first six months is presumably at least 2.5%. If the actual depreciation in the first months is even greater, that makes the inadequacy of the delayed reduction even clearer.

(c) Linear depreciation

76. Since the car tax provisions in force before 15 January 1999 apply to the case at issue in the main proceedings, the linear monthly depreciation by 0.5% provided for therein is material.

77. As may be seen from the case-law, however, the real depreciation of used cars 'is not linear'. [19] Such an inflexible rule must therefore conflict with the principle that the actual depreciation should be taken into account.

3. Abstract or individual evaluation

78. The third question is to be understood as meaning that the national court wishes to know whether the characteristics of the vehicle are to be taken into account individually or whether evaluation on the basis of abstract criteria is sufficient, that is, consistent with Article 90 EC.

79. On the question whether the characteristics of the used car are to be assessed individually or may be determined in the abstract, the judgment of the Court in the *Gomes Valente* case states that Article 90 EC does not preclude a valuation on the basis of general and abstract criteria under certain conditions. This applies, for example, to fixed tables using criteria such as a vehicle's age, kilometrage, equipment, condition, method of propulsion, make or model. The use of an average price is also permissible. [20]

80. It is still, however, a condition of such an — abstract — calculation of value that it may not be discriminatory. [21] The amount of tax resulting from this calculation may not therefore be greater than the

18 — *Commission* v *Greece*, cited in note 4, paragraph 22; see also Advocate General La Pergola, in point 5 of his Opinion, who assumes that experience contradicts putting a limit of 5% on depreciation.

19 — *Commission* v *Greece*, cited in note 4, paragraph 22.

20 — See *Gomes Valente*, cited in note 8, paragraphs 24, 25 and 28.

21 — *Gomes Valente*, cited in note 8, paragraph 26.

residual amount contained in the value of the similar vehicle already registered in the country.

81. The transparency or accessibility — referred to by the parties — of such tables in particular and the question whether the practice in this respect at the material time satisfied the requirements of Community law are not the subject of these proceedings, as they are not mentioned in the questions referred for a preliminary ruling. In this respect I will merely refer to the judgment in *Gomes Valente*, according to which the criteria on which the table is based must be made public. [22]

4. Conclusion

82. The answer to the first three questions is therefore that Article 90 EC is to be interpreted as not precluding a national tax provision under which, in order to determine the taxable value of a used car for the purpose of assessing car tax,

— the customs value is used,

— the taxable value is determined in such a way that all the essential characteristics of the used car are — at least abstractly — taken into account,

unless this leads to the amount of tax exceeding the amount contained in the value of a used car already taxed and on the domestic market, and to the actual depreciation not being taken into account.

Article 90 EC is further to be interpreted as precluding a national tax provision under which, to determine the taxable value of a used car for the purpose of assessing car tax, the commercial level is to be taken into account, the taxable value is reduced only after six months have elapsed, and the reduction is made in linear fashion in the way applicable in the main proceedings.

VI — The questions concerning value added tax

83. The fourth to sixth questions concern the assessment of the value added tax

22 — *Gomes Valente*, cited in note 8, paragraph 34.

charged on car tax, namely whether it is to be classified as value added tax within the meaning of the Sixth Directive and whether it is compatible with Article 33 of the Sixth Directive and with Article 90 EC. [23]

A — *Submissions of the parties*

84. With respect to the value added tax charged on car tax, *Mr Siilin* takes the view that it is value added tax within the meaning of the Sixth Directive and conflicts with that directive. Classification as value added tax is supported by the fact that it is deductible under Paragraph 102(1)(4) of the Arvonlisäverolaki and is a general tax. In view of the answer to be given to the fourth question, there is no need to answer the fifth and sixth questions.

85. According to the *Finnish Government*, the value added tax charged on car tax, despite its name, is neither value added tax within the meaning of the Sixth Directive nor a turnover tax prohibited under Article 33 of the Sixth Directive.

23 — The question raised by the Commission of compatibility with Articles 23 EC and 25 EC need not therefore be considered further.

86. It says that the value added tax charged on car tax is levied in addition to and independently of value added tax. Moreover, it is also levied in a case which does not constitute an acquisition subject to value added tax, namely the purchase of a used car by a consumer in another Member State.

87. The Finnish Government further refers to the case-law of the Court on Article 33 of the Sixth Directive defining the essential characteristics of value added tax. In contrast to value added tax, the chargeable event of the tax on car tax is exclusively the payment of the car tax. Moreover, the tax is not charged on the sale of goods or on imports or intra-Community acquisitions. Finally, it is charged once only.

88. On the fifth question, the Finnish Government submits that the tax mentioned in Paragraph 5 of the Autoverolaki does not fulfil the essential characteristics of value added tax and does not hinder the functioning of the value added tax system applicable within the Community. Rather, it is a tax permitted under Article 33 of the Sixth Directive.

89. On the sixth question, the Finnish Government takes the view that the tax mentioned in Paragraph 5 of the Autoverolaki affects all vehicles in the same way. On the basis of its characteristics, the tax thus does not infringe Article 90 EC.

90. At the hearing the Finnish Government expressly rejected the Commission's view that the value added tax can be deducted from the car tax. The value added tax is neutral.

91. According to the *Commission*, the tax charged on car tax constitutes value added tax within the meaning of the Sixth Directive. Since it is levied on the basis of chargeable events other than those provided for in the Sixth Directive, it is not compatible with Article 2 of that directive.

92. The value added tax at issue also does not satisfy the criteria of Articles 7 and 10 of the Sixth Directive relating to the importation of goods and the chargeable event.

93. Nor is it a tax on intra-Community acquisitions within the meaning of Article 28a of the Sixth Directive.

94. Should the Court conclude that the tax is not in fact value added tax within the meaning of the Sixth Directive, then it does not infringe Article 33 of the directive, since it is not a general tax.

95. The Commission further submits that the tax at issue infringes Articles 23 EC and 25 EC and is thus to be classified as a charge having equivalent effect to a customs duty. This is because in practice it hinders persons who are not subject to value added tax from importing new or used cars into Finland.

96. Should the Court conclude, however, that the tax at issue is neither value added tax nor a charge having equivalent effect to a customs duty, the Commission observes that the tax infringes Article 90 EC in any event, since it is not applicable to domestic used cars but to used cars imported from another Member State; a final consumer who has bought a used car in another Member State has no right to deduct tax. Domestic used cars, by contrast, are not subject to car tax and hence not subject to the value added tax charged thereon.

B — *Opinion*

97. The tax on car tax must be examined in the light of the aspects of Community law raised by the national court.

1. Classification as value added tax within the meaning of the Sixth Directive

98. To begin with, the assessment of the tax charged on car tax cannot depend on the name given to that tax in the Member State in question. Nor is it decisive which law the relevant provision was included in, in this case in the value added tax provisions in Law 1501/1993.

99. The assessment depends rather on whether the tax at issue displays the characteristics worked out in the Court's case-law.

100. (a) These include, first, the possibility of deducting the tax which has already been paid on the preceding transaction. The Finnish provisions admittedly provide for a possibility of deduction, but the effect of the system is not — as required for value added tax [24] — that the added value is taxed; instead the entire value is taxed.

101. (b) Next, it is doubtful whether the tax charged on car tax 'applies generally to transactions relating to goods or services'. [25]

102. The tax at issue is general in so far as acquisitions by operators subject to value added tax and acquisitions by final consumers are both subject to it. However, the tax on car tax is not payable on goods of all kinds, but only on certain vehicles. It is thus a tax levied on certain goods only, which according to the Court's case-law [26] is not to be regarded as a general tax.

24 — Case C-347/90 *Bozzi* [1992] ECR I-2947, paragraph 12; see also Case C-208/91 *Beaulande* [1992] ECR I-6709, paragraph 18.

25 — *Bozzi*, cited in note 24, paragraph 12 and the case-law cited there.

26 — Case C-109/90 *Giant* [1991] ECR I-1385, paragraph 14, and Case C-347/95 *UCAL* [1997] ECR I-4911, paragraph 36, concerning a duty on certain milk products.

103. According to the case-law, taxes which do not apply to 'all economic transactions' are also not to be classified as general taxes. [27] That is the case with the tax at issue in so far as it applies only to the charging of the tax levied on the registration of a vehicle. It is thus a tax which depends on the amount owed by the taxable person, namely the car tax payable. [28]

104. In addition, the tax on car tax is due neither on the basis of a supply of goods or services nor on the basis of an importation within the meaning of Article 2 of the Sixth Directive.

105. Moreover, the tax on car tax is also not payable — as required for value added tax — at every stage of production and distribution. [29] Rather, the tax is levied under Paragraph 5 of the Autoverolaki — only — on the occasion of levying car tax.

106. (c) Finally, it must be examined whether the tax on car tax is, as required for a value added tax, proportional to the value of the goods, that is, the price of the vehicle. [30] In this respect, on the one hand, the Finnish Government is right in so far as not the value of the goods but the car tax forms the basis of taxation, but it is also correct, on the other hand, that the car tax for its part is calculated on the basis of the value of the goods. The tax on car tax is thus based at least indirectly on the value of the goods.

107. The tax on car tax therefore in any case does not display all the essential characteristics of a value added tax.

2. Assessment in the light of Article 33 of the Sixth Directive

108. It follows from Article 33 of the Sixth Directive that Community law permits

27 — *Beaulande*, cited in note 24, paragraph 16, and Case C-130/96 *Solisnor-Estaleiros Navais* [1997] ECR I-5053, paragraph 17.

28 — On the assessment of such a tax, see Case C-318/96 *SPAR* [1998] ECR I-785, paragraph 25.

29 — On this point, see only Case 295/84 *Rousseau Wilmot* [1985] ECR 3759, paragraph 15, Case C-437/97 *EKW and Wein & Co.* [2000] ECR I-1157, paragraph 49, and *Bozzi*, cited in note 24, paragraph 12.

30 — *Rousseau Wilmot*, cited in note 29, paragraph 15, Case 252/86 *Bergandi* [1988] ECR 1343, paragraph 15, and *Bozzi*, cited in note 24, paragraph 12.

'systems of taxation to exist concurrently with [value added tax]' under certain conditions. [31] 'Member States may therefore introduce taxes which cannot be characterised as turnover taxes' [32] or — in other words — 'taxes, duties or charges which do not have the essential characteristics of [value added tax]'. [33]

109. Since, on this interpretation, the tax on car tax does not display all the essential characteristics of value added tax, it is not precluded by the provisions of the Sixth Directive.

3. Assessment in the light of Article 90 EC

110. As regards the compatibility of the tax on car tax with Article 90 EC, it must be observed that the tax applies to vehicles which are registered in Finland. A difference in treatment thereby appears — as already with car tax — between used cars which are taken from another Member State to Finland to be registered there and used cars already in the country. Since car tax, including the value added tax thereon, has already been charged on the latter as new cars, they are not subject to those two taxes again if acquired as in Finland as used cars.

111. Since the so-called value added tax is charged on car tax, it is essentially to be assessed in the same way as car tax. In so far, therefore, as the amount of the tax on car tax charged on the registration of an imported used car exceeds the amount contained in the value of a used car which is within the country, that tax is discriminatory and infringes Article 90.

112. That is because the tax on car tax thereby has the effect that the competitive advantage of a used car imported from another Member State as against a used car which is within the country is eliminated.

4. Conclusion

113. The answer to the fourth and fifth questions is therefore that the Sixth Direc-

31 — Settled case-law since Case 73/85 *Kerrutt* [1986] ECR 2219.

32 — *Giant*, cited in note 26, paragraph 9; see also the earlier case *Rousseau Wilmot*, cited in note 29, paragraph 16.

33 — *Bozzi*, cited in note 24, paragraph 10.

tive is to be interpreted as meaning that a tax called value added tax such as that at issue in the main proceedings may not be regarded as value added tax within the meaning of that directive but as a tax, duty or charge which is permitted under Article 33 of the directive.

114. The answer to the sixth question is that Article 90 EC is to be interpreted as meaning that the tax called value added tax is discriminatory as stated in that article in so far as the amount of tax exceeds the amount contained in the value of a used car present on the domestic market and already taxed.

VII — Conclusion

115. In conclusion, I propose that the Court answer the questions as follows:

(1) The answer to the first three questions is that Article 90 EC is to be interpreted as not precluding a national tax provision under which, in order to determine the taxable value of a used car for the purpose of assessing car tax,

— the customs value is used,

— the taxable value is determined in such a way that all the essential characteristics of the used car are — at least abstractly — taken into account,

unless this leads to the amount of tax exceeding the amount contained in the value of a used car already taxed and on the domestic market, and to the actual depreciation not being taken into account.

Article 90 EC is further to be interpreted as precluding a national tax provision under which, to determine the taxable value of a used car for the purpose of assessing car tax, the commercial level is to be taken into account, the taxable value is reduced only after six months have elapsed, and the reduction is made in linear fashion in the way applicable in the main proceedings.

(2) The answer to the fourth and fifth questions is that 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 — is to be interpreted as meaning that a tax called value added tax such as that at issue in the main proceedings may not be regarded as value added tax within the meaning of that directive but as a tax, duty or charge which is permitted under Article 33 of that directive.

The answer to the sixth question is that Article 90 EC is to be interpreted as meaning that a tax called value added tax such as that at issue in the main proceedings is discriminatory as stated in that article in so far as the amount of tax exceeds the amount contained in the value of a used car present on the domestic market and already taxed.