

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

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

(?. ??????? 40-41, 49-50, ????????. 1)

2. ?? ?????? 1, ?????? 1, ??? ?????? ?????? ?????? ?????? 86/560 ??? ?? ???? ?????????? ??
????????? ?? ???? ?????? ?????? ??? ?????? ?? ?????? ?? ???? ?????? ?????? ?????? — ????
????????? ?? ???? ?????????????? ?????? ?????? ?????? ?????????????? ?? ???? ??? ?? ???? ??
????????????? ?? ?????? ??? ??????????, ?????? ?? ?????????? ?? ???? ?? ???? ?? ???? ?? ?
???? ?? ?????????? ?????????????? ?????? ?????? ?????? ? ?????? ?????? ?????? ?????????? ??
????????????? ?????????? ?????? ?? ???? ?????? ?????????? ?? ???? ?????? ?????? ?????? ??
????????? ?? ?????????? ??? ?????? ?????? ??????.

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

?????, ??? ?????????? ??????????????, ????, ?????? ??? ?????????????? ??? ?????? «????????????? ??????» ? «?????», ??? ?????? ?? ?????????????? ??? ?????????????? ?????????????? ??? ?????? 1, ?????? 1, ??? ?????? ?????? ??????.

(???. ??????? 61-63, ????????. 2)

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

??? 28?? ??????? 2007 (*)

«???? ??????? ??? – ?????? 17, ??????????? 3 ??? 4 – ?????????? ??? ??? – ?????? ?????? ??? – ?????????? ??? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? – ?????? 3, ???????? ??, ??? 9, ??????? ?????? – ???????? B –

?????????????? ??? ???????? ??? ??????????? ??? ????? ??? – ?????? ??????????? – ??????
????? ?????? ??? – ???????? ??? ?? ?????? ??????????? ??? ????? ?? ?????? ??? ??????
?????????????? ??? ?????? ??? ??????????? – ????? 1, ?????? 1 – ?????? ??? ????? ???
????????? ???????????»

???? ?????? C-73/06,

?? ??????????? ??? ?????? ??????? ??????????? ?????????? ??????? ??? ?????? 234 ??,
??? ??????? ?? Finanzgericht Köln (?????????) ?? ??????? ??? 19?? ?????????? 2006, ?
????? ??????? ??? ?????????? ??? 8 ?????????? 2006, ??? ??????? ??? ??????

Planzer Luxembourg Sàrl

????

Bundeszentralamt für Steuern,

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

?????????? ??? ??? K. Lenaerts (????????), ??????? ????????, E. Juhász, R. Silva de
Lapuerta, J. Malenovský ??? T. von Danwitz, ????????,

?????? ??????????: V. Trstenjak

?????????: R. Grass

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

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

- ? Planzer Luxembourg Sàrl, ??????????? ??? ??? P. Widdau, Steuerberater,
- ? ??????? ??? ????????, ?????????????? ??? ??? M. Lumma ??? U. Forsthoff,
- ? ??????? ??? ????????, ?????????????? ??? ??? G. de Bergues ??? J.?C. Gracia,
- ? ??????? ??? ????????, ?????????????? ??? ??? I. M. Braguglia, ?????????????? ??? ???
S. Fiorentino, avvocato dello Stato,
- ? ?????????????? ??? ????????, ?????????????? ??? ??? S. Schreiner,
- ? ?????????? ??? ?????????? ??? ????????, ?????????????? ??? ??? ? . ??????????????,
???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
??? 19?? ?????? 2007,

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

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1 ? ?????? ??????? ?????????? ?????????????? ?????????? ??? ???????, ???????, ???
?????? 3, ??????? ??, ??? 9, ??????? ???????, ?????? ??? ??? ?????????? B ??? ??????
?????? 79/1072/??? ??? ?????????? ??? 6?? ??????? 1979, ??? ?????????? ???
????????? ??? ?????? ?????? ??? ??????? ??? ?????? ??? ?????? ?????? ?????? – ??????
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???

????? ??????????????? ??? ?????????? ??? ????? (?? ??. ???. 09/001, ?. 111, ??? ????:
????? ??????), ???, ????????, ??? ?????? 1, ?????? 1, ??? ?????? ?????? ??????
86/560/??? ??? ???????????, ??? 17?? ?????????? 1986, ??? ??? ??????????? ??? ??????????
??? ?????? ?????? ??? ??????? ?? ??? ?????? ?????? ?????? ?????? – ??? ?????? ?????????? ???
????? ?????????????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ??? ?????? ??????????????
?? ?????? ??? ?????????? (?? L 326, ?. 40, ??? ????: ?????? ?????? ??????).

2 ? ?????? ??? ??????????? ??? ?????? ?????????? ?????? ??? Planzer Luxembourg Sàrl,
????????? ?????????????????? ????, ??? ??? Bundeszentralamt für Steuern (??? ????:
????????? ????, ???), ?????? ?? ??? ????????, ??? ?? ????????, ??????? ?? ???
????? ??????? ? ???????? ??? ?????? ?????????? ?????? (??? ????: ???), ???
?????? ? ??????? ??? ??? ?????? ?????? ???.

?? ?????? ???

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

? ???? ??????

3 ?? ?????? 17 ??? ????? ??????? 77/388/??? ??? ????????????, ??? 17?? ????? 1977, ???
????????????? ??? ??????????? ??? ??????? ??????, ??? ?????????? ?? ??? ????? ?????? ??????
????????? – ????. ????. ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (??
???. ??. 09/001, ?. 49, ??? ????: ??? ??????), ????. ????. ????. ????. ????. ????. ????.
????????????? ??? ?????????? ??? ?????? ?????, ????????????, ??? ?????????? 2 ??? 3,
??? ?????????? ????????:

«2. ????? ?? ?????? ??? ?? ?????? ? ?? ??????????? ?????????????????????? ??? ??
????????????????? ??? ?????????????????? ??????? ???, ? ?????????????? ??? ??? ????? ?????????????? ??
????????? ??? ??? ???, ??? ??? ?????? ?????? ?????? ??????:

?) ??? ??????????? ? ?????????????? [??] ??? ????, ??? ??? ?????????????? ? ?????????? ??
??? ??????????, ??? ??? ?? ?????????? ??? ??? ?????????????? ? ?????????? ?? ???
?????????? ?? ??? ??? ?????????????? ??? ??? ??? ?????????? ??? ???.

[...]

3. ???????, ?? ?????? ???? ?????????? ?? ??? ????? ?????????? ????? ??? ?????? ??? ??????????

???????, ???? ?????????? 2, ?????? ? ?????????? ??? [??], ???? ?? ?????? ??? ???? ????

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

?) ??????? ???. ???. ??????????, ?????????? ???. ?????????????? ?????????????????? ???.
????????????? ???. ???. 4 ?????????? 2, ???. ???. ?????? ?????????? ?????? ???. ??????, ???.
?????. ?????????????????? ???. ?????????? ???. ??????.

[...]».

4 ?? ???? ??? ?? ?????????????? ?????????????? ??? ?????? ??? ??????????? ?? ?????? 17,
?????????? 3, ??? ?????? ??????? ?????????? ?????????? ??? ?????? ??? ?? ? ?????????????? ??? ?????? ???
??????????, ?????????? ??? ?????? ? ??? ?????? ??? ?????????? ??? ?????????????????? ??? ?????? ??? ??????
??? ?????????????? ??????? ???, ????? ?????????????? ?? ??? ????? ?????? ?????? ??? ?????? ???
?????????? ??????????. ? ??? ?????????? ?????? ??? ????? ?????? ?????? ??? ?????? ??? ?????? ???
?????? ?????? ?????.

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

5 ?? ????? 1 ??? ?????? ??????? ??????:

«???? ??? ?????????? ??? ?????????? ???????, ?????????? ?? ?????????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ? ?????????????? [...] ? ?????? [...] ??? ?????? ???
???? ???? ???? ???? ???? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????????????? ???, ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? [...] ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????? [...]».

6 ?? ????? 2 ??? ????? ?????? ??????????:

«????? ?????? ??? ?????? ?????????? ?? ??? ?????????? ??? ?????? ??? ? ?????? ??? ??????
????????????? ??? ?????????? ??? ?????? ??? ?????????????? ?? ??? ?????? ??? ?????? ??? ??????
??? ???? ???? ??? ?????????????? ??? ???????, ?? [?] ??? ?????????? ?????????? ?? ??? ??????
??? ?????????????? ??? ?????? ??? ??? ?????????????? ??? ?????????? ??? ?????? ??? ??????
????????????? ??? ?????? [...]».

7 ??? ?? ????? 3, ?????????? ??, ??? ?????? ???????, ? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ?????????????? ?? ??? ?????? ?????? ?????? ??????????, ??? ?? ??? ?????? ?????????? ???
?????, ?? «????????????? ??? ?????????????? ?????? ??? ?? ?????????? ??? ?????? ??? ??????
????? ?????? ?????????????? ??? ?????????? ??? [?] ?????? ??? ?????? ??? ?????? ??? ?????».

8 ?????? ?? ?? 6 ??? ?????? ???????, ?? ?????? ??? ?????? ??? ?????? ?? ??????????
????? ?????????????? ??? ?????? ??? ?????? 2, ?????? ??? ?????????? ??? ??????????????
????? ?????? ??? ?????? ?????? ??? ?????? 3 ?????, «????? ?????????? ??? ?????? ???
?????????, ?? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??????????????
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??????????».

9 ??? ?? ????? 9, ????????, ??? ?????? ???????, «[?] ? ?????????? ??? ?????? 3,
????????? ? [...] ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?».

10 ??? ?? ?????????? ???, ?? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????????
????? ???? ????, ?? ?????????? ??? ?????? ???, ?? ?????? ??? ?????????? ???, ?? ?????? ??? ?????? ???
????????? ??? ?????????? ???, ?? ?????? ??? ?????????? ???, ?? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ???, ?? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ???.

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

11 ? ?????? ?????? ?????? ??????, ??? ?????? 1 ?????:

«????? ??? ?????? ??? ?????? ??????, ??????????:

1) ?? «????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ???
?????????», ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 4 ?????????? 1 ???
[?] ?????? [...] ? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? 1, ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ???, ???, ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???

?????? ??????? ???, ??? ? ??????, ????? ?? ???????? ??? ?????? ????????, ???
????????????? ??? ?????? ?????? ?????? ? ?????? ?????????? ??? ?? ?????????? ??? ?????
???? ??? ?????? ?????? ??? ?????????? ??? ?????? 2 [...]

[...]».

12 ??? ?? ?????? 2, ?????????? 1, ??? ?????? ?????? ??????:

«?? ??? ???????? ??? ?????? 3 ??? 4, ??? ?????? ?????? ?????????? ?? ??? ?????? ??????????
???? ??? ??? ??? ????? ?????????????? ?? ?????? ??? ??????????, ??? ??? ?????? ???
????????? ??? [??] ?? ??? ????? ?????????? ?? ?????????? ??? ?????? ??? ???
????????? ?? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????
????????? ??? ?????, ??? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????,
??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? 17, ?????????? 3, ?????????? ?? ??? ?? ??? [?????]
????????? ??? ?????? [...]».

13 ?? ?????? 3, ?????????? 1, ??? ?????? ?????? ?????? ??????:

«? ???????? ??? ???????? ??? ?????? 2, ?????????? 1, ?????????? ?????? ?????????? ???
????????? ????. ?? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?? ???
??????, ?????????????? ??? ??????????, ??? ?????????? ??? ?????? ?????? ?????? ???, ???
?????? ??? ?? ??? ??? ?????? ?????????, ?????? ??? ?? ?????????? ??? ?????? ??? ?? ???
?????? ?? ??? ?????? ? ?????????. ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????,
????????????? ??? ??????????. ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????????? ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
?????????????, ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????????????? ??? ?????? ???
?? ?????? 4, ?????????? 1, ??? ?????? [...] . ? ?????? ?????? ?? ?????????? ??? ?????? ???
?????? ??? ?? ??? ?????? ??????????????, ??? ?? ?????????? ??? ?????????? ??? ?????? ???, ???
????? ?????????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 1 ?????? 1
??? ?????? ??? ??????»

14 ??? ?? ?????? 4 ??? ?????? ?????? ??????:

«1. ?? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ?? ?????? ?????? ?????????? ??????????????
?????? ?? ?? ??? 17 ??? [?????] ?????? [...], ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????.

2. ?? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ??? ?? ??????
????????????? ??? ?????????? ??? ?? ??? ??????.

[...]»

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

15 ?? ?????????? ?????? ??? ?????? 18, ?????????? 9, ??? ?????? ??? 1993 ???
??? ?????? ?????? ?????? (Umsatzsteuergesetz 1993, BGBl. 1993 I, ? 565, ??? ????: UStG)
??? ??? ?????? 59 ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
??? 1993 (Umsatzsteuergesetz-Durchführungsverordnung 1993, BGBl. 1993 I, ? 600, ??? ????:
UStDV) ?????????? ?? ?????????? ?????? ?? ??? ?????????? ??? ??? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????????????? ??? ??????.

16 ?????? ??? ?????? 18, ?????????? 9, ?????? ??????, ??? UStG, ?? ??????????
????? ??? ?? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ??????.

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

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

17 ? ?????????????? ??? ?????? ??? ?????????????? ?????????????? ???????????. ??? ????
????? ??? ??? Frisange (?????????????). ? ?????????? ???????? ??? ????? ? ?????? Planzer
Transport AG (??? ????: P AG), ??? ?????? ? ??? ?????? ??? Dietikon (??????).

18 ?? ?????????????? ??? ?????????????? ?????? ??? ?????????? ??? P AG. ? ??? ??'
?????? ???????? ??? ?????? ??? ? ?????? ??? ?????? ???.

19 ? Henri Deltgen (??? ????: D) ??????????????, ??? ?????? ??? ?????????????? ???
?????? ????, ??? ?????????? Helvetia House, ? ?????? ?????????? ??? ?? ???
????????????? ?? ??????? ????. ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
??????, ? D ?????? ?? ??? ?????? ?????????? ??? ?? ??? ?????? ???.

20 ?????????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???.

21 ??? ?????? ??? 1997 ??? ??? ??? 1998, ? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????? ?????? ?????? ?????? 11 004,25 ?????????? ??? (DEM)
??? ?? ??? 1996 ??? 16 670,98 DEM ??? ?? ??? 1997, ??????????. ?? ??? ??? ??? ???
????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? B ???
?????? ??????.

22 ??? ?? ?????????????? ????, ? ?????????? ??? ?????? ??? ?????? ?????? ??? ??
?? ?????? ?????? ?????? ?????? ??????????.

23 ? ?????????? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ??
?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
?? ??? ?????????? ??? 24?? ?????????? 1998 ??? 29?? ?????????? 1998, ??????????,
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? 18, ?????????? 9, ??? UStG ???
59 ??? UStDV ??? ??????.

24 ? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ??
????????? ????. ?????????? ?????????? ?????????? ?????? ??? ?? ??? ??????
????????? ??? «?????? ?????? ??? ?????? ?????? ??? ?????? ??????» ??? ??????
????? «?????? ?????? ??? ?????? ??? ?????? ??????». ?????? ??? ?? ??? ?????? ???, ? D ???
??? ??? ??? ?????? ?????? ??? ?? ?????????? ??? ??? ??? ??? ?????? ??? ?????? ???
??? ??????, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

25 ?? ?????????? ??? 1?? ??????? 1999, ? ?????????? ?????????? ??? ?????????? ???
??? ?????????? ??? ?????????????? ??? ?????? ?????? ?? ? ?????????? ??? ? ?????? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??? ???????????.

26 ? ?????????????? ??? ?????? ?????? ?????? ?????? ???' ???? ??? ??????????????
?????????. ?? ??????? ??? 26?? ?????????? 2001, ?? Finanzgericht Köln (?????????)
????????? ??? ??????? ??? ???????, ???????) ?????? ??? ?????????? ???, ??????????
??? ?? ?????????????? ??????? ?? ?????? ?????? ?????????? ??? ?????????????? ???
????????????? ? ??????? ?????? ?????? ?????? ??? ?????????????? ??? ?????????????? ???
??? ? ??? ?????? ?????? ?????????? ???' ???? ?? ?????? ????.

27 ?? ??????? ??? 22?? ??? 2003, ?? Bundesfinanzhof (????????????? ??? ??????????
????????? ???) ??????? ??? ?????? ???, ?? ? ??????? ??? ? Finanzgericht
Köln ????, ????, ?????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??????????????
??? ?????? ???, ??? ?????? ?????? ?????????????? ??? ?????? ?????????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ???
????????? ??? ??? ?????????? ??? ?????????? ???, ?? Bundesfinanzhof ??????????
????? ?????????? ?? ?????? ?????????, ???' ???, ?? ?????? ?????? ?????????? ??????????
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????
??? ?????????????? - ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????- ???? ???
????????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ???- ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????? ?????????- ?????? ?????????? ??? ?????? ???
????????? - ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ???
????????? - ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ???, ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ???, ?? Bundesfinanzhof ??????????
??? ?????? ??? Finanzgericht Köln ?????????? ??? ?? ?????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ??????????.

28 ??? ?????? ??? ??????????, ?? Finanzgericht Köln ?????????? ??? ????:

«1. ? ?????????? ??? ?????? ???, ?????? ??? ?????? ??? 1?? ?????????? 1996
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?? ????
??? ???????, ?????? ?????? ??? 1997 ?? 1998 ??? ?????? ?????????, ?? ???
????????? ??? P AG ??? ?? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ??????????
????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? P AG ??? ?? ???
????????? ??? ?? ??? ?????? ?????????????? ??? ?????? ??? 26 ?????????? 1995 ?
????????? ??? ??? ?????? ?????????, ??? ??? ?????????? ??? Robert Surber, ??????
?? ??? ?????????? Helvetia House - Henri Deltgen ??? ?? ?????? ??? 1?? ?????????? 1996
????????? ??? Rue de Luxembourg, ?????? 23 A, ??? Frisange. ??? ?? ?????? ?
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?? ????
?? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? D. ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? 1996 ??? 1998 ? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 15 ?????? 1998, ?????? ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? 1996 ? ?????? ?????? ??? ???

???????????????? ?????????? ??? ?? ????? ????????????, ??? ????? ????? ?????????? ??? ??
????????????? ??? ?? 1996. ? ?????????????? ??? ????? ?????????? ??? ?????????? ??? ??
????????? ????, ? ?????????????? ??? ????? ?????????? ??? Bureau d'Imposition ???
????????? ??? ????? ?? ?????????????? ?? ?????? ??????????1995 2408 871 ??? ??? ??
????? ?????? TVA LU 16487850. ? ?????????????? ?????????? ?????? ?????????? ??? ?? ??
??? ?? ?????????? ??? ????? ?????????? ??? ?????? ??????. ????????, ? ??????????????
????? ?????? ?????? ?????????? ??? ?????, ????? ?? ??? ?????? ?? ?????? ?????? ?????? ???
????? 1995/2408/871.

2. ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ??????
????????????? ??? ?? ?????? ??? ?????? ??? 11 ?????? 2002 ?????????? ?? ??? [...]?: ?
????????????? ??? ?????? ?????? ?? ?????? ??? ?? Helvetia House, ? ?????? ??? ??????
??????, ?? ?????? ????, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??????. ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??????. ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? 1997 ? ?????????? ?????? ?????? ??? ?????? ???
????? ?????? 575 129,56 ???.

3. ??? ?? ??' ?????????? ??? ?????? ??? 19?? ?????????? 2006, ?? ?????? ???
????????? ??? ?????? ??? ?? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? 2 ?? 3 ?????? ??? ?????? (? Surber) ? 2 ?? 4 ?????? ??? (?)
Gemple). ??? ?????????? ?? ?????? ?????? ?????? ??? ?? ?????????? ??? ?????? ?????????? ???
(?. ?? ?? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????) ??? ??
? ?????? ??? ?????? (? ????????, ??? ?????? ????????, ?????? ?????? ??? ?????? ???
??? ??????). ?? ?????? ?????? ?????? (????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? P AG ???
??? ??????. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? P AG, ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

4. ??? ?? ?????? ?? ?????? ?? ? ?????????? ??? ?????? ?????? ?????? ?????? ???
?? ????????, ? ?????????? ??? ??????, ?? ?????? ??? 10?? ?????????? 2006,
????????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? «?????????
?????» ??? ?????? ??? ?????? ??? ?????? [...]».

29 ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????, ??? ?????? ??? ?????? ?????????? ???,
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ?? ?????? 18, ?????????? 9, ???
????????, ??? UStG, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
Bundesfinanzhof, ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????????? ??? ?????? ?? ??? ?????? 1, ?????? 1, ??? ?????? ???
??????. ????, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

30 ???' ???, ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????????? ??????????? ?????? ?? ?? ?????????????? ????? ?????????? ?????????
????????? ??? ?????? ????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???? ?????? ?
????????? ??? ?????? ?????? (??? ????: ?????? ?????? ??????).

31 ?? ??? ?????? ??? ?????? ?????? ?????????? ??????????, ?? ?????? ?????????? ?????????? ??
? ?????? ??? ?????? ??? ?????????? ?????????????? ?????? ?? ?????? 1, ?????? 1, ???
?????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????????? ?????? ?????????? ????
????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ???
????????? ??? ?????????? (??? ???? ??????, ??? ?????? ??? ?????? ??????, ???
????????? ????) ? ??? ???? ??? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ??????
(????? ??? ?????? ??????, ??? ?????? ??? ?????? ??????, ??? ?????? ??????).

32 ??? ??? ??????? ????, ?? Finanzgericht Köln ?????????? ?? ?????????? ???
????????? ??? ?? ??????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????? ??????:

«1) ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? B ??? ?????? ??????
????????? ??? /??? ?????????? ?????? ?????????? ??? ?? ??? ? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????????? ???;

2) ?? ?????????? ?????????? ?????????? ??? ?????? 1:

????? ? ?????? “????? ??? ?????????? ??????????”, ??? ?????????? ???
????? 1, ?????? 1, ??? ?????? ?????? ??????, ?? ????????, ?????? ?????????? ???, ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ???,
? ?????? ?? ?????? ?? ?????? ???? ?????? ??? ?????? ?????? ?????????? ?? ?????? ??????
?? ?? ?????????? ??? ??????,

? ?? ?????? ?????? ???? ?????? ??? ?????? ?????? ?????? ?????????? ?? ?????? ??????
?? ?? ?????????? ?????? ?????? ?????????? ??? ??????;»

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

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

33 ?? ?? ??? ?????? ??? ??????, ?? ?????? ?????????? ????, ???' ??????, ??
????????? ??? ?????? ?? ?? ?????????? ?????????? B ??? ?????? ?????? ??????????
????????? ??? ? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??????
????????? ??? ??????????.

34 ??????, ?????? ?? ?????????? ??? ? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????????? ?? ?????? ?????????? ??? ?????? ???
????? ??? ?????? ??? ???? 17, ???????? 3, ??? ?????? ?????? (??., ??? ?? ????
????, ?????? ??? 13?? ?????? 2000, C-136/99, Monte Dei Paschi Di Siena, ?????? 2000, ?.
I-6109, ?????? 20, ??? ??? 15?? ?????? 2007, C-35/05, Reemtsma Cigarettenfabriken, ??? ???
???? ?????????? ??? ?????? ??? ??????, ??? 26).

35 ??? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?? ??? ??????
????? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????????? ??? ??????
????? ??? ??? ?????????? ??? ?????? ?????? ??????. ??? ?????? ?????? ? ?????? ???, ??
????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???, ??

36 ??? ??? ??? ????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ? ??????
????? ?????? ??? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?
????? ?????? (??., ??? ?? ?????? ???, ?????? ??? 11?? ?????? 1998, C?361/96, Grandes
sources d'eaux minérales françaises, ?????? 1998, ?. I?3495, ??? 28).

37 ?????????????? ??? ?????? ??????? ??????, ? ?????? ?????? ??????? ?????? ??? ?????????? ?????? ???????????
????? ??? ?????? ?????????? ?????????? ??? ??? ??? ?????? ?????? ??? ?????????? ?? ??? ?????? ??????
????? ??? ?????? ??? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ?
????? ??? ?????? ??? ?????????????? ?????? ?????? ?????? ?????? ? ?????? ?????? ?????? (?)..,
??? ?? ?????? ???, ??????? ??? 25?? ?????????? 2001, C?429/97, ??????? ??? ???????????,
?????? 2001, ?. I?637, ??? 28), ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????
??? ??? ??????????, ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?
????????? ??? (??? ????: ?? ?????? ??? ?????? ?????????? ??? ???), ?????????????? ???
????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ???.

38 ????? ?????????????? ? ??????????, ?? ??????? ?????????????? ??? ?????? ??? ?????????? ?
????? ?????? ?????????????? ?????? ?? ?????????? ?????????? ?????????????? ?????????????? ??? ??????????????
????? ??? ?????????????? ?????? ??? ??????? ?????? ?????? ?????????? ??? ?????????????? ??? ???
????? ?????? ?????? ?????????? ??? ?????.

39 ?????????? ???, ??????????? ?? ???? ?????????????? ? ?????????? ??????????? ???
?????????? ???, ?? ????? 9, ??????? ??????, ??? ?????? ?????? ?????? ?????? ??? ??
????????????? ??? ???? ??? ?????????? ??? ?????????????? ??? ?????? ??? ??? ?????? ? ???????????
???? ??? ?????? ?????? ??????? ?????? ?? ?????? ?????? ?????? ?? ???? ?????? ???
????????????? ? ??? ??????? ??????. ??????? ?? ???? ?????????? ???, ?? ?? ???
????????????? ?????? ?? ???????, ?????? ?????, ??? ?????? ?????? ??? ?????? ??? ??? ??
«????????? ?? ??????????» ??? ?????????????? ??????. ??????, ?? ?????? 3,
????????? ??, ??? ??????? ?????? ?????? ??? ?????? ?? ?????????????? ?????? ??? ??
????????? ??? ??????? ?????? ??? ?????? ?????? ?????? ?????????????? ? ?????????????? ???.

40 ????? ?????????? ? ??????? ?????????? ??? ? ????????, ?? ??????? ?? ?? ???????
???? ?????????? B ??? ?????? ??????? ??????????????? ??????????, ???????, ?? ???????
??? ? ?????????????? ??? ?????? ?????????? ??? ??? ??? ?????? ?????? ?????? ?????? ???
??????????????, ??? ??? ??? ??? ?????????????? ??? ??? ?? ??? ? ??? ??? ?????? ???,
?????? ??? ??? ??? ??? ?????????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ???
??? ?????? ?????? ??????.

41 ? ??????????? ???? ??? ??????? ?????? ??????????? ???? ?????? ???????????, ???'
?????, ??????????? ???? ??????, ??? ?? ??????? ??? ?????????????? ?? ?????????????? ???.

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

43 ?????? ?????? ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? (??????? ???
20?? ?????????? 1997, C-260/95, DFDS, ?????? 1997, ?. I?1005, ?????? 23).

44 ??????, ??? ????? ???????, ?? ?????????? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? (??.,
???? ?????? ??? ???, ?????? ?????, ?????????? ??? 3?? ?????? 2005, C?32/03, Fini H,
?????? 2005, ?. I?1599, ????? 32, ??? ??? 21?? ?????? 2006, C?255/02, Halifax ???.,
?????? 2006, ?. I?1609, ????? 68).

45 ???? ?? ?????????? ?? ? ?????????? ??? ?????? ??? ?????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
??????, ??? ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
?????? ?? ? ?????????? ??? ?????????? ??? ?????? B ??? ?????? ??? ???
????????????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???,
??????, ? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???,
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

47 ?? ?????? ??? ???????, ??? ?????? ??? ? ?????? ?????????? ??? ?????? 53 ???
????????? ???, ? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? 6 ??? ??????
??????, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? (??., ??? ??
????? ???, ?????????? ??? ?????? Monte Dei Paschi Di Siena, ??? 31), ???
????????? ??? ?????????? ??? ?????? ?? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

48 ??? ?????? ? ???????, ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? (??) 1798/2003 ???
????????? ??? 7?? ?????? 2003, ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? (??) 218/92 (?? L 264, ?. 1), ???
??? ? ?????????? (??) 1925/2004 ??? ???????, ??? 29?? ?????? 2004, ??? ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 1798/2003 (?? L 331,
. 13).

49 ?? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?, ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
? ?????????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????? ?? ?????? ??? ?????????? (??., ??? ?? ?????? ????, ??? ?????? ???
??????????, ?????????????? ?????? Fini H, ??????? 33 ?? 34- ??., ???' ???????, ???
?????? ?? ?????? 43 ??, ??????? ??? 12?? ?????????? 2006, C?196/04, Cadbury
Schweppes ??? Cadbury Schweppes Overseas, ??????? 2006, ?. I?7995, ??? 55).

50 ?????? ??? ??????????????, ??? ?????? ??????? ?????? ?? ?????? ? ??????? ??? ??
????? 3, ??????? ??, ??? 9, ?????? ??????, ??? ?????? ?????? ?????? ?? ?????? ? ??????????
??? ?? ?????? ??? ?????????????? ?????? ?? ?? ?????????? ??? ?????? ?????? B ???
?????? ?? ?????? ??????????, ???' ?????, ?? ??????? ?? ?????? ??? ? ?????????????? ???
????? ?? ?????? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ?????? ? ?????????? ???
? ?????? ??? ?? ???????, ??? ?? ??? ?????? ?????? ?????????????? ?' ???? ?? ??????
?????. ?? ?????????? ??? ?????? ??? ???????, ??????, ??? ?????????? ??? ?????????? ???
??? ?????? ?????? ?????????? ??? ?????, ? ?????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ?????? ???, ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???.

51 ?? ?? ?????? ?? ???????, ?? ?????? ?????????? ?????? ??? ?????? ??? «?????
?? ?????????? ??????????» ??? ?????????? ??? 1, ?????? 1, ???
?????? ?????? ???.

52 ??????????????, ?????? ?? ?????????????? ???, ??? ?? ?????? ?????? ??????, ?
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ???
????????? ??????????, ?????? ???, ??? ? ?????????? ??? ?????? ??? ??????, ???
??? ?????? ??? ?????? ?? ?????? 3, ??????? 1, ??? ?????? ???, ??? ?????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????? ?? ?????? 1, ?????? 1, ??? ??????
?????.

53 ?????? ??? ?????? ??? ?????????? ?????????? ??????????????, ??????????, ? «????? ???
????????? ??? ??????????» ??? ? ?????? «????? ?????????? ??? ??? ??? ???
????????? ??? ?????? ??????».

54 ?????? ?? ?????? ?????????? ??? ?????? ???, ? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? (??., ??????? ??? 4?? ?????? 1985, 168/84, Berkholz, ??????
1985, ?. 2251, ??? 18- DFDS, ???????????, ??? 20, ??? ?? 17?? ?????? 1997, C-
190/95, ARO Lease, ?????? 1997, ?. I-4383, ??? 15). ???????, ??? ?????????? ??
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????, ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ? ??????
????? ??? ?????????? ??? ?????? ?????? (??., ?????????? ?????? ARO Lease, ?????? 16).

55 ??? ?????, ?????????, ??? ?????????? ??????????????, ? ?????? ???
?????????, ??? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ?????????? ???
???, ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? (??., ??? ??
????? ???, ?????????? ?????? ?????? ARO Lease, ?????? 19 ?? 27, ??? ?? ??? ??
?? ?? 1998, C-390/96, Lease Plan, ?????? 1998, ?. I?2553, ??? 26). ??????????, ?
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ???' ??? ?? ?????? ??? (??., ??? ?? ?????? ???, ??????????????)

?????? Lease Plan, ?????? 21 ??? 27).

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

57 ??? ?????? ??? ?????? ????, ??? ?????????? ??? ???? 31 ??? ??????
?????????, ?? ?????? ?????????? ??? ???? ???, ?????????? ?????? ??? ??????
????????? ??? ???? ??? ?????????? ?????????? (??., ????? 28 ??? ??????
????????), ? ?????? ??? ??? ?????? ?????? ?????????? ?? ?????????? ?????????????? ???
????????????? ??? ?????? ?????? ?????????? ??? ??????.

58 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ??? ???? 1,
????? 1, ??? ?????? ?????? ??????, ?????? ?? ?????????? ??? ??????, ??????, ?
????? ?????? ?????? ?? ?????????? ?????????? ??? ?????? ??? ??????????
????????????? ??? ???? ?????? ?????? ?????????? ??? ?????? ?????????? ?? ?????????? ???
????? ??? ? ?????? ???, ???, ??????, ??? ???? 1 ??? ?????? ?????? ??????????
????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??????????????
?????, ??? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ?? ??????????
??????, ??????, ??????, ?????? ???, ??? ?????? ??? ?????????? ??????????, ? ??????
????? ?????? ?????? ?????????? ?????????? ?? ?????? ??? ??????.

59 ???????, ?? ?????? ???, ?????? ?? ??? ?????????? ??? ?????? ?????? ?????? ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????? ??? ??? ??????
????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??????????
??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?? ??? ?
????????? ??? ??? ?????? ?????? ?????? ?????????? ??? ??? ??? ?????????? ???
?????????.

60 ?????????? ??? ?????? ???, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??????, ?
????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? 1, ?????? 1, ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????? ?? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ??????????
??? ?????????? ???.

61 ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ???
????????? ?????????? ?? ?????????? ?????? ?????????? ?????? ?????? ??? ??????
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?,
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ???
????????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ???
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???, ? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.

62 ???, ??? ?????? ?????????? ???, ??? ?????? ??? ?????????? ??? ?????? ???
«????????? ???» ? «????», ??? ?????? ?? ?????????? ??? ?????? ??????????
????????? ??? ???? 1, ?????? 1, ??? ?????? ?????? ?????? (??., ???'
????????, ?????????? ??? 2? ??? 2006, C?341/04, Eurofood IFSC, ?????? 2006, ?. I?3813,
????? 35, ??? Cadbury Schweppes ??? Cadbury Schweppes Overseas, ??????????????,
????? 68).

63 ?? ??? ? ? ?????????? ???, ??? ?????? ?????? ??? ?????? ?? ?????? ? ?????????? ??? ??

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

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

64 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? , ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ?????????? ??????????
????? ?????????? ?????????? ??? ?????????? , ??? ??? ?????? , ??? ?????? ?????? , ??? ?????????? .

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

1) ?? ?????? 3, ????????, ??, ??? 9, ??????? ???????, ??? ?????? ???????
79/1072/??? ??? ??????????, ??? 6?? ?????????? 1979, ??? ?????????????? ???
????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? -
????? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ?????????????? ???
?? ?????? ??? ?????? ?????????????? ??? ?????????? ??? ?????? ??????, ??
????????? ??? ??? ?????? ??? ?????????????? ?????? ?? ? ?????????? ???
????????? B ??? ?????? ??? ???????, ???' ????, ?? ?????? ??
????????? ??? ? ?????????????? ??? ?????? ?????? ?????????? ??? ????
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ? ?????????? ??? ?
????? ??? ?? ??????, ??? ??? ??? ?????? ?????? ?????????? ?' ??? ? ?? ??????
?????.

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

2) ?? ?????? 1, ?????? 1, ??? ??????? ??????? ??????? ??????? 86/560/??? ??? ???????????,
??? 17?? ?????????? 1986, ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?? ??? ????? ?????? ?????? ?????? - ?????? ?????????? ??? ??????
????????????? ??? ????? ????? ?????????????? ??? ?????? ??? ?????? ??? ??????
????????????? ?? ?????? ??? ??????????, ?????? ?? ?????????? ??? ??? ??????
??? ? ???? ??? ?????????? ?????????????? ??? ?????????? ??? ?????? ? ?????? ???
????????? ?? ?????????????? ?????? ?????? ?? ?? ?????? ?????????? ??? ??????????
????????? ??? ????? ?? ?????? ?????????? ?? ?????????? ??? ?????????? ??????????
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(???????????)

* ?????? ??????????????· ? ??????????