

This document tests how the UK "payments for a licence" to use the Spectrum for 3G mobile phones should be recorded according to the ISWGNA 21 December 2001 annex criteria, which are shown in italics.

Because the terms and conditions of lease arrangements vary widely, in practice it is often difficult to establish whether or not they effectively transfer ownership rights to the lessee. The correct classification in the accounts should therefore be based on a case-by-case study, taking a range of circumstances into account that may be indicators of the economic nature of the lease. Although none of the following provisions is in itself sufficient to support classifying payments made by the lessee as rent, a combination of them would indicate such recording:

- *The contract is of short-term duration, or renegotiable at short-term intervals. Such contracts do not provide the lessee with a benefit when market prices for the leased asset go up in the way that a fixed, long-term contract would. Such benefits are holding gains that typically accrue to owners of assets.*

1. The UK contract terms is 22 years, and so may be characterised as long-term. This criterion does not favour rent

- *The contract is non-transferable. Non-transferability is a strong but not a sufficient criterion for the treatment of licence payments as rent, because, although it precludes the lessee from cashing in on holding gains, it does not preclude the lessee from reaping comparable economic benefits (e.g., using the licence in their business).*

2. The UK licences are non-transferable. This strongly favours the rent treatment.

- *The contract contains detailed stipulations on how the lessee should make use of the asset. Such stipulations are often seen in cases of rent of land, in which the owner wishes to retain a control over the usage of the land. In the case of licences, examples of such stipulations would be that the contract states what regions or types of customers should be served, or that it sets limits on the prices that the lessee may charge.*

3. There are many conditions governing the behaviour of the UK licence holders - this favours the rent treatment.

- *The contract includes conditions that give the lessor the unilateral right to terminate the lease without compensation, for instance for under-use of the underlying asset by the lessee.*

4. This is stated clearly in the UK licence terms, that the licence can be terminated without warning or compensation in different circumstances. This favours the rent treatment.

- *The contract requires payments over the duration of the contract, rather than a large up-front payment. Although this condition is essentially financial in character and thus cannot be decisive on the type of the lease, it may indicate a degree of control for the lessor to direct the use of the spectrum. The case for a treatment as rent is further supported if the payments are related to the revenues the lessee derives from the licence.*

5. The terms of payment in the UK were optional. A choice was given between payments at certain times during the licence period (years 1,6,7,8,9,10) although not the full duration, or as a one-off up-front payment. This was a financial decision, with all five successful applicants choosing the up-front payment. However, the contract allowed choice and by making such a choice this suggests the indication of degree of control aspect proposed by ISWGNA is not relevant in the UK case. The payments were decided by an auction process, with the bids

related to expected revenues the lessee expects to obtain from access to a particular frequency of the spectrum. Thus, it is not clear from this criterion whether rent or sale of asset is supported. We could interpret this as support for rent, support for sales, or equal.

Conclusion

According to the ISWGNA criteria, three out of the five suggest that the rent treatment is appropriate for the UK, and one is neutral. The long period of the contract argues against the rent treatment. However, the non-transferability, the cancellation options for government, and the conditions of use all favour the rent treatment. It is our judgement that in accord with the criteria of the ISWGNA, the payments for the UK 3G mobile phone spectrum-use licences should be classified as rent.