

?????? C-76/05

Herbert Schwarz

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Marga Gootjes-Schwarz

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Finanzamt Bergisch Gladbach

(?????? ??? Finanzgericht Köln

??? ??? ?????? ?????????????? ??????????)

«????? 8 A ??? ??????? ?? (??, ?????? ??????????????, ??? 18 ??) — ??????????
????????? — ??? 59 ??? ??????? ?? (??, ?????? ??????????, ??? 49 ??) —
????????? ?????? ?????????? — ?????????? ??? ? ?????????? ?????????? — ?????????? —
????????? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??????
????????? ?????????? ?????»

????????? ??? ??????????

1. ??????? ?????? ?????????? — ?????????? — ??????

(????? 50 ??)

2. ??????? ?????? ?????????? — ?????????? — ?????????? ??????????

(????? 49 ??)

3. ??????? ??? ?????????? ?????? — ??????? ?????????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? — ?????????? ??????????

(????? 18 ??)

1. ?? ??????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??
????????? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ?? ?????? ?? ?????? ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? «?????????», ??? ?????????????? ???
????? 50 ?? . ?? ?????? ??????, ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ??????, ?? ?????? ?????????? ??? ??????, ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ? ??? ?????? ???, ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ???' ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??????, ?????????? ??? ?????? ??? ?????? ???.

?????????, ?? ??????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????, ?????????? ?????????? ??? ??? ?????? ??? ?????? 50 ??, ?????????? ??? ? ???
???? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????. ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????? ? ?? ???? ?????????? ? ????. ????????????, ?? ????? 50 ?? ??
?????? ? ?? ???? ?????? ?? ?????????? ?? ?????????? ?? ????? ????.

(???. ??????? 39-41)

2. ??? ? ?? ?????????? ?????????? ?? ??? ?????? ?????? ?????????? ?? ???
????? ?? ?????????? ?? ?????????? ?? ??? ?????? ?????? ??? ?????????????? ?????? ??
????????? ??????, ?? ????? 49 ?? ??? ?????? ??? ?????????? ??' ??? ? ??????
????????? ?????? ??? ?????????? ?? ?????????? ??? ?????????????? ?? ??????????, ??
????????? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??????????????, ??
????????? ??? ?????????? ?? ?????????? ?????????? ?????????? ?????????????? ??? ??????
????????????, ??? ?????????? ?????? ?? ?????????? ?????? ??? ?????? ?????????? ??? ??????????
????????????? ?? ?????????? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????????? ?? ?????????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ???.

?? ???? ???? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????????, ?? ??????
????????? ?? ????? 49 ??, ?????? ??? ?????? ?? ?????????? ?? ?????????????? ???
????????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????????? ?? ??????
????? ?? ?????? ?????????????? ?? ?????? ?????? ?????., ???????, ?????????? ?????? ???
????????? ?????????????? ?????????????? ??? ?????????????? ?? ?????? ?????? ?????? ??????
????????????? ??????????, ?????????????? ??? ?? ?????????????? ??? ?????? ??????????????
??? ?????????? ??? ?????? ?????? ???.

? ?? ?????????? ?? ?????????? ?????????? ?????????? ?? ?????? ?? ?? ?????????? ??
????????????? ?? ?????????????? ?? ??? ?????? ?????? ?????? ?????????? ?? ?????? ??
????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ??????????
????????? ??? ?? ?????????? ?????? ?????????? ??? ?????????? ?? ??????????, ?? ?????? ???
????????, ??? ?? ?????????? ??? ?????????? ?????????? ??????????, ?? ?????????? ??? ??
????? ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?????? ?? ?????????? ?????????? ???,
????????? ??? ?? ?????????? ?????? ??? ?????????? ?? ?????? ?????? ?????? ??? ??
????????? ?? ?????????? ?????? ??? ?????????? ???, ?????? ?????????? ?????? ??? ??
????????????? ??? ??????, ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ??
????????????? ?????????, ?? ?????? ?????????? ?????? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ??
????????? ?? ?????????? ??? ??? ?????? ???.

(???. ??????? 66-67, 79-82, ??????. 1)

3. ??? ? ?? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ?? ???
????? ?? ?????????? ?? ??? ?????? ?????????? ?? ??? ?????? ?????? ?????, ??????? ?? ??????
?? ?????? ?? ?????????? ?? ??? ?? ????? 49 ??, ?????????? ?? 18 ?? ? ?????? ??????
?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????? ?????? ?? ?????? ??????????, ?? ??????
?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????????, ?? ??????
??? ?????????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??????????, ???
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??

? ?????? ??? ?? ?????? ?????? ?? ?????????? ?? ?????? ?????????? ?? ?????? ??? ??
????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

?????????? ?????????????? ?? ?????? ??????????????? ?? ?????? ?????? ?????? ??? ??
????????????????? ??? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?? ?????
????? ?? ????? 18, ?????????? 1, ??.

(??, ??????? 98-99, ??????. 2)

?????? ?? ?????????? (????? ??????? ??????????)

?? 11?? ?????????? 2007 (*)

«????? 8 A ??? ??????? ?? (??, ?????? ??????????????, ??? 18 ??) – ??????????
????????? – ??? 59 ??? ??????? ?? (??, ?????? ??????????????, ??? 49 ??) –
????????? ?????? ?????? – ?????????? ?? ? ?????????? ?????????? – ?????????? –
????????? ?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??????
????????? ?????????? ??????»

???? ?????? C-76/05,

?? ?????????? ?????? ??????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ?????? ?? Finanzgericht Köln (???????) ?? ?????? ??? 27?? ?????????? 2005, ?
????? ?????? ??? ?????????? ??? 16 ?????????? 2005, ??? ?????? ??? ??????????

Herbert Schwarz,

Marga Gootjes-Schwarz

????

Finanzamt Bergisch Gladbach,

?? ?????????? (????? ??????? ??????????),

????????? ??? ??? ?. ??????, ???????, P. Jann, C. W. A. Timmermans, A. Rosas (?????????)
??? K. Lenaerts, ??????? ???????, J. N. Cunha Rodrigues, R. Silva de Lapuerta, K.
Schiemann, J. Makarczyk, ?. ??????, A. Borg Barthet, M. Illeši? ??? J. Malenovský, ????????,

????? ??????????: C. Stix-Hackl

?????????: B. Fülop, ??????? ???????????,

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
?? ?????? 2006,

????????? ??? ?????? ??? ?????????? ??? ??????:

– ? H. Schwarz ??? ? M. Gootjes-Schwarz, ?????????????? ??? ??? W. Meilicke,
Rechtsanwalt,

- ?????????? ???????, ?????????????? ??? ??? M. Lumma ??? U. Forsthoff,
- ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? K. Gross ??? R.
Lyal,

????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ???? ?? ??????????
??? 21?? ?????????? 2006,

?????? ??? ??????

??????

1 ? ?????? ?????? ?????????? ?????????????? ?????? ??? ?????? ??? ?????? 8 ?,
????????? 1, 48, 52 ??? 59 ??? ?????? ?? (???, ?????? ??????????????, ?????? 18,
????????? 1, ??, 39 ??, 43 ?? ?? 49 ??).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ? H. Schwarz ??? ? M.
Gootjes-Schwarz (???: ?? Schwarz), ?????? ?????? ??? ?????? ??????????????
????? ??? Finanzamt Bergisch Gladbach (???: Finanzamt), ??? ??? ?????? ???
Finanzamt ?????? ?? ??? ?????? ?????? ?? ?????? ??? ??? ??? ?? ?????? ???
????????? ??? ?? ?????? ???, ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ???
????? ???, ?? ?? ?????????? ??? ? ?????? ?????????? ??? ?? ?????? ?????????? ??????????
????????? ??? ??? ?????? ?????? ?????? ??? ?? ?????????????? ??? ???
????????? ?????? ?? ?????? ?????? ?????????? ?????? ??? ?? ?????????????? ??? ???.

?? ?????? ?????? ??????

3 ?? ??? 7, ?????????? 4, ??? ?????????? ??? ?????? ??? ?????????????? ??????????
?? ????????, ??? 23?? ??? 1949 (Grundgesetz für die Bundesrepublik Deutschland, ???:
????: ?????????? ???), ?????? ?? ???:

«(4) ?????????? ?? ?????? ?????? ?????????? ?????????? ?????????? ??????. ??? ??? ??????
????????? ??????, ?? ?????? ?????? ?? ??????, ?????????? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ?????? ??? ?????? ??? Länder (????????? ??????). ? ??????
????????? ??????, ?? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ?? ?????????? ??? ??? ?????????? ??????, ?????? ??? ??? ?????????? ?????? ???
????????? ??????, ?? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ??????. ? ?????? ??? ?????? ??????, ??? ? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

4 ?? ??? 10, ?????????? 1, ??? 9, ??? ?????????? ?????? ??? ??? ???
??????????, ??? ? ??? ?????? ?????? ??? ??? ??? ?????? ??? ?????????? ?????????? ??? ??
????????? ??? ?????? ?????? (Einkommensteuergesetz, BGBl. 1997 I, ? 821, ???: EStG),
????? ?? ???:

«????? ?????? [Sonderausgaben] [?? ?? ?????? ?????? ?????????? ?????? ?????? ??? ??
???? ??????????] ?????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???
????????? ?????? ???:

1. [...]

9. ?? 30 % ?? ?????????????? ??? ??? ?????????????? ?????? ??? ?? ?????? ???
?? ?? ??? ?????? ?????????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???

?????? ?????????? ??? ?? ?????? ??????? ??? ?????? 7, ?????????? 4, ??? ??????????
????? ? ?? ?????? ??????? ??? ?????? ??? ????? ?????????? ?????? ???
????????? ??? Land (????????? ??????) ? ?? ?????????? ??? ?? ?????????? ???
Land ?????? ?????? ?????????? ??????????, ?????????? ??? ?????? ??? ??????
??? ??????, ?????? ??? ??????.»

5 ??????, ??? ?? ??? 33, ?????????? 1, ??? EStG, ? ?????????????? ?????? ??
????????? ?????? ??????? ??? ?? ????? ?????????? ?????????? ?????? ??? ?????
????????? ?? ?????????? ?????, ?????? ?? ?????? ????? ?????? ?????????? ??? ?????
??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????
????? ?? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ???

? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??????

6 ??? ??? ?????? ??? ?? Schwarz ?????? ??? ???????, ??? ??????
????????? ??? ?????? ?????????? ??? ?? ????? ?????????? . ??? ?????
????????????? ?? ?????? ?????? ?????? ?????? ?????????? ?????????? ??????
????????? . ??? ??? ??? ?????? ?????????? ?? ?????????? ?? ??? ?????? ???, ??? ?????
????????? ?? 1981 ?? 1986, ?? ?????? ?????????? ??? ???????, ?? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??????: ?? Cademuir
International School (???: Cademuir School), ??? ?????? ?????????? ?????? ??? ??
1998 ??? 1999.

7 ?? ?????? Schwarz ??? ?????? ??????? ?????????? ?????????? ??? ?? ??? ??,
????? ?? ?????? ?????? ?????? ?????? ??? ?? ????? ?????????? ??? ?????? ???' ??????. ??
????? Schwarz ?????? ?????? ??? Finanzamt ?????? ??? ??? ?????????? ??????
????? ???' ??????.

8 ?? ?????? Schwarz, ?? ??? ?????????? ?????? ??? ?????? ??? ?? ??????????
?? ?????? ???, ?????????? ??? ?? ?????? ??? ?????? ???, ??? ?? ?????? ???
????? 33, ?????????? 1, ??? EStG, ?????? ???, ?? ?????? ?????????? ??? ?? ??? ??
1998 ?? 1999, ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ??
????????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ??? ?? ???.

9 ?? ?????? ?????????? ?????? ??? ?? Schwarz ??? ??? ?? ??????????
?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???, ?? ?????? ???
????????? ?? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? 10 000 ?????? ??? (DEM).

10 ?? 13 ?????????? 2001 ?? Finanzamt ?????? ??? ?? ?????? ?????????? ??????????
????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? Schwarz, ??? ??? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? . ?????? ??? ?????? Schwarz ?????? ??? ?????? ???
??, ?? Finanzamt ?????? ??? ?????? ??? ?????? ??? ?????? ??? 6?? ?????? 2001.
????? ??? ?????? ??? ?????? Schwarz ?????? ?????? ??? ?????? ???
Finanzgericht Köln.

11 ?? ?????? Schwarz ?????? ?? ??? ?????? ???, ??????, ?? ?????? ? ???
????????? ??? ??? ?????????? ??? ?? 1998 ?? 1999, ??? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? 33, ?????????? 1,
??? EStG. ??????????, ?????? ?? ??? ?????? ???, ?????? ??? ?????? 10, ?????????? 1, ???
9, ??? EStG, ? ?????? ??? ?????? ?????? ??????.

12 ?? ??????? ??????????? ??????????? ?????????? ?? ?????? ??? ??????? Schwarz ??
?????? ????? ?? ??????? ???????, ??? ???? 33, ??????????? 1, ??? EStG, ?? ???????
????.

13 ?? ?? ??? ?????????????? ?????????????? ??? ?????????? ??? ?? ?????? 10, ??????????? 1,
?????? 9, ??? EStG ??? ?????????? ??? ????? ?????????? ?????????? ?? ?????????? ???????
????????????? ??? ?????????? ?????????? ??? ??, ??? ???????, ?? ?????????? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?? ??????? ?????????? ??? ?????? ?????? ?????????? ?????????? ???
??? ????. ?? ?????????? ??? ?????????? ?????????? ??? ?? ??? ?????????? ?? ??
????????? ??? ?????? ?? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? 10, ??????????? 1,
?????? 9, ??? EStG ?????? ??? ?? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????????? ??? ??????.

14 ??? ??? ????????, ?? Finanzgericht Köln ?????????? ??? ??????? ??? ??????????
??? ??????? ??? ?????????? ?? ??????? ??? ??????? ??? ?????? ??? ?????? ??????????
????????:

«????????? ??? ?? ?????? 8 ? [...] [????????? ??????????] (?? ?????? ??? ??????????)
?????], 48 [...] (????????? ?????????? ??? ??????????), 52 [...] (????????? ??????????)
??? 59 [?? ?????? ??] [...] (????????? ?????? ??????????) ?? ?????? ???, ?????? ???
????? 10, ?????????? 1, ?????? 9, ??? EStG, ??? ?????? ??? ?? ??? 1998 ??? 1999,
????? ?? ?????????? ?? ??????? ???????, ?????????????? ?????? ??? ?????? ???
??????????, ?? ??????? ??? ?????????? ?? ?????????? ???????, ?????????????? ???????, ??? ???
??? ?? ??????? ??? ?????????????? ?? ??????? ??? ?????????? ??? ?????????? ??? ?????? ???
[?????????] ?????????;»

??? ??? ?????????????? ??????????

15 ?? ?????? ??????????, ?? ?? ??????? ???, ?????????? ???' ?????? ?? ?????? ??
????????? ??? ?? 8 A, ?????????? 1, 48, 52 ??? 59 ??? ??????? ?? ? ?????? ??
????? ?? ?????????? ?? ?????????? ??? ?????????? ?? ???????????, ?? ??????
????? ?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ???????????, ?? ??????
??? ?????????? ?? ?????? ?????????? ?????????? ?????????? ?????????????? ??? ?????? ???
????? ?????????? ?????? ?? ?????????? ?????????? ?????????? ?????????????? ???
????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????? ?????????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???.

16 ?????????? ?????????? ? ?????????? ???, ?????????? ??? ?? ?? ?????????? ??????????
??? ?????????? ??? ?? ?????? ?????? ?????????? ??? ?? 1998 ??? 1999, ?? ?????????? ???
????????? ?? ??? ?? ?????????? ?????????? ??? ??????? ??? ?????????? ???, ??? ??
????????? ???????????, ??? ?? ?????? ?????????? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?? ??? ?? ?????? ??? ?????? ???
????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?? 1?? ??? 1999, ?????????? ???
??? ?????? ?????? ?? ??? ?? ?????? ??? ?????????? (?? ?????? 8 A, ?????????? 1, 48, 52
??? 59 ??? ?????????? ?? ??????? ??? ?????? ?????????? ??? ?? ??? ?? 1? ??? 1999, ??? ??
????? 18, ?????????? 1, ??, 39 ??, 43 ?? ??? 49 ?? ??????? ?? ?????? ?????????? ??? ??
????????? ???).

17 ?????????? ????, ????, ?????????? ? ?????? ?????????? ?? ?? ?????? 16 ???
????????? ???, ?? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ??
????????? ??? ??????????, ?? ?????????? ?????????? ?? ?????????? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? 1? ?????? 1999.

??? ??? ?????????? ?????????? ??? ?????????? ??

????????? ??? ?????????? ??? ?????????? ??

18 ?? ?????? Schwarz ?????? ???' ?????????? ?????? ???, ??? ?????? ??
????? 18 ??, 39 ?? ??? 43 ??, ??????? ?? ??? ?????? ??? ?????? ?? ?????? ???
????????? ?????????? ??? ?????????? C?318/05, ?????????? ??? ?????????? ???, ??? ??????
????????? ?????? (??? ??? ?????????? ??? ?????? ??? ??????), ??? ?????? ??
????????? ?????? ?????? ?????? ?? ?????????? ?????? ?????? ??? ? ?????? ??? ?????? ???
????? ????.

19 ?? ?????? Schwarz ?????????? ??? ?????? ??? ? ??? ?????? ??? ?????????? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ? ?????? ??? ?????? ???,
????, ????, ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
??, ????, ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???.

20 ??? ?? ?????? Schwarz, ?? ?????????? ?? ??? ?????? ?????? ??? ?????? ?????????? ???,
????? ??? ?? Cademuir School, ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??
????????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????????? ?? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? 10, ?????? 1, ?????? 9, ??? EStG. ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
??????, ?? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? 30 % ??? ??? ?????? ???
????????, ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??
????????? ??? ?????? ??? Cademuir School.

21 ? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ?????? 18 ??, 39 ?? ??? 43 ??
??? ?????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

22 ??? ???????, ? ??????? ??? ?????????? ??? ? ?????????? ?????? ?????????? ???
Cademuir School ??? ??????? ??? ?????? ?????????? ??? ?????? 49 ??, ??? ?????? ???
?? ????? «?????? ??? ?????? ?????????? ??? ?????? ???», ? ?????? ?????????? ???
????? 50 ??, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????????
?????????????.

23 ??? ?? ?????????? ?????????, ?? ?????? ??? ?????? ?????????? ?????????? ???
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? 50 ?? (??, ?????? ??? ?????? ???
27?? ?????????? 1988, 263/86, Humbel ??? Edel, ?????? 1988, ?, 5365, ????? 18).

24 ??? ?? ?????????? ???, ?????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
????????, ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????, ?????? ???
????? ?????????, ??? ??? ?????? ??? ?????? 50 ?? (?????? ??? 7?? ?????????? 1993, C-
109/92, Wirth, ?????? 1993, ?. I-6447, ????? 17), ??? ??? ?????? ?????? ??? ?????? ???
Cademuir School ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????.

? ??????????????. ?? ??????????? ??? ?????? ?? ?????????? ??? ???? ?? ?????????? ??? ??
?????? ??????????? ??? ??????. ????????????, ? ?????????? ??? ???? ?? ??????????, ??
???????????, ?? ??????? ??? ?????, ??? ?????? ??????????? ??? ?????? ??? ?????????? ??????????????
???????????, ??? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????????? ??????????????
?????????????? ?? ??????? ?????????? (??. ??????? ??? ?????????? ?????????? ??????????
Humbel ??? Edel, ??? 19, ??? Wirth, ??? 15). ????????, ? ?????????? ?????????? ?????????? ??????
??? ? ??????? ??? ?????????? ??? ?????????? ?? ?? Cademuir School ??????????????
????????????? ? ?????? ??? ?????????? ?????? (??. ??? ?????? ??? ??????) ? ?? ???
????????????? ????.

25 ? ??????? ????, ??????????? ?? ?? ?????????? ??????????, ??? ??? ?????? ??????? ??
?????? ?????? ??????????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? 39 ??
????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?? ?????? 43 ?? ??????????
?????????????.

26 ? ??????? ?????????? ??? ?????????? ?????? ??? ?? ?????????? ??? ?????? ??????? ??
????? 49 ?? ??? ??? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????.

27 ? ??????? ? ??????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????? ??
? ??? ???? ??????? «?????????» ?????????? ???????, ??? ?? ?????????? ???
???????????, ?? ?????????? ?? ?????? ??? ?????? Schwarz, ?????????? ???
????????????? ?? ??? ?????? ?????? ?????? ?????????? ??? ??????????, ?? ?????????? ??
????????? ?????? ??? ?????????? ??? ?????? ?????? ??????.

28 ??? ???? ???????, ? ?????????? ??? ? ?????????? ??? ?????? ??????? ?? ??????????
????????? ????????. ??? ??? ?????????? ?????? Humbel ??? Edel ? Wirth
????????? ??? ???? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ?????? ??? ?????? ??? ? ?????? ??? ?????? ?????? ?????????? ???, ?? ???
?????????????, ??? ?? ?????? ? ???, ??? ?????????? ?????? ??? ??????????
??????????????. ??? ?????????? ???, ? ?????? ?????? ?????? ?????????? ?????????? ??????????
??????????????.

29 ? ???????, ?? ??????? ??? ?????? ???????????, ??? ??????? ??? ?????? ?? ??????? ??
????? ?? ??? ??? ?????? ???????, ?????????? ??? ?????????? ??? ?????? ??? ?? ??????
?? ?????????? ??? ?????? ??? ?????? ??? ???????, ??? ???????, ??? ??? ???????,
????????? ?????? ?????? (??. ?????? ??? ?????????? ?????? Wirth, ??? 15
?? 16). ?? ?????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ??????????
????????? ?????? ?? ?????? ?????? ?????? ?????? (??. ?????? ??? ?????? ??????????
????????? Humbel ??? Edel, ??? 19).

30 ? ??????? ?????? ??? ??? ?????? ?? ?????? ?? ?????????? ? ?????????? ?????????? ??
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?????? ?????? ?????? ???????, ??? ?? ?????? ??? ?????? ???
????????????? ?? ??? ?????? ?????? ?????? ???????, ??? ?? ?????? ??? ?????? ???
????????????? ?????? ??? ?????? ?????? ???????, ??? ?????? 10, ?????????? 1, ?????? 9, ??? EStG.

31 ? ??????? ??? ??? ?? ??????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ???????????, ??? ?????? ??? ?????? ??? ?????? 10, ?????????? 1, ??????

9, ??? EStG, ??????? ?????????? ?????? ??? ?????????? ??? ?????????????? ??????????????????
???? ?????????? ??? ??? ???? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ???
???????, ??? ?? ?????? ?? ??????????, ??? ?? ??????????, ?? ?????????????? ????????
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ???
????? ?????????????? ?? ??? ?????? ?????? ???.

32 ? ?????????? ????????????, ??? ???? ?????????? ??? ???? ?????????? ??????
??? ???? ?????? ?????????? ?????? ?????????? ??? ???? ?????????? ??? ???? ??????
?????, ??? ?????? ?????? ??? ???? ?????????? ?????? ?????? 12, ?????? ??????, ??
??? 18, ?????????? 1, ?? ??? ??? ???? ???? ?????? ?????????? ?????? ?????????? ??????.

????????? ??? ??????????????

33 ???????, ??? ?? ??????????????? ?? ?? ?????????? ??? ?????????? ?? ??? ?????????? ?? ?? ?????????? ??
????????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??????, ?????????????? ???, ???, ??? ??????
?????? ??? ? ?????? ??????????? ?? ?? ?????? 25 ?? ?????????? ???, ??? ?????? ???????
?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? 39 ?? ??? 43 ??.
??????????, ?? ?????? ???, ??? ?? ?????? Schwarz, ?????????? ??? ?????? ??????????????
?? ??? ?????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??????????
????????????? ?? ??? ?????? ??????, ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ??????????
?? ?????? ??? ?????? ?????????? ?????????????? ?? ?????? ?????????? ??? ??????, ??? ?????? ??
????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? 39
?? ??? 43 ?? ??? ?????? ?????? ??? ?????? ???.

34 ????????, ??????????? 18 ??, ?? ?????? ??????? ??????? ?? ????
????? ??????? ?? ???? ??????? ?????? ?? ??????? ?? ??????????? ?? ???? ?? ???? ???????
?????? ?? ???? ?????? ?? ?????, ?????????????????????? ??????????? ?? ???? ?? ????
????????? ?? ???? ?????? ??????????? ?? ?????? ?????? ?????? (????????? ?? 6??
?????????? 2003, C-92/01, ???????????, ??????? 2003, ?. I-1291, ??? 18, ??? ?? 11??
?????????? 2007, C-208/05, ITC, ??? ?? ?????? ??????????? ?? ???? ?? ???? 64).
?? ??????? ? ??????? ?????? ?????? ??????? ?? ?????? ?????????? ?? ???? ?? 49 ??, ??
?????????? ?? ??????????? ?? ??????? ?? ?????? ?????? ??????? ?? ???? ?? (?.
?????????????? ???????, ???????, ???????, ??????? 20, ??? ITC, ????? 65).

35 ????????, ?? ?????????? ?? ?????????? ??? ?? ?????? 18, ?????????? 1, ?? ???
?????? ? ??????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? 49 ??.

?????? ???????, ??, «????????? ??? ????? ?????? ?????????????????? ??? ????? ??????????».

39 ?? ??????????? ??????? ?.?. ??? ? ??? «??????????», ??? ?????????????????? ??? ???
50 ??, ??? ??????? ?? ??????? ??? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
?? ??? ??????? ?????????????? ??????? ??? ?????????????????? ?? ??? ? ?? ?????? ???
????????? ?????? (??. ??????? ?? ?????????????? ?????????? Humbel ??? Edel, ??????
17 ??? 18, ????? ??? Wirth, ??????? 15 ??? 16). ?? ?????????? ?????????????? ??????? ??
??????, ?????????????? ??? ?????????? ??? ?? ?????? ?????????????? ???????, ?? ???
?????????????, ??? ??????, ??? ??? ?????? ?????????????? ??? ??? ??? ??? ???
????????? ??? ????? ?????? ???, ??? ?????????? ??? ?????? ?????????? ??????????????,
???' ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????, ??????????????
??? ?????????????? ???.

40 ????????, ?? ?????????? ?????????? ??? ?? ???????? ??? ?????????? ??
????????? ?????? ?????? ??? ?????????????? ?????? ??? ?????????? ??????, ???
????? ?????? ??? ????? ?????????? ? ??? ?????? ???, ?????????? ?????????? ??? ??
????? ??? ?????? 50 ??, ?????????? ??? ? ?????? ??? ?????? ?????? ?????????? ?? ??????
???? ?????? ??? ?????? ?????? ?????? ?????? (????????????? ?????? Wirth,
????? 17).

41 ?????????? ???? ?????????????? ?? ?????????????? ??? ? ?????????? ??? ??????????????
???? ???? ?????? ??????? ?? ?????????????? ?????? ??? ???? ?????????? ? ??? ???? ?????? ????.
?????????????, ???? ???? ?????? ?????????, ?? ?????? 50 ?? ??? ?????? ?? ?????? ??? ?????? ??? ??????????
?? ?????????? ??? ???? ?????? ??? (??., ?????? ????, ?????????? ??? 26?? ??????
1988, 352/85, Bond van Adverteerders ???., ?????? 1988, ?. 2085, ??? 16, ??? 11??
????????? 2000, C-51/96 ??? C-191/97, Deliège, ?????? 2000, ?. ?-2549, ????? 56, ????? ???
????????????? ?????? Smits ??? Peerbooms, ??? 57, ??? Skandia ??? Ramstedt,
????? 24).

42 ??? ??? ??????? ?? ?????? ?????????? ?????????? ??? ?? ??? ?????? ?????????? ??? ???
??? ??????? ?? ?????? Schwarz ??? Cademuir School ??? ?? ??? ?????? ??? ??????????
?????????? ?? 10 000 DEM. ??? ?? ??????? ??????????, ?? ??? ?????? ??????????? ???
???? ?? ??? ??? ?????? ?? ??????? ?????? ??? ?????? ?????????????? ??? ??????
??? ??????? ??? ?????????? ??? ?????? 10, ?????????? 1, ?????? 9, ??? EStG.

43 ?? ???? ????????????, ?????????? ??? ? ??????? ????? ?????????????? ??? ??????? ?????
????????? ?????????? ??????? ?? ??? ????? ?????? ?????????????????? ??? ?????????????? ??? Cademuir
School, ??? ?????? ??????????? ?????????????? ?? ?????????????? ?? ???? ?????????? ?? ? ? ?????????? ???
????????????????? ?????? ??? ?????????????? ??????.

44 ??????????? ??, ??? ?? ??????????? ?? ?? ?????? 49 ?? ??? ??????????? ??
?????????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??
??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??
??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??
??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??, ??? ?? ??????? ??

??? EStG ?????????? ?????????? ?????????? ????? ??? ?????? ??? ?????? 50, ?????? ??????, ??.
?? ??? ???? ??? ?????? ?????? ?? ?? ?????????????? ?? ??? ?????? ?????? ?????? ??????????
????????? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????.

45 ??????????????, ?? ??? ?????? ??? 16?? ????? 2006, C-372/04, Watts (????????? 2006, ?. I-4325, ?????? 90), ? ?????? ?????? ?????????? ?????????? ?????? ??? ?????????? ??????????
?????????, ?? ?????????? ?????? 49 ?? ??? ?????? ?????? ?????? ?????? ?????? ??????????
?????????, ?????????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ??????????
??? ?????? ?????????????? ?????????? ??? ?????, ?????? ??? ?????? ?????? ?????? ??? ?? ???
?????? ?????? ??? ?? ??? ?????????? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????
?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??????.

46 ?? ?? ?????? 91 ??? ?????? ?????? ??????????, ?? ?????????? ?????????? ???, ?????? ??
?????????, ??? ?????????? ?????? ??????????, ?? ?????? ?? ???? ?????? ??????????????
????????? ??? ?????? ?????? ?????????? ??????, ??? ?????? ?????? ?????? ?????? ??????
????????? ??????, ?????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ???
????????? ?? ??? ?????? ?????? ??????, ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ??????.

47 ??? ?? ?????????? ?????????? ??? ?? ?????? 49 ?? ??? ?????? ?? ?????????? ?? ?????????? ???
????? ??? ?????????? ??? ?????? ??????, ?????? ?????????? ??? ??? ?????? ?????????? ??????????
????????? ?? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?? ?????????? ?? ??????????
????????????? ?? ??? ?????? ??????, ?? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??????
????? ??????, ?? ?????? ?????? ?????????????? ?????? ??? ?????????? ?????? ?????? ??????, ??????
??? ?????? ?? ?????????? ?? ?????? ??????.

??? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??????????

- ?????????????? ??? ?????????????? ??? ??????????

48 ??? ?? ?????? Schwarz, ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? 49 ?? ??? ??? ?????? ??????????.

49 ? ?????????? ?????????? ??? ? ?????? ??? ? ?????????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ??? ??????.

50 ? ?????????? ?????????? ?????????? ??????, ????, ??? ?? ?? ?????? 49 ?? ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ??? ?????? ?????? ??????????
????????????? ??? ?????? ?????? ??????, ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?? ? ?????????? ??? ?????? ?????? ?????? ??????
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ? ?????? ?? . ?? ?????? 149 ??????, ???????, ??? ? ?????? ?????? ?????????? ??
????? ??? ??? ?????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????.

51 ??????? ? ?????????? ?????????? ?????????? ???, ?????????? ??? ? ??????????????
????????? ?????????? ??? ?? ?????? ?????????? ????? ?????? ??? ? ?????????? ???
????????? ??? ?????? ?????????? ??? ?? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?? ?????????? ?????????? ?????, ????? ?????? ??? ????
????????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? 7
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???,
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ????
????, ? ?????? ?????????? ??? ?????????? ?????? ??? ?? ?????????? ??????, ?????????? ??
????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???.

52 ??? ?? ?????????? ??????????, ?? ?????????? ?????????? ??? ?????? ?????? ??? ?? ???
????????? ?? ?????????, ?????????????? ??? ?? ?????????? ?????????? ?????? ??? ??
??????, ?? ?????????? ??? Cademuir School, ??? ?? ??? ?????? ?????? ?????????? ??
????????? ?? ?????????? ??? ?????????? ???, ??? ?????????? ?? ?????????? ?????????? ???.

53 ???????, ? ?????????? ?????????? ?????????? ??? ? ?????? ?????????? ??? ????????
???? ?? ??? ?????? ?????? ?????????? ?????????? ???, ??? ?? ?????????? ??? ?? ???
??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ???,
????????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?? ??? 10,
????????? 1, ?????? 9, ??? EStG ??? ?? ?????????? ??? ?? ??? ?????? ??? ?????? ???
??????, ??? ?????? ?? Cademuir School, ??? ?????? ?? ?????????? ?????????? ???.
?????????.

54 ??? ?? ?????????? ??????????, ?? ?????? 10, ?????????? 1, ?????? 9, ??? EStG
????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ???
????????? ??? ?????? ?????? ??? ?????? 4, ??? ?????????? ??? ?? ???
????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ??????????
????? ??? ?????? ?????? ??? Land ??? ?? ?????????? ??? ?? ??? ?????? ??? Land
????? ?????? ?????? ???.

55 ?? ?????????? ?????????? ??? ?????? ??????????, ?? ?????????? ??? ?? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ??? ?? ???
????? ?????? ??? ?????? 7, ?????????? 4, ??? ?????????? ??? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 80 %
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? 10,
????????? 1, ?????? 9, ??? EStG ?????????? ??? ?? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?? ???
????????? ??? ?????? ??? ???.

56 ?? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????? ??? Land ??? ?? ?????????? ??? ?? ??? ?????? ??? ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?? ???
??? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????????? ??? ?????? ??? ?? Land ? ? ?????????? ??? ?? ?????? ??? Land ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ???
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

?????????? ??? ????.

57 ??? ?? ?????????? ??????????, ??? ?????????? ??? Cademuir School ??? ?????? ???
? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ??? ??????
????? ??? ??????????, ??????????, ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????????? ??? ??????, ?????????? ??? ?????? ???' ?????? ?? ?????????? ??? ??????
????????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? . ???, ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? 10,
????????? 1, ?????? 9, ??? EStG, ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??
????? ??? ?????? ???.

58 ?????, ??? ??? ??? ??? ??????????, ? ???????? ??? ?????????? ??? ?????????? ???
?????????????, ??? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? Cademuir
School, ??? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ???
?? ?????????? ??? ??????, ??? ?????? ?????? ?? ?????? 7, ?????????? 4, ????? ??????, ???
????????????? ?????, ??? ?? ?????????? ?????? ?? ?????????? ?? ?????????? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 10, ?????????? 1, ?????? 9, ???
EStG.

59 ?? ??????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ?????? 10, ??????????
1, ?????? 9, ??? EStG ?????????? ?? ?????? ??????, ??? ?? ??????????
?????????, ??? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ???
?????, ??? ?? ??? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????. ??? ?????????? ?? ?????? ?? ??? ?????? ??? ?????? ??? ?? Cademuir School, ?? ??????
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

60 ??????, ? ?????????? ?????????? ?????????? ??? ?? ??????????, ?? ?? ?????? ???
15?? ?????? 2005, C-209/03, Bidar (?????? 2005, ?. I-2119, ??? 56), ?????????? ???
????? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

61 ? ??????? ??? ? ?????? ??? ? ?????? ??? ? ?????? ??? ?????? ?????????? ??? ??????
?????? ???????. ??? ?? ??????, ?? ??? 10, ?????????? 1, ?????? 9, ??? EStG ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? . ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??????, ?????????? ??? ?? ??? ????. ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
EStG, ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ?? ??? ?????????? ???.

62 ??? ??? ???????, ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???

?????? 10, ?????????? 1, ?????? 9, ??? EStG ?????????????? ?????????????? ???
????????????????? ?????????????? ??? ?? ??????? ??? ?????? ??? ?? ??? ????
????????? ?????????????? ???, ?????? ??? ?????? ?????????????? ?????????? ???
?????. ? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ?????? ???
?????? ?????? ?????? ?????? ??? ?????? ?????? ?? ?????? 49 ??.

63 ??? ???? ??????, ??? ?????? ?????? ?????? ?????????????? ?????? ??? ?? ??????
???? ?? ?????? 49 ??, ?????????? ?????? ??? ? ?????????? ?????? ??? ??????????
????????? ??????, ?????? ??? ?????????? ??????, ?? ?????????? ?? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ???
????, ??? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ?? ??????????????
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? . ? ??????
????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ? ??????
??? ?????? ??? ?????? ?????? ??? ? ?????? ?????????? ??? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ???? 149,
????????? 2, ?????? ??? ?????? ????????, ??.

- ??????? ??? ??????????

64 ? ?????????? ?????? ??????, ??? ? ?????????? ??? ?? ?????? 10,
????????? 1, ?????? 9, ??? EStG, ?????????? ?? ?????????? ??? ?? ?????????? ??????
?? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?? ???
????? ? ?????? ?????? ?????????? ? ?????? ?????????????? ??? ?? ?????????? ??????
????? ??? ?? ?????????? ???, ?????? ??? ?????????? ?????? ??? ?? ?????????? ???
????? ?????????? ??? ?????? ???.

65 ? ?????? ??? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?? ???
????????? ?? ?????????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ???, ??? ? ?????????? ??? ?????? ??? ?????? ?? ?????? ?? ?? ?????? ??? ??????????
?? ?????????? ?????????? ?????? . ? ?????? ??? ?????????? ?????? ?????? ??????????
????????? ?????????? ??? ?????? ?????????????? ???, ??? ?????????? ??? ??????
????? ?? ?????? ???, ??? ? ?????? Schwarz, ?? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?? ?????? ?????? ?????????? ?????? ??? ??????
?????????.

66 ??? ?????? ??? ?????? ??? ?????? 10, ?????????? 1, ?????? 9, ??? EStG ??? ??
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??
????????? ?? ?????? ??? ?? ?????? ?????? ?????????? ?? ?????? ?????? ?????? . ??????,
????????? ?????? ??? ?????? ?????? ?????????? ?????? ?????????? ??? ?????????? ?? ??
????? ?????? ?????? ?????? ?????????? ???, ?????????? ??? ?????? ??? ?? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ???.

67 ??? ?????? ??????? ??????? ??????? ??? ????? ??????? ??????? ???????, ??? ???
?????? ?? ??? 49 ?. ???????, ?? ??? ???? ??????????? ??? ??????? ??????? ???????????
?????? ??????? ??? ??? ?? ??????????? ?? ??????????? ? ??????? ??????? ??????? ??????
?????? ??????? ??????????? ??' ?,?? ? ?????? ??????? ??? ??????????? ??? ??????????? ??????
?????????????? ??? ?????????? ??? ?????? ?????? (??., ?????? ????, ??????????? ???
28?? ??????? 1998, C-118/96, Safir, ??????? 1998, ?. I-1897, ????? 23, Smits ??? Peerbooms,
??????????????, ??? 61, Danner, ???????????, ??? 29, ??? ??????? ??? 4??
?????? 2004, C-334/02, ??????? ??? ???????, ??????? 2004, ?. I-2229, ????? 23, Watts,
??????????????, ??? 94, ??? ??? 19?? ??????? 2007, C-444/05, ???????????, ??? ???
???? ??????????? ??? ???????, ??????? 25).

68 ??? ?? ??????? ???????, ? ??????? ??????? ??????????? ??? ??????? ???????
?????????? ??????????? ??????? ??? ?? ??????? ??? ?? ??? ??? ??? ???????
?????? ??????? ??? ??????? ?? ??????? ??????? ??????? ??????? ??????? ??? ???????
?????????? ??????????? ??????? ??????? ??? ??????? ??????? ??????? ??? ???????
?????????? ??? ??????? ???????, ??? ?? ??????? ??? ??????? ??????? ??? ?? ???????
???? ??????? ???????.

69 ??????? ??????????? ??? ?? ??? 10, ??????? 1, ??? EStG ???????
?? ??????? ??? ??????? ??? ???????, ??? ???????, ??????? ???? ????
?????????? ??????? ??? ??????? ??? ??????? ??? ???????, ?? ?????? ??? ??????? ??????? ???
??? ??????? ??????? ?? ??????? ??? ??????? (??., ?????? ???, ??????? Danner,
??????????, ??? 28, ??? 12?? ??????? 2006, C-374/04, Test Claimants in Class IV of
the ACT Group Litigation, ??????? 2006, ?. ?-11673, ??? 36, ??? ??? 13?? ??????? 2007, C-
524/04, Test Claimants in the Thin Cap Group Litigation, ??? ??? ??? ??????? ???
??????, ??? 25).

70 ??????, ??????? ??? ??????????? ??? ?? ??????? ??????? ??? ??????? ???
?????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????????? ???
??? ??????? ??? ??????????? ??? ???????, ??? ??? ??? ??????? ??? ??????????? ???
???? ??????? (????? 149, ??????? 1, ??), ??? ??????? ?? ??????????? ???
?????????? ??? ??????????? ??? ??????? (????? 150, ??????? 1, ??), ??? ???????
?????? ??? ?? ??????? ??? ???????, ??? ??? ??????? ??? ??????????? ??? ???????, ??
?????? ??? ??????????? ???, ??? ???????, ??? ??????????? ??? ??? ??? ???????
?????????? (??., ???' ???????, ??? ??????????? ??????? Watts, ??????? 92 ??? 147).

71 ??????, ??? ??? ?? ??????????? ??? ??????? ??????? ??? ?? ??????? ???
?? ??????? ?? ??????? ??????? ??? ??????? ?? ??????? ??????? ??? ?? ???????
?????????? ??? ??????? ??? ??????? ???????, ??? ??? ??????? ??? ??????? ??? ??
?????????? 10, ??????? 1, ??? EStG ??? ??????? ??? ??????? ??? ??????? ???
?????????? ??? ?? ??????? ???????, ??? ?? ??????? ??????? ??????????? ???
?????????? ??? ?? ??????? ??? ??????? ??? ??????? ??? ?? ??????? ???.

72 ??? ??????? ?? ??????????? ??? ??????????? ??????? ??? ?? ??????? ??????? ???
?????????? ??????????? ??? ??????? ?? ??????? 10, ??????? 1, ??? EStG ???
?????????? ??? ??????????? ??? ??????? ??????? ?? ??????? ??????? ??? ???????
?????????????? ?? ??? ?? ??????? ??? ??????? ??????? ??????? ??? ??????? ???
??? ?? ??????????? ?? ??? ??????? ??????? ??????? ???????, ??? ??? ??? Cademuir
School, ??? ??????? ?? ??????????? ??????? ??????? ???????, ??? ??? ??? ??????? ???
?? ??????? ??? ??????? ?? ??????????? ??????? ??? ??????? ??? ??????? ??? ??
?????????? ??? ??????? ??????? ??????? ??? ??????? ??? ??????? ??? ?? ??????? ???
?????????? ??? ??????? ??? ??????? ??????? ??? ??????? ??? ?? ??????? ???

????? ?? ?????? ?? ??????? ?? ?????????????? ?? ?????? ?????? ?????????????? ?????????????? ?? ?????? ??????????

73 ??? ???????????, ??? ?????????? ?????????? ??? ?????? ?????????????????? ?? ??? ?????? ????????

????? ??? ??? ??? ?????????????? ?????????? ??? ?????????? ?????????????? ?????????????? ??????????, ???

??? ??? ??? ??? ??? ??? ?????? ?????????????? ??? ?????????? ?????????????? ??? ??????????, ??? ??? ??? ????????

????????? ?????????? ?????????? ?????????? ?????????? ??? ???? ?????????????? ??? ?????????? ??? ??????????

?????????, ??? ??? ?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??

????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

74 ? ?????????? ??????????, ??? ?? ?????????????? ??? ?????????????? ??? ?????????????? ??? ????????????

????????? ?????????? ??? ??? ?????? ?????? ?????????, ?????????????? ???????, ?????????????? ???

???? ?????????????? ?????? ?????? Bidar, ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??

????????? ?? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????????

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??? ?? ?????????? ??? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ?????????? ???.

75 ??? ??? ?????????? ???, ?? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ?????????? ???, ?

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????????? ??? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????, ??? ?????? ??

????????? ?? ?????? ???????, ???????, ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ???

????????????? , ? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?? ?????????? ???'

????? ?? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???

?? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ??????. ? ?????????? ?????????? ???

????????? ?????? ??? ? ?????????? ??? ?????? ?????? ??? ?????? 10, ?????????? 1, ??????

9, ??? EStG, ??? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

76 ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???.

77 ???????, ??????? ?? ?????? ?????????? ??? ?????????????? , ? ??????? ??? ?????? ??? ??????? ???

????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 46 ??,

?? ?????????? ?? ?? ?????? 55 ??, ??? ??? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ???.

78 ??? ???????, ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???

?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??

????????? ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????? ??? ?? ?????????? , ??? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

??? ?????????? ?? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ??? ?? ?????????? ??? ?????? ??? ?????? ???

????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?? ?? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

79 ?????? ??? ?? ??????? ??? ?????? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ???

????????? ??? ?????? ???, ??? ??? ?????? ?? ?????? ??? ?????????? ?????????? ?????????? ???

????? ?? ?? ???????, ??? ??? ?? ?????????? ? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????? ?????? ??? ?????? Bidar, ?????????? ???, ??? ?????? ?????? ??? ?????? ???, ? ??????

??? ??? ?????????? ??? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???
?? ??????? ??? ??? ?????? ?????????? ?? ?????????????? ?? ??? ?????? ?????? ?????? ??????,
?????? ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???
?? ?????????? ?????? ?????? ?????? ??? ??????, ?????? ?? ??? ?????? ??? ?????? ???
????????? ??? ?????? Bidar, ?? ?????? ?? ?????????? ?? ?????? ?????? ?????? ???.

80 ???????????, ??? ?????? ?? ?????? ?????????? ?? ?? ?????? 62 ??? ???????
??, ?? ??? ?????? ?????? ??????, ?? ? ?????????? ?? ?????????? ?????????? ???????????, ??
????????? ??? ?? ??? ?????? ??? ?????? ?? ?????????? ?? ?? ?????????? ??? ?????? ??
????????? ?????? ???, ?????? ??? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??
????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????????? ???, ?????? ??????????
????? ??? ?????????? ??? ?????? ???, ?????? ??? ?? ?????????? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

81 E? ??? ??????????, ??? ?????? ?????? ?????????? ?? ?????????? ?????? ? ???????
?? ?????????? ??? ?????????? ?? ?????????? ?? ?????? 10, ?????????? 1, ?????? 9, ??? EStG,
????? ?????????? ??? ?????????? ?? ?????????? ?? ?????????????? ?? ?????????????? ?? ?????
????????? ??? ?????????? ?? ?????????? ?????????????? ?? ?????? ?????? ?????? ??? ??? ???
????????? ?????????? ??? ?????????? . ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ?????? ?? ?????????? ??? ?????????? ?? ?????????? ?? ?????? ?????????????? ??
????????????? ?? ??? ?????? ?????? ?????? ??????, ?????????? ??? ?? ?? ??? ?????? ???
????????????? ?? ?????? ?????? ?????? ?????????? ??????????, ?? ?????? ?? ?????? ?? ??????
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ???.

82 ?????? ??? ?????? ??????, ??? ?????? ?? ?????? ??? ?????? ?????????? ? ???????
??, ??? ?? ?????????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ?? ??????
????? ?? ??????? ?? ?????????? ?? ?????? ?????? ?????? ??? ?????????????? ?????? ???
????????? ???, ?? ?????? 49 ?? ?????? ??? ?????? ??? ?????????? ??' ??? ? ??????
????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????? ?????? ???
????????? ???, ??? ?????????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.
????? ???

?? ???? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???

83 ??? ?????? ??? ?????? 35 ??? 47 ??? ?????? ???????, ??? ???
????????? ??? ?? ?????? ?????????? ?????????? ??? ?? ?????? 49 ?? ??? ??? ?????? ??????? ???
????????? ??? ?????? ??? ?????? ???, ? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
??? ?????? ??? ?????? 18 ??.

- ?????????? ??? ?????????? ??? ??????????

84 ??? ?? ?????????? ??????????, ??? ?????? ??? ? ?????? ??? ?????? 10,
????????? 1, ?????? 9, ??? EStG ??? ?????????? ??? ?????? 18 ??.

85 ? ?????? ?????? ??????????, ??? ??? ?????? ??? ? ?????? ?????? ??? ?? ??????
49 ?? ??? ??? ??????, ??? ? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????????
????? ?????????? ??? ?????? ?????? ?????? 12, ?????? ??????, ?? ??? 18,
????????? 1, ??.

- ??????? ??? ??????????

86 ????? ?????????? ??? ? ?????????? ??? ?????????????? ?, ? ?????????? ??? ?????? ???
????? ?????? ?? ?????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??????, ?
????? ?????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??????????, ??? ?????? ?????? ratione materiae ??? ????????, ?, ?????????? ??? ??
????????? ??? ?? ??? ??? ?????????? ??? ??? ?????????????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????????? (??., ?????? ???, ?????????? ??? 20?? ?????????? 2001,
C?184/99, Grzelczyk, ?????? 2001, ?. I?6193, ????? 31, ??? 11?? ?????? 2002, C-224/98,
D'Hoop, ?????? 2002, ?. I-6191, ????? 28, ??? 2?? ?????? 2003, C-148/02, Garcia Avello,
????? 2003, ?. I-11613, ?????? 22 ??? 23, ??? ??? 29?? ?????? 2004, C?224/02, Pusa,
????? 2004, ?. I?5763, ????? 16).

87 ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ?????????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
??? ?????? ?????? ?? ?????? ??, ???, ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ?????? ??
????? 18 ?? (??., ?????? ???, ??? ?????????????? ?????? Grzelczyk, ????? 33,
D'Hoop, ????? 29, Garcia Avello, ????? 24, ??? Pusa, ????? 17).

88 ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??????????????
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??????????, ?? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?? ?? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(????????? ?????? D'Hoop, ????? 30, ??? Pusa, ????? 18).

89 ???????????, ?? ?????????? ??? ?????? ??? ?? ?????????? ?? ?????????? ??? ?????? ??
????????? ???, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??
????? ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ??? ??? ??? ??? ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? (?. ?????? ??? ??? ?????? ??? ??? 19?? ?????? 1992, C-370/90, Singh, ?????? 1992, ?. I-
4265, ????? 23, ??? ??? ?????????? ?????? D'Hoop, ????? 31, Pusa, ????? 19, ???
??? 18?? ?????? 2006, C-406/04, De Cuyper, ?????? 2006, ?. I?6947, ????? 39).

90 ?? ?????? ??? ?????? Schwarz, ?????????? ?? ?????? ??? ?????????? ?? ?????? ???
?????, ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ??? ?????? ??? 19?? ?????? 2004, C-200/02, Zhu ??? Chen (???????)
2004, ?. I-9925, ????? 20), ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ??? ??? ??? ?? ?????? ??? ?????? ??? ?????? ???.

91 ??? ?????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

92 ? ?????? ??? ?????? ???, ?????? ?????????, ??? ??? ?????????? ??? ?????? ???
????????? ??? ??? ???, ??? ?????????? ?? ?????? ?????????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???

?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ??????????, ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????????????????? ?? ?????? ?? ?????? ?? ??????, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
?????.

93 ? ??????? ??????? ?? ???? ???? ?????????? ?? ??????? ?????? ?????????????? ?????????? ??
?????? ?????? ??????? ??????? ??? ???? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? ??
?????????? ?? ???? ???? ??????? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
??? ?????????? ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ?? ?????? 18, ?????????? 1, ??
(????????????? ?????? De Cuyper, ??? 39, ??? ?????? ??? 26?? ?????????? 2006, C-
192/05, Tas-Hagen ??? Tas, ??????? 2006, ?. I-10451, ??? 31).

94 ????? ??????? ?????????????? ??????? ?? ??????????????????, ??? ??? ?????? ??? ??????????????
???????, ????, ?? ?????????????? ?? ?????????????????? ??????, ?????????????? ?? ????
????????? ?? ??????????????????, ??? ?? ??? ?? ?????? ?? ?????????? ???? ??? ?????? ?? ??????????????
????????? ?? ?? ?????? ?????? (????????????????? ?????????? D'Hoop, ??? 36, De Cuyper,
????? 40, ???? ??? Tas-Hagen ??? Tas, ??? 33).

95 ?????????????? ??? ? ?????????? ??????????, ?????????????? ?? ?????????????? ???
?????????? ?????????? ??? ?????????? ?????????? ?????????, ?????????? ?? ??????????
??? ?????????????? ??? ?????????? 58 ??? 60 ??? ?????????? ?????????? ??? ?????????? ???
???? ?????? ?????? ?? ??????????, ?? ??? ?????????????? ?????? Bidar, ?????? ?? ???
????????? ??? ?????? 18 ??.

96 ?? ?? ?????? 56 ?? ????????, ?? ???????????, ?? ???????????, ?? ?? ????
?????? ?? ???? ???????, ?? ???????????, ?? ???? ???????, ?? ???????????, ?? ?? ????
??????????, ?? ???????????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ?? ????
??????????, ?? ???????, ?? ???????, ?? ???????????, ?? ???????, ?? ???????????, ?? ?? ????
??????????, ?? ???????, ?? ???????, ?? ???????????, ?? ???????, ?? ???????????, ?? ?? ????.

97 ?????? ??? ? ?? ?????????? ?? ? ???? ?????????????? ?????? ?? ?????????????? ?? ????
???, ?????????? ??, ??? ? ?? ?????????? ??, ?? ?????????? ??, ?? ?????????? ??, ?? ?????? ??,
????? ?????? ?????????? ??, ??? ? ?? ?????????? ??, ?? ?????????? ??, ?? ?????? ??, ?????????? ??,
????????? ??, ?? ? ?? ?????? ??, ?? ?????? 10, ?????????? 1, ?????? 9, ?? EStG ?????, ?? ??
????????? ??, ?????????? ??, ?? ?????????? ??, ?? ?????????? ??, ?? ?????? ??, ?????? ??,
????? ??, ?? ?????????? ??, ?? ?????? 81 ??, ?? ?????????? ??, ?? ?????? ??, ?? ?????? ??,
????????? ??, ?? ?????? ??, ?? ?????????? ??, ?? ?????????? ??.

98 ????? ???????, ??? ? ???? ? ?? ?????????????? ??? ?????? ?????? ??????, ??
????? ?????? ???? , ?? ?????? ?? ???? ???? ? ? ???? ???? ? ? ???? ???? ? ? ???? 49 ??,
??? ?????? ???? ?? ???? 10, ?????????? 1, ?????? 9, ??? EStG ??? ? ? ?????????? ??
????????? ?????????????? ?? ?????? ??? ? ? ???? ?????? ?????? ?????? ??? ? ? ????
????? ???? ??? ?????????? ??? ???? ???? ?????? ?????????? ?????????????? ?? ????
????????????? ?? ??? ???? ?????? ??? ? ? ?????????????? ?????? ?????? ???
????????????? ?? ???? ?????? ??? ? ? ?????????????? ??? ? ? ?????????????? 18, ?????????? 1, ??.

99 ????? ????????, ??? ?????? ?????????? ?????? ?? ?????? ? ?????????? ???, ???? ??
????????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ?? ?????? ???? ??
????????? ?? ?????? ?????????????? ?? ??? ?????? ?????? ?????, ?????? ??? ?????? ??
????? ??? ?????????? ?? ??? ?? ????? 49 ??, ?????????? ?? 18 ?? ? ?????? ??????
????? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????????? ?? ??????????, ?? ??????
????? ??? ??? ?????? ?????????? ?????????? ?????? ??? ?????? ??????????????. ?? ??????

??? ??????????? ?? ??????? ??????? ?????????????? ??? ?????? ?????? ???????????, ???
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????????? ??
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100 ??? ?????????? ??? ? ??????? ??????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ???
???? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ???????????, ?' ???
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
???? ?????????? ?????????????? ??? ??????????, ??? ??? ?? ??? ?????? ???, ??? ??????????.

??? ??? ?????? ????, ?? ?????????? (????? ??????? ??????????) ??????????:

1) ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??
????? ??? ? ??????? ??? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??? ??????????????
????? ??? ?????????? ??????, ?? ?????? 49 ?? ?????? ??? ?????? ??? ?????????? ?'
????? ? ??????? ?????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ??????????????
?? ??????????, ?? ??????? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??????
??? ?????? ??????????, ?? ??????? ?????? ??? ?????????? ?? ?????????? ?????????? ??????????
??????? ?????????????? ??? ?????? ?????? ??????????, ??? ?????????? ?????? ??
????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??????????
????????? ?????????? ?? ??? ?????? ?????? ??? ?????????? ??? ?????????? ?????? ???.

2) ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??
????? ??? ? ?????????? ?? ?????? ?????????? ??? ?????? ?????? ?????? ??????,
??????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? 49 ??, ??????????
?? 18 ?? ? ??????? ?????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????????? ?? ??????????, ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ?????? ??? ?????? ?????????? ?? ?????? ?????? ??????????, ??? ?????????? ??????
????????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??????
?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????
????????????? ?? ??? ?????? ?????? ???.

(?????????)

* ?????? ??????????: ? ???????.