

?????? C-281/06

Hans-Dieter Jundt et Hedwig Jundt

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**Finanzamt Offenburg**

(?????? ??? Bundesfinanzhof

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

«E?????? ?????? ?????????? — ?????????????? ?????????????? ?????????? ?? ??????????  
????????????? ?????????? — ?????? ??? “??????” — ?????????????? ??? ??????  
????????????? ?????? — ?????????? ??? ?????????????? ?????????? — ?????????????? —  
????? ?????????????? ??? ?????? ?????????? ??????????»

????????? ??? ?????? ?????????? M. Poares Maduro ??? 10?? ?????????? 2007

????????? ??? ?????????? (????? ????) ??? 18?? ?????????? 2007

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

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

(????? 45, ??, 1, E?, 49 E? ??? 50 E?)

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

(????? 49 E?)

1. ? ?????????????? ?????????????? ?????????????? ?????? ??? ?????? ?????????? ??????, ? ??????  
????????? ??? ?????????? ?????? ?????? ?????? ?????????? ??????, ?????????????? ?? ???  
????? ??????, ?????????? ??? ????? ?????????? ??? ?????? 49 ??, ?????? ?? ?? ?????????? ??  
????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??????????.  
?????????????, ? ?????????????? ?????? ?????? ??? ?????? ??? ?????????????? ??????????  
?? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????????  
????? ?????????? ??????, ?????? ? ?????????????? ??? ?????? ?? ?????????? ?? ??????????  
?????????. ?????????? ??? ?????????? ?????? ?????? ?????????? ??? ?????????? ??????????  
?? ?????????? ??????. ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ??????????  
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????????  
????????, ??? ??? ?? ?????????? ?? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ???  
????????? ??? ?????? 49 ??, ?????? ?? ?????? ?????? ?????? ?????????????? ??????????  
????????????? ?? ?????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????????? ???  
????? 45, ?????? ??????, ??, ?? ?????????? ?? ?? ?????? 50 ??, ??? ? ?????????? ???  
????? ?? ?????????????? ??? ?????????????? ?? ?????? ?????????? ?????? ??? ??????  
????????? ??? ?????? ?????? ?????????? ???????.

(??, ??????? 32-33, 35, 37-39, ??????. 1)

2. ?????????????? ??? ???????? ??????? ?????????? ??? ?????? ?????????????? ???????  
??? ??????? ??????? ??? ??? ??? ?????????????? ??? ??? ??? ??????? ??? ??????????????,  
?? ?????????? ?????? ?????????????? ?????????????? ?????????????? , ??? ?????????????? ?? ??????  
????? ?????? ?????? ?????? ?????? , ?????????? ?????? ??? ?????? , ??? ??? ?? ??????  
????? ?? ?????? ?????? ?????? ?????????????? ??? ?????????? ?????? ?????????????? ?? ??? ?????? ??????  
????? , ??? ?????????????? ??? ?????????? ?????? ?????? ?????????? ??????????.

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

(??. ?????? 54, 56-57, 61, 69, 71, 73, 83-85, 88-89, ??????. 2-3)

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

?? 18?? ?????????? 2007 (\*)

«????????? ?????? ?????????? – ?????????????? ?????????????? ?????????? ?? ??????????  
????????????? ?????????? – ?????? ??? “??????” – ?????????????? ??? ??????  
????????????? ?????? – ?????????? ??? ?????????? ?????????? – ?????????????? –  
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????? ?????? C2281/06,

?? ?????????? ?????? ?????? ?????????? ?????????? ?????? 234 ??,  
??? ?????? ?? Bundesfinanzhof (?????????) ?? ?????? ??? 1?? ?????? 2006, ? ??????  
????????? ??? ?????????? ??? 28 ?????? 2006, ??? ?????? ??? ??????

**Hans-Dieter Jundt,**

**Hedwig Jundt**

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**Finanzamt Offenburg,**

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

????????? ??? ??? A. Rosas (?????????), ?????? ????????, J. N. Cunha Rodrigues, J.  
Klu?ka, P. Lindh ??? A. Arabadjiev, ????????,

?????? ??????????: M. Poires Maduro

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

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

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

- ?? .-D. ??? H. Jundt, ?????????????? ??? ??? H.-D. Jundt, Rechtsanwalt,
- ? ?????????? ????????, ?????????????? ??? ??? M. Lumma,
- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? E. Traversa ??? W.  
Mölls,

????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ??????????  
??? 10?? ?????????? 2007,

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

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1 ? ?????? ??? ?????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 59 ???  
????????? ??? (?? ?????? 59 ??? ????????, ?? ??? ?????? ???????, ?????? ??????????????,  
????? 49 ??) ??? 128 ??? ??????? ??? (??, ?????? ??????????????, ?????? 126 ???  
????????? ??, ?? ?????? ?????? ??? 149 ??).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? .-D. ??? H. Jundt (???  
????: ?????? Jundt), ?????? ????????, ??? ??? Finanzamt Offenburg, ?? ??? ??? ??????  
?? Finanzamt Offenburg ?? ?????? ?????, ?????? ??? ?????????? ??? ?????????????? ???

????? ??????????? ?? ???? ??????? ??? 1991, ??? ?????????? ??? ????? ??????  
????????????? ??? ?????? ??? ?????????? ??? ??? ?????? ?????????? ??????????????  
????????????? ?? ??? ?????????? ??? ?????? ?????? ??????, ?????? ? ?????? ?????????? ???  
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## ?? ?????? ?????? ??????

3 ?? ????? 1, ?????????? 1, ????? ???????, ??? ?????????? ??? ?????? ??? ?? ???  
??????????, ??? ? ?????? ??? ?????? ??? ??? ?????? ??? ?????????? ?????????????? ???  
????????? ??? ?????? ?????? (Einkommensteuergesetz, ??? ????: EStG), ?????? ??? ?? ???  
????????? ?? ??? ?????? ?????? ??? ?????????? ??? ? ?? ?????? ?????? ??? ?????? ??? ??????????  
????????? ?????? ?????????? ?????? ?????? ??????????.

4 ??????? ?? ?? ??? 2, ?????????? 2, ??? EStG, ?? ?????????? ?????????????? ??? ??  
?????? ? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ???.

5 ?? ????? 3, ?????? 26, ??? EStG, ?? ????? ?????????????? ??? ?????? ??? ?????? ???  
???? «????????????? ???», ??? ?? ???:

«?????????????:

[...]

26. ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??????????????  
????????????? ??? ?????????? ??? ???????, ??????????, ?????????? ? ?????? ??????????  
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????????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ??  
????????????? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?  
????? ??? ?? ?????? 5, ?????????? 1, ?????? 9, ??? ?????? ??? ??????????  
(Körperschaftssteuergesetz) ??????? ??? ?????????? ?????? ?????????? ??? ?????????? ?  
????????????? ??? [????? 52 ??? 54 ??? ?????? ?????? ?????? (Abgabenordnung)].  
?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????  
????? ?????????????? ?? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?? 2 400  
[????????? ???] DEM ?????? [...]»

## ? ?????? ??? ?????? ??? ?? ?????????? ??????

6 ?? ?????? Jundt ?????????? ??? ?????? ?? ??? ?????? ?????????? ??? ?????????? ?? 1991,  
???? H.-D. Jundt, ? ?????? ??????? ??? ?????? ?? ?????? ??? ?????????? ??? ??????????  
????????? ??? 16 ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????  
????? ??? ? ?????????? ??? 5 760 ?????? ?????? (FRF) (?? ????  
????????? ?? 1 612 DEM).

7 ?? ??? ?????? ??? ?????? ?????? ?????? 1991, ?? Finanzamt Offenburg ?????? ???  
????????? ??? ??? ?????????? ??? ??????.

8 ?? ?????? Jundt ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ?????????? ??? ??  
???? ?????????? ??? ?????? ?? ??? ??? 3, ?????? 26, ??? EStG. ?????? ??? ? ?????????? ???  
?? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????? ?????? ??? ??????.

9 ?? ?????? Jundt, ??? ??? ?????????? ? ?????????? ??? ?????? ?????? ???

Finanzamt Offenburg ??? ? ??????? ??? Finanzgericht ???????? ???, ??????? ?????? ???  
Bundesfinanzhof ??????? (Revision).

10 ?? Bundesfinanzhof ?????????? ??? ? H.-D. Jundt ?? ??????? ??? ?????????? ??? ???  
3, ?????? 26, ??? EStG ?? ??? ?????? ?? ?????????????? ??? ?? ?????????? ??????????????,  
?????? ??????? ??????? ???????, ??? ?? ?? ?????????????? ??? ?????? ?????? ??????. ??? ??  
?????? ?? ??????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ???  
????????? ?????? ???????, ?? Bundesfinanzhof ?????? ?????? ?? ?????? ???  
????????? ?????? ???????.

11 ???' ????, ?? Bundesfinanzhof ?????????? ?? ? ?????????? ?????????????? ???  
????????? ?? ?????????? ?????????????? ?????????? ?? ?????????? ?????????? ??? ??????  
????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????? ??? ?????? ??????  
??? ?? ??? ?? ??????? ?? ?????? ?????????? ?????? ??? ?????? 3, ?????? 26, ???  
EStG ?????????? ????. ?????? ?? ?? ?????? ???, ?? ?????????? ?????? ???  
????????? «????????? ??? ?????? ?????????? ?????? ???», ?????? ??? ??????????  
??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ??? ?????? ???  
????????? ?????????? ??????.

12 ??? ???????, ?? Bundesfinanzhof ?????????? ??, ??????????, ?????????????? ?  
????????? ??? ?? ??? 3, ?????? 26, ??? EStG ?????????? ??? ?????????? ???  
?????????. ?????? ??? ?????? ?? ?????????? ?????? ?????????? ?????????? ??? ??????????  
????????????? ??? ?????? ?????????????? ??? ?????????????? ??? ?????? ?????? ? ???  
????????? ??? ?????????? ?????? ?????? ??????.

13 ?????? ?? ?? Bundesfinanzhof, ? ?????????????? ??? ?????? ?????? ?????? ?? ??????????  
??? ?????? ??? ?????? ?????????? ??????????, ??? ?????????? ?? ?????????? ?? ???  
????????? ?? 28?? ?????????? 1992, C204/90, Bachmann (?????? 1992, ?. I-249), ??? C-  
300/90, ?????????? ??? ?????? (?????? 1992, ?. I-305). ?? Bundesfinanzhof ?????? ???,  
???? ?????? ??? ?????? ?????, ?????????? ?????? ?????????? ???????, ??????, ???  
????????????? ?????????????? ??? ?????????? ?????? ?????????? ?????????? ???????, ???  
?????????, ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??????????  
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??????????  
????????????? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ??????????  
??? ?????????? ???, ? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??????. ?????? ?? ?? Bundesfinanzhof, ?? ??? 3, ?????? 26, ??? EStG  
????????? ??? ?????????????? ? ?????? ?????????? ??? ?????? ?????????? ??? ??? ?????? ???  
????????? ??? ?????? ??????????.

14 ?????, ?????????? ??? ?????????? ??? ?????????????? ??????????????, ??  
Bundesfinanzhof ?????????? ?? ?????????????? ???????, ??? ? ??????? ??? ????? ?????? ??  
?????? ?????, ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ??  
?????? ?? ??? ????? ???, ?? ?????????, ??? ?????????? ?????? ?????? ?????? ??? ??  
?????? ????. ?????, ??????? ?? ?? Bundesfinanzhof, ? ?????????? ??? ?? ??? ??????????  
????? ??? ?????????? ?????????? ??? ?????????????? ??? ?????? ?????? ??????????????  
??????????, ??? ?? ?? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ??????  
???? ?????????? ??? ?????????? ??? ?????? «????????? ??? ??????» ??????????????,  
?? Bundesfinanzhof ?????? ??? ?? ?????? ? ?????? ?????? ?????? ???????. ?? ??  
?????? ??? ????? ?? ?????????? ??? ?????? 126 ?? ?????????? ?? ?? ??? ?? ?????????? ??  
????????????? ??? ?????????? ??? ?????? ?????? ??????.

15 ??? ?? ??????? ??????, ?? Bundesfinanzhof ?????????? ?? ?????????? ??? ??  
?? ?????????? ??? ?? ??????? ??? ?????????? ?? ?????????? ?????????????? ??????????:

«1) ??? ?? ????? 59 ?? ??????? ?? [...] ??? ?????? ??? ?? ?????? ?????????? ???  
????????????? ??? ?????????? ???????, ??????, ? ?????????? ?????????????? ??????????  
??? ?? ??????? ?????????? ?????????? ?? ?????????? ?????? ?? ??? ?? ??????  
????????????? ??????? ?????????? ?????????? ?????? (?????????????), ??? ?????????? ????  
????????????? ??? ?? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ??  
????????? ?????????? ??? ??????;»

2) ?? ?????????? ?????????? ?????????? ??? ?????? ??????, ?????????? ???  
????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??????????????  
??? ?? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????? (????? 3, ?????? 26, ??? ?????? ??? ?????? ?????? ??????) ?????? ?? ??????????  
??? ?? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??????;»

3) ?? ?????????? ?????????? ?????????? ??? ?????? ??????, ??? ?? ?????? 126 ??  
????????? ?? [...] ??? ?????? ??? ?????????? ?????????? ?????? ??????, ? ???  
????????? ??? ?????????? ??? ?????????? ?????? (????? ?? ?????????? ?? ?? ???  
3, ?????? 26, ??? ?????? ??? ?????? ?????? ??????) , ?? ?????? ?? ?? ?????? ??? ??????  
????????? ?? ?????? ??? ?????? ?????? ??????;»

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

16 ?????????? ?? ?????????? ? ?????????? ???, ?????????? ??? ?? ??????????  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? 1? ?????????? 1993,  
???? ?? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???, ???  
????????? ??? ?????????? ??? 7 ?????????? 1992, ? ?????????? ??? ?????? ?? ??????  
????????? ??? ?? ?????? 59 ?? 128 ?? ?????? ??? ?? ??? ?? ?????? 59 ?? 126 ??  
????????? ??.

17 ??? ?? ?????? ?????????? ? ?????????? ??? ?????????? ?????????? ?? ?? ??????  
????????? ???, ?? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?? ?????? ???  
????? ?? ?????? ??? ?????? ??????.

18 ?????????? ?, ?????, ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????  
?? ?????????? ?, ???' ?????, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??????.

19 ????????, ?? ??? 128 ??? ??????? ?? ?????? ??? ?????????????????? ???????????, ???  
????? ??????? ? ?????????????????? ?????????? (??.. ?????????? ??? 2?? ?????????? 1988,  
24/86, Blaizot ?.., ?????? 1988, ?. 379, ?????? 15 ??? 20- ??? 30?? ??? 1989, 242/87,  
?????? ??? ???????????, ?????? 1989, ?. 1425, ????? 25- ??? 7?? ?????? 2005, C-  
147/03, ??????? ??? ???????, ?????? 2005, ?. I-5969, ????? 33, ??? ??? 11??  
????????? 2007, C?40/05, Lyyski, ?????? 2007, ?. I-99, ????? 29). ??????? ?????? ??????  
????? ??? ?????? 126 ??? ??????? ?? ??? ?????????????? ???????????, ?????? ??? ??? ?????? ???  
????????? ???????, ???????????, ?????? ???????, ?????????????? ???, ?????? ??? ?????? ??? ???????  
??? ??? ??????? ??? ?????? ?????? ?????????????? ??????????????, ?? ?????? ??? ?????? ??? ???????  
??? ??? ?????????? ??? ??? ?????? ?????? ?????????? ?????????, ??? ?????????? ??? ??? ?????? ???  
13?? ?????????? 1985, 293/83, Gravier (?????? 1985, ?. 593, ????? 19), ? ?? ??????? ???  
????????? ??? ?????????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???  
??????.

20 ??????? ??????, ?? ?????????? ??? ??? ??????? ?????????? ??? ?????????? ??????????????  
???? ?????? ??? 1? ??? 1999.

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21    ?? ?? ?????? ???. ????????, ?? ?????? ?????????????? ?????? ???' ?????? ?? ? ??????????????  
????????????? ?????????????? ???? ???? ???? ?????? ?????? ???? ?????? ?????? ??????  
????????? ????, ?? ?????????? ???? ??????????????, ?????????????? ?? ???? ??????  
?????, ???????? ???. ?????? ?????? ???? ?????? 49 ??, ?????? ?? ?? ?????? ??  
????????? ?????????????? ???? ?????? ?????? ?????? ?????? ?????? ??????.

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

22 ?? ??????? Jundt, ? ??????? ?? ?????????? ??? ? ??????? ?? ??????? ?? ? ??????? ?? ? ??????? ?? ?? ? ??????? ??  
?????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ?? ??  
?????? ?? ?? ?? ?? ?? 50 ??, ??? ?? ??????? ?? ??????????? ?? ??????????? ?? ???????, ??? ?? ??????? ?? ?? ??,  
?????? ?? ???????????.

23 ?? ?????? Jundt ??????????? ??? ?? ???? 3, ?????? 26, ?? EStG ?????????? ?? «????????????? ??? ?????????????????? ??????» ?? «?????????????» ???, ??? ?????? ?????? ?????? ??? ?????? ??? ??????, ??? ?????????? ?????? ? ?????? «????????????? ??? ?????? ?????? ?????? ?????? ??????» , ??? «????????? ??? ?????????? ?????? ?????? ??????».

24 ??????? ?? ?? ?????????? ??????????, ?? ????? ?????????? ?? ?????? 49 ?? ?????? ???  
?? ?????????? ?????????????? ?????????????? ?????????????? ?????? ?????????? ?????????? ?? ????  
????????? ?? ?? ?????????? ????? ?????? ? ?? ?????????? ?????????? ?????????? ?????????? ??????????  
????????, ?????? ?????????????? ????? ?????? ?????????????????? ??????. ?? ??????????????  
????? ?????????????? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??? ?????? ?  
????????????? ???????, ???' ?????? ? ?????????? ??? ?????? ??? ?????? ?????????? ??????????

25    ? ?????????? ?????????? ??? ?? ?????????? ??? Bundesfinanzhof ??? ?? ?????????  
????????? ?????????? ??? ?? ??????? ???, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ???????, ?????????????? ? ?????????? «????????? ??? ?????? ?????? ??????????????  
?????», ? ?????? ?????????? ?????? ?????????? ?????? ?? ?????????? ??? ?? ?????? ???  
????????? ?????? ??? ?? ?????? ??????. ????, ?????? ?? ?? ?????? ??????, ? ??????  
????????? ?????? ??? ?? ?????? ?? ?????? «?????» ?????? ?? ?? ?????? ??? ??????

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

26 ? ??????? ??????????? ???, ?? ??? ???????????, ? ??????? ??? ?????? ?????? ?? ?  
?????? ??? ?????? ?? ?????? ?? ?????? ?????? ??????????? ?????? ??? ?????? ?????? ? ??????  
?????????? ?? ?????? ?? ?????? ?? ?????? ?????? ??????.. ???????????, ?? ? ??????  
?????????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?  
????? ??? ?????? ??????????? ? ?.-D. Jundt ??? ??? ?????? ???????????, ? ?.-D. Jundt ???  
?? ??????????? ?? ??? 3, ?????? 26, ??? EStG ??? ?? ?????? ?? ??????????? ?? ?  
????????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? EStG ? ?????????????? ?? ??  
????? ??? ?????? ???????????.

27 ??? ?? ???????, ?? ??? 3, ?????? 26, ??? EStG ?????? ??????  
?????????? ??????????? ??, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? «?????».  
????????? ??? ??????????

28 ??? ?? ?????????? ?? ??????????? ?? ??????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?? ?  
????????? ??? ?????? 49 ??, ???????????, ??????, ??? ? ?????? ??? «?????????» ???  
??? ?????? ??? ?????? 50, ?????? ??, ?? ?????????? ??? ?????? ??? «?????» ???  
?????????? ?????? ?????? » (?????? ?? 22? ?? 2003, C?355/00, Freskot,  
?????? 2003, ?. I-5263, ??? 54).

29 ?? ?????????? ?? ?????? ??, ??? ?? ??????? ??, ?? ?????? ?? ??????? ??, ?? ??????  
????????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
????????? ?? ??????? ?? (??., ??? ??, ???, ??? 27?? ?? ??????? ??  
1988, 263/86, Humbel, 1988, ?. 5365, ??? 17? ?? 26?? ?? 2003, C-422/01,  
Skandia ??? Ramstedt, 2003, ?. I-6817, ??? 23? ?? 11?? ?? 2007, C-  
76/05, Schwarz ??? Gootjes-Schwarz, ??? ?? ?????? ?????? ??????? ?? ???????, ???  
38, ??? C-318/05, ??????? ??, ??? ???????, ??? ?? ?????? ?????? ??????? ??  
??????, ??? 67).

30 ???????, ??????????? ?? ?? ?????????? ?? ?????? ?? ?????? ?? ? ??? «?????????»,  
???? ??????????? ?? ?? 50 ??, ??? ??????? ?? ?????? ?? ??????? ?? ??????? ??  
????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
????????? ?? ?? ?? ?? ?? ??????? ?? ??????? ?? (??., ??' ??, ??? ??????? ??  
????? Humbel, 18, ??? 7?? ?? 1993, C-109/92, Wirth,  
????? 1992, ?. I-6447, 15 ?? 16). ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
?? ??????, ??????????? ?? ???????, ??? ?? ??????? ?? ??????? ?? ??????? ??  
????????? ?? ??????? ??, ??? ???????, ??? ?? ??????? ?? ??????? ?? ??????? ??  
??' ??????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
?? ?????????? ?? (?. ?????? Schwarz ??? Gootjes-Schwarz, ???????????, ???  
39).

31 ??????, ? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????? ?? ??????????? ??  
??????????, ?? ?????? ??????????? ?? ?????? ?? ?????? ?? ??????????? ?? ???????, ?  
?? ?????? ??????, ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ???????  
??????, ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????????? ?? ?? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??

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

32 ??? ?????????? ? ??????? ?????????????? ?? ?? ?????? 12 ??? ?????????? ???, ?  
????????????? ?????? ?????? ??? ?????? ??? ?????????????? ?????????? ??? ??????  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??????  
????????? ??????, ?????? ? ?????????????? ??? ?????? ?? ?????????? ??? ?????????? ????  
?????????.

33 ??????????, ??????? ??? ?????? ?????? ?????? ?????????? ?? ?????? ??????????, ???  
????????? ?????? ? ?????????? ??? ?????????? ?????? ?????????? ?? ?????????? ?????? (??.,  
????? ????, ?????? ??? 12?? ?????? 2001, C-157/99, Smits ??? Peerbooms, ??????  
2001, ?. I-5473, ?????? 50 ??? 52).

34 ??????, ? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? 3, ?????? 26, ??? EStG  
????????? ?????????? ?????????????? ?????? «?????». ?? ?????????? ??? ??? ?????? ??? ??  
????????? H.-D. Jundt ??? ?? ??????????, ?????? ?? ?? ?????????? ??? ?????????? ???  
????????? ?????? ?????????? ?????????, ?????? ?????? ??? ?? ?????? 50 ??, ??????  
????????? ??? ??? ?????????? ??????.

35 ???, ?? ?????? ??? ? ?????????????? ?????????????? ?????????? ??? ?????????? ???  
?????????????, ??? ?????? ?????? ?????? ?????????? ???????, ??? ??? ?? ?????????? ??  
??? ?????? ? ?????????? ?????? ??? ?????? ?????????? ??? ?????? 49 ??.

36 ?? ?????? ?????????? ??????? ?????? ?????????? ?????????? ?????????? ?? ??????????  
????????? ?????????? ?? ?????????????? ??? ?????????? ??? ?????????? ?? ??? ??????????  
????????? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ??????  
45 ??, ?? ?????? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????  
?????????. ?????? ?? ?? ?????? ??????????, ?? ?????????????? ?????? ?????? ?????? ??  
????????? ?? «??-????????» ??? ?????????? ??? ?????? ?????? ?????? ?????? ???  
?????.

37 ???, ?????????? ???, ???????, ???????, ??? ?????? ?? ?? ?????? 45, ?????? ??????, ??, ??  
????????? ?? ?? ?????? 50 ??, ? ??????? ?????? ?????? ?????????? ??? ?????????? ???  
????????? ???, ??? ?????? ?????????? ?????, ?????????? ?????????? ??? ?????? ?????? ??????????  
????????? ?? ??? ?????? ?????, ? ?????????? ?????? ?????? ?????? ?? ?????????? ?????? ???  
????????? ?????? ?? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??????????  
????????? ?????? (??., ?????? ?????, ?????????? ??? 21?? ?????? 1974, 2/74, Reyners,  
?????? ????? 1974, ?. 319, ????? 45- ??? 31?? ????? 2001, C-283/99, ??????? ???  
??????, ?????? 2001, ?. I-4363, ????? 20, ??? ??? 30?? ?????? 2006, C-451/03, Servizi  
Ausiliari Dottori Commercialisti, ?????? 2006, ?. I-2941, ????? 46).

38 ???, ??? ?? ?????????? ??? ?????????? ?????? ??? ?????? 39, ?????????? 4, ??  
????????? ??? ?? ?????? ?????? ?????? ?????????????? ?????? ?????????? ?? ?????????? ???  
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? (??., ??' ????, ?????????? ???  
30?? ????? 1989, 33/88, Allué ??? Coonan, ?????? 1989, ?. 1591, ????? 7, ?????? ??? ??  
????? 1996, C-290/94, ?????? ??? ?????? ?????? 1996, ?. I-3285, ????? 34).

39 ??? ???????, ??? ?????? ?????? ?????? ?? ?????? ? ?????????? ??? ? ??????????????  
????????????? ?????????? ?????? ??? ?????? ?????? ?????, ? ?????? ?????? ??? ?????? ???  
????? ?????? ?????? ?????? ?????, ?????????????? ?? ?????? ?????? ???, ?????? ?????? ???  
????? ?????? ??? ?????? 49 ??, ?????? ?? ?? ?????????? ?? ?????????? ??????????????  
????????? ??? ?????? ?????? ?????? ??????.



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

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

48    ? ?????????? ??? ?????????? ?????? ??? ?? ?????? 3, ?????? 26, ??? EStG ??????????  
????? ??????????????, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ???, ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????  
????????? ??????.

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

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

51    ?? ?????? 149, ?????????? 1, ?? ?????? ?????? ??? ?? ?????? ??? ? ?????????? ?????? ???  
????? ??? ??? ?????? ??? ?????? «????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ????  
??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

52    ??? ????? ???? ??????????, ?? ??? 49 ?? ?????????? ??? ??????? ?????????????? ?????? ?????? ?????? ???  
?????? ?????? ??? ????? ?? ?????????? ?? ?????????? ? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? ?????????? ??' ?,?? ? ?????? ?????????? ??? ?????????????? ???  
????????????? ??? ?????????? ????? ?????? (????????? ??? 5?? ?????????? 1994, C-  
381/93, ??????? ??? ?????, ?????? 1994, ?. I?5145, ??? 17- ??? 28?? ?????? 1998,  
C-158/96, Kohll, ?????? 1998, ?. I?1931 ??? 33- Smits ??? Peerbooms, ??????????????  
????? 61- ??? 3?? ?????? 2002, C-136/00, Danner, ?????? 2002, ?. I-8147, ?????? 29,  
????? ??? ??? 8?? ?????????? 2005, C-544/03 ??? C-545/03, Mobistar ??? Belgacom Mobile,  
?????? 2005, ?. I-7723, ?????? 30).

53    ???????, ??? ?????????????? ??????? ??? ?????????? ???, ??????? ? ?????????? ? ???????????  
????????????? ??? ??????? ?? ?????????? ?????????????? ?????????????? ???????????, ???  
????? ??????, ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????????  
????????? ???????, ?????? ?????????? ?????? ??? ?? 3, ?????? 26, ??? EStG  
????????? ??? ?????????? ??? H.-D. Jundt, ??? ?????????????? ?? ?? 49 ??, ??  
????????? ??? ?????????? ??? ?????? ?????? ?????? ??????, ??? ?????? ??? ?? ??????  
????????? ?????????? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ??  
????????? ???.

54    ???????, ?? ?????? ?????????? ??????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????????? ???????, ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??  
????????? ??? ?????????? ?? ?????? ?????? ?????????????? ?? ?????? ?????? ?????? ?????? ???  
????????? ???????, ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
?????????.

55    ?????? ?? ?????????? ?? ? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ??????????  
????????????? ??????????????.

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

57    ? ?????????????? ??? ?????? ??? ?????? ?? ?????? ???.

58    ?????? ?? ?? ?????????? ??? ? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??????  
?? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????????? ??? ?????????? ???, ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
??? ?????? ??? ?????? ?????? (????????? ??? 26?? ?????????? 2000, C-478/98, ?????????? ???  
??????, ?????? 2000, ?. I-7587, ?????? 41, ??? ??? 4?? ?????? 2004, C-334/02, ???????  
????? ??????, ?????? 2004, ?. I?2229, ?????? 28).

59    ?? ?? ?????? 23 ??? ?????????????? ?????????? Laboratoires Fournier, ?? ??????????  
?????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? . ??????, ?? ?????????? ?????? ??? ??  
????????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???

? ?????? ??? ??????? ??? ?????? ?????????????? ????????, ? ?????? ?????? ?? ?????????????? ???  
?????????? ??? ????? ??? ?????? ??? ?????? ??? ?????????????? ????????, ??? ?????? ?????????????? ???  
?????????? ?????? ?????? ??? ?????? ??? ?????????????? ????????, ??? ?????? ?????????????? ???  
????????? ?????? ?????? ??? ?????? ??? ?????????????? ????????, ??? ?????? ?????????????? ???  
????????? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?????? 163, ?????????? 2, ??, ????????,  
??????, ??? ?????? ?????? ??? ?????????????? ??? ?????? ??? ?????????????? ??? ?????? ???  
??????.

60 ??? ??????? ??? ??? ?????? ???????????, ?????????????? ??? ?? ?????? 149, ???????????  
1, ?? ??????? ??? «? ?????????? ?????????? ??? ?????? ?????????? ????????, ??? ?????? ???????????,  
????????????? ?? ?????????? ?????? ?????? ?????? ???, ?? ?????? ???????????,  
????????????? ??? ?????????? ?????? ?????? ?????» , ??? ?? ?????? 149, ?????????? 2, ??  
?????? ??? «? ?????? ??? ?????????? ??? ?????? ?? ?????? [...] ?? ?????? ??? ???????????  
????????? ??? ??????????» .

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

62 To ?????????? ??? ?????????? ?? ??????? ??? ?????? ?????, ??? ?????? ???  
?????? 18 ?? . ???????????, ?? ??????????, ??? ?????????? ??? ?? ??????????????? ???  
?????? ? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??, ??? ?? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????, ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
??????, ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??  
??????, ?????????? ??? ?? ?????? ??? ?????? ??? ?????? 3, ?????????? 1, ??????? ??, ?? ??  
?? ?????? 149, ?????????? 2, ??????? ???????, ??, ???, ???, ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????????? (?? . ?????? ??? 23?? ?????? 2007, C-  
11/06 ?? C-12/06, Morgan ?? Bucher, ??? ?? ?????? ?????? ??????????? ??? ???????,  
?????? 26 ?? 27 ?? ?????? ?????? ?????????? ??????????).

63 ?????????? ??? ?????? ??? ?????? ??? ?????? ?????, ? ?????? ??? ?????? ?????????? ???  
?? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??? ??????  
Laboratoires Fournier, ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????  
????????????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????  
??? ?????????? ????, ??? ?? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ????, ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

66 ?????? ?? ? ?????? ???????????, ?? ????? 3, ?????? 26, ??? EStG ??? ??  
?????????? ?? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ???  
???? ?????????? ??? ?????, ??????, ?????, ?? ???????????, ??? ?????? ?????????? ???  
????????????? ???????????????, ?????????? ?????????????? ?? ?????????? ?? ?????????? ???  
????????????? ???, ???????, ?? ?????????? ?????? ?????????? ?????? ?????? ?????? ???  
????????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????????????? ?????? ??? ??????  
?????. ??? ???????, ?? ?????? ?????????? ?????????? ??, ??? ?????? ??? ?????? ???  
????, ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ???  
????????? ??? ? ?????????? ???, ???????, ?????, ??? ? ?????? ??? ?????????? ???  
????, ? ?????? ?????????????? ?? ?? ?????????? ?????????? ???, ?????????? ?? ??????  
????????? ???, ???????, ??? ?? ??? ?????? ?????? ?????? «?????????»  
????????????? ?? ?????????? ?????????? ??? ?????????? ??? ?? ?????? ??? ?? ?????? ???.

67 ??????, ?????????? ???, ?? ??? ?????? 28 ?? 21 ?? ??????????????  
????????? Bachmann ??? ?? 28?? ?????????? 1992, ?????????? ??? ???????, ??  
????????? ?????? ??? ? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ? ??????.

68 ?????, ??? ?????? ??????????, ??? ?? ?????????? ??? ?????????? ?????????????? ???  
????????? ??? ?????? ?? ?????????????? ??? ?????? ?????? ?????????? ?????? ???  
????? ?????????? ?????????? ??? ?????? ??? ?????? ??? 23?? ?????????? 2006, C-471/04,  
Keller Holding, ?????? 2006, ?. I-2107, ????? 40- ?? 29?? ?????? 2007, C?347/04, Rewe  
Zentralfinanz, ?????? 2007, ?. I?2647, ????? 62, ??? ?? 11?? ?????? 2007, C-443/06,  
Hollmann, ??? ?? ??? ?????? ?????????? ??? ???????, ??? 56).

69 ?????, ??? ?????????? ?????? ??????????, ??? ?????? ??? ?????????? ?????????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ???????, ???  
????? ?????????? ?? ?????? ?????? ?????????? ??? ?????????? ???.

70   ????? ?????????? ? ??????? ?????????????? ?? ?? ?????? 23 ??? ?????????? ???, ???  
????????? ??? ?????? ?????? ?????????????? ?????? ??? ? ?????????? ??? ??? ????? ??????????????  
????????????????? ??? ?? ?????????????? ??? ?????????? ??? ?????? ?????????????? ?????? ???  
??? ??? ?? ?????????????? ??? ?????????? ??? ?????????????? ?????? ?????????? ???  
????????????? ??? ?? ?????????? ??? ?????????? ?????? ?????????? . ? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? Bachmann.

71   ???????, ??? ?????? ?? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????????????? ???  
????????????? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???  
??? ?????????? ?????????? ??????.

72   ??? ?? ?????????? ??? ?????????? ??? ?? ?????? ?????????? ?????????? ???  
????????? ??? ?? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???  
????????? ??????.

73   ????? ????????, ??? ?????? ?????? ??? ?????? ?? ?????? ? ?????????? ??? ? ??????????  
??? ?????????? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??????????  
??? ??? ??? ?????????? ??? ??? ??? ?????? ??? ?????????? ??? ?????????? , ?? ??????????  
????????? ?????????? ?????????? , ?????????? ?????? ??? ?????? ?????? ??? ?????? ??????  
????????? ?????? ?????? , ?????????? ?????? ??? ?????? ?????? , ??? ??? ?? ?????? ??? ??  
????????? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ??  
????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ???  
????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

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

74   ??????? ?? ?????? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????  
????????? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? , ??? ???  
????? ??? ?????????? ?????????? , ?????????? ?????? , ?????????? , ? ?????????? ?????? ??????  
????? ??? ??? ??? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??????.

75   ??????? ?? ??? ?????? ??? ?????? Jundt, ??? ?????? ?? ?????????? ??? ??  
????????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???' ??' ??? ??  
?? ?????????? ?????? ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ??? ?????? ??? ??  
????????????? ??? ?????????? ?????? ??? ?????? 149 ?? . ?? ?????????? ??????  
????????????? ?? ?????? ?? ?????????? ??? ?????? ?????? ??? ?? ?? ?? ?????????? ??  
????? ??? ?????? ?????????? ?????? ??????.

76   ? ???????? ?????? ??? ?? ?????? 3, ?????? 26, ??? EStG ??? ?????? ?????? ??? ??  
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??????  
?? ?????? ??? ?? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ??? ?? 149 ?? ??  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ??? ??  
????? ??? ?????????? ??? ?????? ??????.

77   ????????? , ? ??????? ?????? ??? ?? ?????? 3, ?????? 26, ??? EStG ??? ?????? ???  
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? . ?????????? ???  
????????? ?????????? ?? ?????? ?? ?????? ?????? , ?????? , ??? ??????????  
????????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? , ?????? ?? ??? ???

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

78 ? ??????? ?????? ?? ?????? 128 ??? ??????? ?? ?????? ?? ??????????? ?????  
????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
Bundesfinanzhof ??? ? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
??? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
????? ??? «????? ?????? ??????». ??????????, ?? ?????? ?????? ?????? ?????? ?????? ?????  
??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? «? ?????? ?????? ?????? ?????? ?????? ?????  
????????? ??? ??????» ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
?????????, ??? ?????? ?????? ?? ?? ??????, ??? ?????? ?????? ??? ?? ?????? 149 ??.

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

79 ?? ?? ?????? ??????, ?? ?????? ?????????? ?????? ???' ?????? ?? ?? ?????? ?? ?? ?????? ??  
????? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ?????????? ?????? ?????? ?????????? ??????  
????????? ?? ?? ?????????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ??  
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

80 ??????? ?? ?? ?????? ??????????, ?? ?????? 3, ?????? 26, ??? EStG ?????? ?? ??????  
?? ??????? ?? ?????????? ??? ?????? ?????? ?? ?????? ?? ?????????? ??? ?????? ?????????? ???  
????????????? ??? ?????? ?????? ?????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ??????  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

81 ??????, ?????????? ???, ??????, ??? ?? ?????? 149, ?????????? 1, ?? ???????  
??? «? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????? ???, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????????????? ?? ?????? ???, ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????  
????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????  
?????????, ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????».

82 ??????? ? ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? 128 ??? ?????? ???, ??? ?????? ?????? ??? ?????? ?????? ?????? ???  
??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ??? ?? ??????  
19 ??? ?????????? ?????? Gravier ?????? ???, ??? ??? ?????? ???  
????????? ?????? ??? ?????? ?????? ???, ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ??? ?????? ?????? ???.

83 ??????, ??? ?????? ?????????? ? ??????, ?????????? ?????? ?????? ??? ?????? 3,  
????? 26, ??? EStG ??? ?????? ??? ?????? ??? ?????? ?? ?? ?????????? ??? ?????? ??????  
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????  
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???  
??? ?????? ?????? ??????.

84 ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
??? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????????? ???, ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???.

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

85 ?? ????? ??????????, ?????????? ?? ?????????????? ? ?? ?????????????? ?????????? ?????  
??? ?? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????????????? ?????, ??????  
????????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????? ??????.

86 ??????????, ?? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??? ??  
????????? ?????? ?? ?????????? ?????? ???, ?????? ?????, ??? ?????????? ???  
????????? ?????? ??????. ?? ?????????? ?????? ??? ?? ?????? ?????? ?????, ?????? ???  
????? ? ??? ?????? ?????? ??? ? ?????????? (??., ?????? ?????, ??????????????)  
????????? Schwarz ??? Gootjes-Schwarz, ?????? 69 ??? 70, ?????? ??? ?????? ???  
?????????, ?????? 85 ??? 86).

87 ??? ??????, ? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? ???  
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????????? ??????.

88 ??? ?????? ??? ?? ?????? 61 ??? 63 ??? ?????? ??? ?????? ??? ?? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????????? ??? ?????? ?????? ?????? ???' ??' ??? ?????? ??? ?????? ?? ??  
??????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

89 ??????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ??? ?? ?????? ??? ??  
????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

90 ??? ?????? ??? ? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ??  
??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.  
????????? ?????? ??? ?????? ??? ?????? ??? (????? ???) ??????????:

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

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

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

3) ?? ??????? ??? ?? ?????? ??? ?????? ?????? ?????? ?? ??? ?????? ?????????? ???  
????????? ??? ? ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????????? ???  
????? ?????????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ?  
??? ?????????? ??? ?????? ?????? ?????? ??????????.

(?????????)

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