Conclusions
OPINION OF ADVOCATE GENERAL
RUIZ-JARABO COLOMER
delivered on 23 November 2004(1)

Case C-412/03

Hotel Scandic Gåsabäck AB
v
Riksskatteverket

(Request for a preliminary ruling from the Regeringsrätten)

(Sixth VAT Directive – Chargeable event – Transactions regarded as supplies of goods and services for consideration – Provision of meals for its staff, at a price lower than cost price, by an undertaking operating in the hotel and restaurant sector – Interpretation of Articles 2, 5(6) and 6(2)(b))

I – Introduction

1. The case pending before the Regeringsrätten (Supreme Administrative Court), Sweden, concerns the manner in which the meals provided by a hotel and restaurant company to its staff, at a price lower than the value of the operation, should be treated for the purposes of value added tax (hereinafter 'VAT').

2. In order to give judgment, it needs to know whether the Sixth Directive, (2) in particular Articles 2, 5(6) and 6(2)(b), precludes national legislation which regards as applications for own consumption not only transactions effected free of charge but also situations in which a taxable person transfers goods or provides services for a sum lower than the purchase price of the goods or the cost of performing the service.

II – Legal context

A – *Community law: the Sixth Directive*

3. Article 2(1) defines its scope, stating: '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.' The two kinds of legal transaction are defined later, in Articles 5(1) and 6(1) respectively.

4. The taxable amount is calculated on everything which constitutes the consideration 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 (Article 11(A)(1)(a)).

5. By assimilation, the application by a taxable person of goods forming part of his business assets for his private use or that of his staff, or the disposal thereof free of charge or more generally their application for purposes other than those of his business, where the value added tax on the goods in question or the component parts thereof was wholly or partly deductible, is to

be taxable (Article 5(6)).

6. In such circumstances, the taxable amount is the purchase price of the goods or, in the absence of a purchase price, the cost price, determined at the time of supply (Article 11(A)(1)(b)).

7. Under Article 6(2)(b) the following are to be treated as supplies of services for consideration: supplies of services carried out free of charge by the taxable person for purposes other than those of his business or, particularly, for his own private use or that of his staff, in which cases tax is charged on the full cost of providing the services (Article 11(A)(1)(c)).

B – *Swedish law: the Lagen om medvärdesskatt*

8. Under the Lagen om mervärdesskatt (1994:200), the Swedish Law governing VAT, the application of goods for own consumption means the transfer of goods to a third party free of charge for a consideration less than the purchase value or, if that value is not known, the cost price at the time of the transfer (Chapter 2, Paragraph 2(2), in conjunction with Chapter 7, Paragraph 3(2)(a)).

9. Application of services for own consumption means that a taxable person performs, arranges performance or in some other way provides a service for himself or his staff for private purposes or for non-commercial purposes, where the service is provided free of charge or for a consideration less than the cost of providing the service at the time of the application (Chapter 2, Paragraph 5, first subparagraph, first sentence, in conjunction with Chapter 7, Paragraph 3(2)(b)).

10. In both cases it is essential that the reduction is not made for commercial reasons; under Chapter 7, Paragraph 2, first subparagraph, the value of the transaction, ascertained in one of the ways stated, constitutes the taxable amount.

III – The facts, the main action and the questions referred to the Court of Justice for a preliminary ruling

11. Hotel Scandic Gåsabäck AB (‘Scandic’) operates a hotel and restaurant business; during the working day it provides its employees (between 23 and 25 persons) with lunches at a price lower than the company’s costs. (3) The employees receive the food and take it to a dining-room. At the end of the meal, they collect the crockery and cutlery and place them in baskets put out for the purpose.

12. In order to ascertain the tax scheme applicable to the services described, Scandic put two questions to the Skatterrättsnämnden (Revenue Law Commission). In the first, it asked whether they were regarded as provision of foodstuffs (tax rate 12%) or food-dispensing services (tax rate 25%). The second concerned the taxable amount and asked whether it should be fixed according to the amount paid by the worker or according to the rules laid down in the Swedish legislation on applications for own consumption.

13. By a decision of 10 June 2002, the aforementioned consultative body answered that they were food-dispensing services, the taxable amount of which was to be calculated in accordance with Chapter 2, Paragraph 5, first subparagraph, first sentence, in conjunction with Chapter 7, Paragraph 3(2)(b) of the Lagen om mervärdesskatt.

14. Scandic disagreed with that assessment and brought proceedings before the Regeringsrätten on the ground that the meals should be regarded as a supply of goods and that the taxable amount should be determined according to the consideration paid by the employees.

15. The national court harbours doubts as to whether the term ‘application’ used in Articles 5(6) and 6(2)(b) of the Sixth Directive covers only operations carried out free of charge or also includes, as does the Swedish law, applications in which the recipient pays a token consideration or a consideration that is closely related to the cost price. In order to resolve them, it has referred the following questions to the Court of Justice for a preliminary ruling:

‘1. In the event that the Regeringsrätten finds, when the case is decided, that the company’s supplies are supplies of goods, are Article 2 and Article 5(6) of the Sixth Directive to be interpreted as precluding provisions in the legislation of a Member State under which the application of goods for private use means that a taxable person transfers goods to a third party for a consideration less than the purchase value of the goods or of similar goods or, if no such value is available, the cost price?

2. In the event that the Regeringsrätten finds, when the case is decided, that the company's supplies are food-dispensing services, are Article 2 and Article 6(2)(b) of the Sixth Directive to be interpreted as precluding provisions in the legislation of a Member State under which the application of services for private use means that a taxable person performs, arranges performance or in some other way provides a service for himself or his staff for private purposes or for other non-commercial purposes where the service is provided for a consideration less than the cost of performing the service?'

IV – Procedure before the Court of Justice

16. The European Commission and the Swedish, Danish and Greek Governments submitted written observations within the period laid down by Article 20 of the EC Statute of the Court of Justice.

17. The Commission's representative and the representatives of the Swedish, Greek and Finnish Governments presented oral argument at the hearing on 21 October 2004.

V – Analysis of the questions referred to the Court for a preliminary ruling

A – *Preliminary issue: the legal classification of the transaction*

18. It appears that the Regeringsrätten is not seeking the views of the Court of Justice regarding the nature of the transaction at issue in the main action, because it has raised the same question for two different situations, depending on whether the provision of meals to Scandic's employees is regarded as a supply of goods or as a supply of services. In the allocation of tasks which proceedings for a preliminary ruling involve, it is for the national court to evaluate the facts; if it has to apply provisions of Community law, it must follow the interpretative guidelines laid down by the Court of Justice.

19. As the Commission states in its written observations, in the context of the Sixth Directive the concepts 'supply of goods' and 'supply of services' require a uniform interpretation and, therefore, a preliminary ruling from the Community Court. Consequently, it is necessary, although the Swedish court has not so requested, to refer to the guidelines laid down by the relevant case-law.

20. In that respect the judgment in *Faaborg-Gelting Linien* (4) stated that, in order to determine whether a transaction constitutes a supply of goods or a supply of services, regard must be had to all the circumstances in which the transaction in question takes place in order to identify its characteristic features (paragraph 12). (5) Taking that rule into account, it held that restaurant transactions carried out on ferries operating a regular service between the ports of Faaborg (Denmark) and Gelting (Germany) constituted a service (paragraph 15), because the components of that kind of contract predominated, whereas the provision of food was only a small part of the whole transaction (paragraphs 13 and 14). (6)

21. It is therefore not necessary to break the taxable transaction down into its various parts in order to charge them separately to VAT. The Court of Justice, adhering to the principle of 'unity of the supply', (7) focuses on the whole, which it describes in one way or the other depending on the predominant component. If it follows that criterion, the Regeringsrätten must examine overall the action taken by Scandic in favour of its employees, concentrating on the predominant element, in order to classify that action as a supply of goods or a supply of services.

B – *Application for own consumption and VAT*

22. The crux of the matter is to clarify whether the Sixth Directive allows national legislation to describe as application for own consumption the situation at issue in the main proceedings, by virtue of which Scandic's employees pay the company an amount for meals, although it is lower than the cost price.

23. The letter and spirit of the Sixth Directive and, therefore, the intention of the Community legislature, do not point towards that possibility.

1. Why charge tax on applications for own consumption?

24. The assimilation of applications for own consumption to supplies of goods and supplies of services for consideration respects the principle of neutrality, a fundamental element of the common system of VAT, (8) designed to ensure that the levying of tax does not affect

manufacturing processes, (9) by treating all commercial activities in the same way, without altering their price. (10) The mechanism is simple: VAT is levied upon acts of consumption – which are an indirect manifestation of people's economic capacity – by means of taxation of transactions carried out by traders and professionals, who pass on the tax burden to the end consumer. In that way, a 'neutral' tax is imposed on taxable persons: the tax is borne only by the final link in the chain, which is the person who receives the goods or benefits from the service. (11)

25. A corollary of that principle is that identical situations must not be treated differently. So far as concerns the present matter, the final recipients and anybody who, without being the final recipient, is in a materially similar position must be subject to the same VAT system, so that, when traders or professionals act as the definitive purchaser or final user, they must be regarded as such, and their legal acts must be assessed accordingly, in order 'to prevent private consumption by taxable persons from escaping' the tax. (12)

26. Similarly, the judgment in *De Jong* (cited in footnote 12) pointed out that Article 5(6) of the Sixth Directive ensures equal treatment as between a taxable person who applies goods forming part of the assets of his business for private use and an ordinary consumer who buys goods of the same type (paragraph 15). (13) The judgments in *Enkler* (14) and *Fillibeck* (15) attribute the same intention to Article 6(2)(a), likening the use of an asset for such purposes to the supply of services for consideration.

27. In short, it is sought to prevent a taxable person, once VAT has been deducted on the purchase of an asset used for his business, from avoiding payment of the tax if he 'applies' it for own consumption (Articles 5(6) and 6(2)(a)) and from thereby enjoying advantages to which he is not entitled by comparison with an ordinary consumer who buys goods and pays the corresponding tax on them. (16)

28. The principle of neutrality and the concomitant equality in terms of tax arrangements lead to the same solution in the case of services provided free of charge by the trader for his own private use or that of his staff, covered by Article 6(2)(b). If the intention is that, in comparable situations, economic operators should bear an equivalent tax burden, a trader who benefits in his private capacity from the services connected with his business is, so far as VAT is concerned, at the same stage as private recipients who have to pay for them: both are the final link in the chain.

29. To sum up, a taxable person may apply (Article 5(6)) or use (Article 6(2)(a)) a business asset for purposes other than those of his business. If when he purchased it he deducted the VAT, when he subsequently acts as final consumer and does not pay the tax, he enjoys an advantage to which he is not entitled by comparison with ordinary purchasers or users, who are required to pay it. (17) When, free of charge and with a similar intention, he supplies a service which is part of his occupation (Article 6(2)(b)) without any tax being collected, he allows himself a consumption which is exempt, privileged and detrimental to the principle of neutrality.

30. In order to make it easier to understand the interpretation suggested it might be a good idea to give a few examples. (18)

31. A dealer who buys and sells cars uses one of them for his private use or makes a present of it to a friend. This transfer is subject to VAT (EUR 1 000), otherwise taxation of the final consumption, for which the tax was established, would be evaded. However, if the dealer, when he acquired the vehicle, did not deduct the VAT paid, tax would be levied on the application for own consumption and the car would bear a double tax burden (EUR 2 000), which would infringe the principle of neutrality; if, on the other hand, the tax had been deducted, that principle would require the tax to be paid, in order to prevent a taxable event from avoiding taxation. Articles 5(6) and 6(2)(a) of the Sixth Directive therefore make taxation of the application for own consumption conditional on the prior deduction of the tax paid.

32. On the other hand, an architect prepares drawings for building a family house for himself. In this case, the 'productive chain' begins and ends with the supply of the service, without prior stages which might have given rise to a charge to VAT, so that taxation of this transaction does not need to be made subject to the deduction of previous contributions, which have not been paid. However, the aim of the rule (Article 6(2)(b)) is still the same: 'To prevent a taxable person from

receiving a tax-free commercial service from his undertaking on which a private individual would have to pay VAT'. (19)

2. The taxable amount in cases of application for own consumption

33. As a rule, the taxable amount is the amount of the consideration obtained by the supplier of the goods or services (Article 11(A)(1)(a) of the Sixth Directive). On the other hand, for applications for own consumption it is either the purchase price of the goods or of similar goods or the cost price, or the cost to the taxable person of providing the service (Article 11(A)(1)(b) and (c)).

34. There is therefore no middle way. For applications for own consumption another reference is used, because the recipient makes no payment, and any transaction which is not free of charge is excluded, as can be inferred from the wording of the aforementioned provisions.

35. That approach respects the case-law of the Court of Justice on the concept of consideration, the main thrust of which is that there must be a legal relationship between the seller (or provider of the service) and the purchaser (or recipient of the service), pursuant to which there is reciprocal performance, the remuneration received by the former constituting the actual value of the advantage obtained by the latter; (20) this is a subjective value, which reflects the amount actually received in each case, not an amount estimated according to objective criteria. (21) Therefore, the fact that an economic activity is carried out at a price higher or lower than the cost price is irrelevant for the purposes of describing it as being carried out for consideration.

36. Furthermore, as the Commission points out, there is nothing in the Sixth Directive or in the case-law which requires the taxable amount to be fixed on the basis of the market valuation of the transaction subject to tax, irrespective of the amount paid. Article 11 itself elaborates on this point, providing that, for determination of the tax payable, the taxable amount is not to include price reductions, discounts or rebates (Article 11(A)(3)) and that the taxable amount is to be reduced in cases of cancellation, refusal or total or partial non-payment or where the price is reduced after the supply takes place (Article 11(C)(1)). The taxable amount is always determined in accordance with the consideration received, (22) a rule which is also based on the principle of neutrality and on the configuration of this tax as an indirect tax levied on economic capacity indicated by consumption, which requires that the contribution should be fixed according to the value actually 'added' at the final stage of the economic process. (23)

37. The system contained in Articles 5(6) and 6(2)(b) of the Sixth Directive covers only transactions made free of charge; the others, even those agreed for less than their cost, must be regarded as made for consideration, falling within Article 2(1). Consequently, those provisions do not allow national legislation which classifies 'sales at a loss' as applications for own consumption.

38. The Swedish Government refutes that argument, contending that there is no difference at all between a transaction carried out for a token price and a transaction carried out for nothing. Its assertion is too rhetorical and is not relevant to the present case because the order for reference states that Scandic's employees pay an amount higher than the cost incurred by the company for the meals, although in the future 'it may be lower', but at no time does it use the term 'token payment'.

39. The fear of tax evasion revealed in that argument, and in the views of the Greek and Finnish Governments, does not constitute justification since it overlooks the fact that the Community legislature bore that possibility in mind and, in Article 27 of the Sixth Directive, left the way open for Member States, in certain circumstances, to disapply it; and it fails to take account of the fact that the legitimate interest in preventing mockery of the law must not be put forward as an absolute reason, converting the exception (determination of the taxable amount according to the market price for transactions made free of charge) into the general rule, and widening the meaning of a tax provision, because, as is explained below, it is inappropriate to apply analogy to the guiding principles in this area of the law.

40. In any event, the Swedish Government's argument, even though it purports to protect the neutrality of the tax, does not appear acceptable. According to its observations, if an undertaking subsidises meals for its employees through another catering company, it transfers to that company

the amount of the subsidy, supplementing it with the sum paid by the employees. That contribution would be directly linked to the price and, under Article 11(A)(1)(a) of the Sixth Directive, would be included in the taxable amount. It takes the view that an employer who contributes to its employees' meals using its own services should be treated in the same way, but that is not possible when only the amount paid by the employees is taxed.

41. The Swedish Government gives the concept of 'subsidy' a breadth which ill befits it, because the Sixth Directive uses it in a technical and legal sense as an incentive measure, so that a State may stimulate a sector by granting financial advantages to individuals. For this reason, the Court of Justice requires the subsidy to be granted by an authority, a condition which means implicitly that there are three parties to the relationship: the authority which grants the subsidy, the trader who benefits from it and the final consumer. (24) In short, Article 11(A)(1)(a) of the Sixth Directive 'covers only subsidies which constitute the whole or part of the consideration for a supply of goods or services and which are paid by a third party to the seller or supplier.' (25)

42. The fact of the matter is that the Swedish Government disregards the substantive scope of the principle of legality in taxation law, which, as in criminal law in relation to freedom, intends that the legislature, in which sovereignty resides, should be the only power with the authority to limit the patrimony of citizens. (26) A necessary adjunct to that principle is the prohibition of an analogical interpretation of tax provisions to the detriment of the taxpayer, so that those who apply them, in general, and the courts in particular, should not go beyond the intention embodied in the law, and demand taxes in respect of events not covered by their wording. By proposing to extend the notion of subsidy contained in Article 11(A)(1)(a) of the Sixth Directive, the Swedish Government uses that method of interpretation, but that manner of extending the objective scope of the tax rules is expressly prohibited in the legal systems of some Member States. (27)

VI – Conclusion

43. In the light of the foregoing, I propose that the Court of Justice give the following reply to the questions referred to it by the Regeringsrätten:

'Articles 2, 5(6) and 6(2)(b) 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, are to be interpreted as precluding national legislation under which transactions that are not free of charge and in which a price is paid, even though it may be lower than the purchase value of the goods supplied or of similar goods, or of the cost of performing the service, are regarded as applications of goods for own consumption'.

1 – Original language: Spanish.

2 – 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 (OJ 1977 L 145, p. 1, hereinafter 'the Sixth Directive').

3 – In fact, according to the order for reference, the employees pay an amount slightly higher than the cost but, in the future, they will pay a sum which is lower. The tax decision which has given rise to the main action is based on the second hypothesis.

4 – Case C-231/94 *Faaborg-Gelting Linien* [1996] ECR I-2395.

5 – The same criterion, that of taking account of all the circumstances surrounding the transaction, was used in the judgment in Case C-68/92 *Commission* v *France* [1993] ECR I-5881 to define certain transactions as 'advertising services' (paragraphs 16 to 19).

6 – The Court of Justice pointed out that the supply of prepared food and drink for immediate consumption was the outcome of a series of services ranging from the cooking of the food to its physical service in a receptacle, whilst at the same time an infrastructure is placed at the customer's disposal (dining room, cloakroom, furniture, crockery). However, it stated that the situation was different where the transaction related to 'takeaway' food and was not coupled with services designed to enhance consumption on the spot in an appropriate setting (paragraphs 13 and 14 of the judgment in *Faaborg-Gelting Linien*).

7 – This expression ('Grundsatz der Einheitlichkeit der Leistung') is a paraphrase of the terms used by P. Haunold, 'Der Steuergegenstand', in *EuGH-Rechtsprechung und Umsatzsteuerpraxis* ,

Vienna 2001, p. 111.
8 – Case 50/88 *Kühne* [1989] ECR 1925, paragraph 12, and Case C-193/91 *Mohsche* [1993] ECR I?2615, paragraph 9, describe the aforementioned principle as 'inherent' in VAT.
9 – C. Lohse, 'Der Neutralitätsgrundsatz im Mehrwertsteuerrecht', in *EuGH- Rechtsprechung und Umsatzsteuerpraxis* , Vienna 2001, p. 49.
10 – This consequence, to which L. Mochón López and A. Jabalera Rodríguez refer in the introduction to their work *El impuesto sobre el valor añadido. Comentarios a sus normas reguladoras* , Editorial Comares, Granada 2001, p. 14, is the raison d'être of the principle of neutrality.
11 – I have used similar terms in points 33 and 38 respectively of my Opinions in Case C-68/03 *Lipjes* [2004] ECR I-0000 and Case C-382/02 *Cimber Air* [2004] ECR I-0000.
12 – Opinion of Advocate General Jacobs in Case C-20/91 *De Jong* [1992] ECR I-2847, point 10.
13 – The judgments in Case C-48/97 *Kuwait Petroleum* [1999] ECR I-2323 and Case C-415/98 *Bakcsi* [2001] ECR I-1831 stressed the same idea (paragraphs 21 and 42 respectively).
14 – Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 33.
15 – Case C-258/95 *Fillibeck* 1997] ECR I-5577, paragraph 25.
16 – . *De Jong* , paragraph 15, *Enkler* , paragraph 33 and *Bakcsi* , paragraph 42.
17 – This notion is latent, *a sensu contrario* , in the judgment in *Kühne* , cited above, in which the Court of Justice held that Article 6(2)(a) of the Sixth Directive must be interpreted as precluding taxation of the depreciation of business goods in respect of their private use where the VAT on such goods was not deductible because they were purchased from a non-taxable person (paragraph 11). The judgment in *Bakcsi* , also cited above, was expressed in similar terms (paragraph 44).
18 – I have based them, although with some amendments, on the cases suggested by A.M. López Molino, 'Entregas de bienes y prestaciones de servicios sujetos al IVA', in *El impuesto sobre el valor añadido. Comentarios a sus normas reguladoras* , Editorial Comares, Granada 2001, p. 49 et seq.
19 – These are the words of Advocate General Jacobs in his Opinion in *Mohsche* , cited above (point 22).
20 – This is confirmed by Case C-16/93 *Tolsma* [1994] ECR I-743, paragraph 14, and Case C-172/96 *First National Bank of Chicago* [1998] ECR I-4387, paragraph 26.
21 – . *Fillibeck* , paragraph 13; Case C-317/94 *Elida Gibbs* [1996] ECR I-5339, paragraph 27; and Case C-404/99 *Commission* v *France* [2001] ECR I-2667, paragraph 38.
22 – This is constantly stated in Community case-law. See Case C-86/99 *Freemans* [2001] ECR I?4167, paragraph 27, and the judgments cited therein.
23 – Another example (this time I use a case put forward by L. Mochón López and A. Jabalera Rodríguez (*op. cit.* , p. 13)): trader B sells for its market value (EUR 150) a certain asset purchased from trader A for EUR 100. VAT on the purchase was EUR 16 (tax rate 16%) and on the sale EUR 24, that amount being paid by the consumer. The amount trader B has to pay in is the contribution received less the contribution paid (24 - 16 = EUR 8), whereas the final consumer pays the whole contribution (EUR 24). It is clear that, as far as B is concerned, the tax is neutral. Initially the tax involved expenditure (EUR 16), then became a receipt (EUR 24), although in the end he lost the balance in his favour (EUR 8) in the payment to the Treasury. Thus, the tax has no effect on the price of the goods or services on which it is charged, because it involves neither cost nor profit for the trade or professional activity. However, if for any reason trader B sells for EUR 90 the asset bought for 100, on which he paid VAT of 16, the VAT cannot be calculated according to the market value (EUR 150), disregarding the actual price of the transaction (EUR 90), because the contribution would be EUR 24 instead of 14.4, which would be to B's detriment, and the neutrality which must prevail in this indirect tax system would be lost.
24 – Case C-184/00 *Office des produits wallons* [2001] ECR I-9115, paragraph 10. The same approach is found in paragraphs 32 and 31 respectively of the judgments of 15 July 2004 in Case C-381/01 *Commission* v *Italy* [2004] ECR I-0000 and Case C-144/02 *Commission* v *Germany*

[2004] ECR I?0000.

25 – Operative part of the judgment in *Office des produits wallons* .

26 – The principle of legality was forged in the ‘criminal’ and ‘fiscal’ spheres during the late Middle Ages to restrict the rights and powers of the sovereign. In Spain, the ‘comunidades’, municipalities and towns were able to make the vote of subsidies in favour of the Crown and the punishment of certain conduct subject to approval by assemblies of representatives (‘cortes’). The development of ‘covenantism’ between the monarchy and ‘political society’, which consolidated the political organisation of the State and halted any further extension of royal power, is a constant, although with significant differences and nuances, in the formation of the kingdoms of medieval Spain. In Aragon and Navarre the Cortes obtained powers of judicial and financial review between the end of the 13th and middle of the 14th centuries (see M.A: Ladero Quesada, ‘España: reinos y señoríos medievales’, in *España. Reflexiones sobre el ser de España* , Real Academia de la Historia, 2nd edition, Madrid 1998, pp. 95 to 129). In Castile, this institution, which reached its peak in the 14th and 15th centuries, had a lower profile and, even when it played a prominent role in political life, its powers were more limited (J. Valdeón, ‘Los reinos cristianos a fines de la Edad Media’, in *Historia de España* , Editorial Historia 16, Madrid 1986, pp. 391 to 455, particularly pp. 414 to 423).

27 – One example is Article 14 of the Spanish *Ley General Tributaria* (Ley 58/2003, *Boletín Oficial del Estado* of 18 December 2003), which does not allow analogy to extend, beyond its strict wording, the definition of a chargeable event. In Germany, the Bundesfinanzhof (Federal Finance Court) refused to use that criterion of interpretation and implementation against taxable persons (*Bundesteuerblatt II* 1972, 455, 457; *Bundesteuerblatt II* 1976, 246, 248; *Bundesteuerblatt II* 1977, 283, 287; *Bundesteuerblatt II* 1978, 346; *Bundesteuerblatt II* 1979, 347; *Bundesteuerblatt II* 1982, 618). Belgian academic writers seem unanimous in censuring the interpretation of tax provisions by analogy and refer to a judgment of the Cour de Cassation of 13 April 1978 (*État belge, Ministre des Finances* v *Bodson, Fr., A et M., Pasicrisie belge* 1978, 910). This view is taken, for example, by A. Tiberghien and Others, *Manuel de droit fiscal: 2000* , Editorial Larcier, 21st edition, Brussels 2000, pp. 68 and 69, and M. Dassesse and P. Minne, *Droit fiscal, principes généraux et impôts sur les revenus* , Editorial Bruylant, 5th edition, Brussels 2001, pp. 58 and 59. The situation in France, where published views are divided, is less clear (see P. Marchesson, *L’interprétation des textes fiscaux* , Editorial Economica, Paris 1980, pp. 197 to 234; L. Philip, *Dictionnaire encyclopédique des finances publiques* , Editorial Economica, Paris 1991, vol. II, pp. 971 and 972; L. Trotabas and J.M. Cotteret, *Droit Fiscal* , Editorial Dalloz, 8th edition, Paris 1996, pp. 272 and 273; F. Donet, *Contribution à l'étude de la sécurité juridique en droit fiscal interne français* , Editorial L.G.D.J., Paris 1997, pp. 157 to 164; and M. Bouvier, *Introduction au droit fiscal général et la théorie de l’impôt* , Editorial L.G.D.J., 5th edition, Paris 2003, pp. 42 to 47); however, the Cour de Cassation has held, on occasion, that interpretation by analogy is not permitted in the sphere of taxation (judgment of 25 October 1975, Bull. III no 309, 234).