Downloaded via the EU tax law app / web

??????? C-20/09

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

????

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

«???????? ??????? ?????? – ????????? ??? ????????? – ???????? ?????????? ??? ????????? – ????? 56 ?? – ????? 40 ??? ????????? ??? ??? ??? – ?????? ???????? ?????? – ??????? ?????????? ??????????? – ??????????? – ?????? ??? ??????????? – ?????? ??? ???????????»

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

1. *???????? ???? ?????????? – ??? ??? ???????? ??? ????????? ?????????? – ?????? – ???????????? ??? ??????????? ??? ???????? – ???????????? ????? – ?????????? ?????? ??? ?????*

(????? 226 ??)

2. *???????? ???? ?????????? – ??????? ??? ??????? ??? ?? ?????????? – ????????? ??? ?????? ?? ?????????? ????? – ????????? ???? ??? ?????? ??? ????????? ?? ??? ???????????? ????? ??????????*

(????? 226, ??. 2, ??)

3. *???????? ?????????? ??? ????????? – ??????????? – ?????????? ????????*

(????? 56 ??· ???????? ???, ????? 40)

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

(??. ??????? 17, 20)

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

(??. ??????? 31, 33-34, 42)

3. ?????? ????? ?? ????? ?????????, ??? ??????? ??????????? ?????????? ??????????? ????????????? ???????????? ????????? ??? ??? ??????????? ???? ???????, ??????? ?????????? ??????????? ??? ???? ??????? ???????? ?????? ??? ?????????? ???????????? ??? ????? ??? ?? ????, ?????????? ??? ??????????? ??? ?????? ??? ?? ????? 56 ?? ??? ??? ?? ????? 40 ??? ????????? ??? ??? ????????? ?????????? ???? (???).

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

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

(??. ??????? 60-62, 64-65, 70 ??? ??????.)

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

??? 7?? ???????? 2011 (*)

«???????? ??????? ?????? – ????????? ??? ????????? – ???????? ?????????? ??? ????????? – ????? 56 ?? – ????? 40 ??? ????????? ??? ??? ??? – ?????? ???????? ?????? – ??????? ?????????? ??????????? – ??????????? – ?????? ??? ???????????? – ?????? ??? ????????????»

???? ??????? C?20/09,

?? ??????????? ???????? ??? ?????? 226 ?? ???? ??????????, ? ????? ???????? ???? 15 ?????????? 2009,

????????? ????????, ?????????????? ??? ??? R. Lyal ??? ??? A. Caeiros, ?? ???? ????????? ??? ????????????,

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

????

??????????? ??????????, ???????????????? ??? ??? L. Inez Fernandes, ??? C. Guerra Santos ??? ??? J. Menezes Leitão,

?????,

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

?????????? ??? ???? J. N. Cunha Rodrigues, ??????? ????????, A. Arabadjiev, A. Rosas (????????), U. Lõhmus ??? P. Lindh, ????????,

??????? ???????????: P. Mengozzi

??????????: M. Ferreira, ????? ????????? ??????????,

??????? ????? ??? ??????? ?????????? ??? ??????? ??? ??’ ??????????? ?????????? ??? 11?? ????? 2010,

???? ?????? ??? ?????? ?????????? ??? ???????? ??? ????????? ??? ???? ?? ?????????? ??? 17?? ??????? 2010,

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

???????

1 ?? ??? ???????? ???, ? ???????? ??? ?????????? ?????????? ????? ??? ?? ?????????? ?? ?????????? ??? ? ?????????? ??????????, ??????? ????????, ??? ??????? ?????????? ???????????? ??? ??????? ?? ??? ???? 39-A/2005 ??? 29?? ??????? 2005 (*Diário da República,* ????? ?, ????. 145, ??? 29?? ??????? 2005), ??????? ?????????? ?????????? ??? ???? ??????? ???????? ?????? ??? ?????????? ??????????? ??? ?? ?????????? ???????, ?????? ??? ?????????? ??? ?????? ??? ?? ????? 56 ?? ??? ??? ?? ????? 40 ??? ????????? ??? ??? ?????? ?????????? ????, ??? 2?? ????? 1992 (?? 1994 L 1, ?. 3, ??? ????: ???????? ??? ??? ???).

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

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

2 ?? ????? 40 ??? ????????? ??? ??? ??? ????????? ?? ????????:

«??? ??????? ??? ????????? ??? ???????? ?????????, ??? ??????????? ?????????? ?????? ??? ???????????? ????? ???? ???????? ????????? ??? ??????? ?? ??????? ??? ????? ???????? ?? ?????? ????? ??? [?????????? ??????????] ? ??? [?????????? ????? ????????? ?????????? (????)] ???? ???????? ??????????? ??? ????????? ???? ????????? ? ???? ???????? ??? ????? ? ???? ???? ??? ??????????. ??? ????????? ??? ?????????? ?? ????????? ????????? ??? ??? ???????? ??? ???????? ??????.»

3 ?? ?? ???? ????????? XII, ??? ???????????? «???????? ?????????? ??? ?????????», ?????????? ???? ?????? 88/361/??? ??? ??????????, ??? 24?? ??????? 1988, ??? ?? ???? ?? ???????? ??? ?????? 67 ??? ???????? [????? ??? ?????????? ?? ?? ??????? ??? ??????????] (?? L 178, ?. 5).

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

4 ?? ?????????? ???????? ?????????? ???????????? ??????????? ????????? ???

??? ??????????? ?? ??????????? ?????? ???? 31 ?????????? 2004 («regime excepcional de regularização tributária de elementos patrimoniais que não se encontrem no território português em 31 de Dezembro de 2004», ??? ????: ????) ?????????? ?? ??? ???? 39-A/2005.

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

«?? ???? ??????????? ?? ??????????? ???????? ??? ??? ??????????? ?? ??????????? ?????? ???? 31 ?????????? 2004 ??????????? ?? ??????????, ?????????? ??????????, ??????? ????? ??? ???? ??????????????? ????????, ??????????????? ??? ???????????? ?????????? ???? ??? ????? ??????????? ?? ?????????? ???????? ??? ??? ???????? ??????????????? ??? ????? ????????? ????.»

6 ???? ?? ????? 2, ?????????? 1, ??? ????, ??? ?? ???? ????? ??????? ?? ????? ????????? ?? ?????? ??????? ??? ???????? ?? ??????????? ???????? ??? ???????????? ??? ????? 1.

7 ?? ????? 2, ?????????? 2, ??? ????, ???? ?? ?????????:

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

a) ?? ????????? ?? ?????? ??????????? ??????????? ??? ????????? ?? ????? 5,

b) ?? ?????????? ???? ??? ??????????? ?? ???????? ?????????? 5 % ??? ??? ????? ??? ??????????? ????????? ??? ??????????? ??? ?????????? ?????? ??? ?????????? 1.»

8 ?? ????? 5 ??? ???? ?????? ?? ????:

«1. ? ?????? ??????????? ??????????? ???? ????? ?????????? ?? ????? 2, ?????????? 2, ???????? a, ????????? ??????? ??? ?????????? ?? ??????? ??? ???????? ??????????? ??? ?????? ?? ??????????? ??? ??????? ??? ??????????? ??? ????????? ??? ??? ???????? ? ????????? ??? ??????????? ????????? ??? ??????????? ?? ?????.

2. ? ?????? ??????????? ??????????? ??????????? ?? ???????? ?? ??? 16 ?????????? 2005 ???? Banco de Portugal (??????? ??? ???????????) ? ?? ??????????? ???? ??????? ????? ???????????? ???? ??????????.

3. ? ???????? ??? ????? ??? ????????? ?? ????? 2, ?????????? 2, ???????? b, ??????????????? ????? ??????????? ??? ???????????? ??? ????? 2 [??? ???????? ??????], ????????? ?? ??? ??????? ??? ??????? ??? ?????? 2, ?????????? 2, ???????? a, ? ????? ???? ????????? ?????? ??? ??? ?? ???? ???????, ?? ?????? ???????????? ??? ??? ????? ????? ??? ??????? ??????????? ???????????.

4. ???? ??? ???????? ??? ??????????? ?????, ? ??????????? ?????????? ?????????? ????????? ???? ???????? ?????????? ??????? ??? ??????????? ??? ??????? ??? ??????? ??? ??? ?????????? ????????.

5. ????? ??? ????? ??? ????????? ? ????? ?????, ? ?????? ??????????? ??????????? ?? ????? ????????? ??? ?????? ?? ????????????? ?? ??????? ? ???????? ??????????? ????? ??? ??????? ??????????? ???????????, ???????? ? ??????????? ???????????, ?? ?? ????????????? ???????? ???????? ?? ??????????? ?? ???????? ??? ??????????? ???????????.

6. ???? ????????? ???? ??? ????? ? ??????? ??? ??????? ??? ? ???????? ??? ????? ??? ???????????????? ????????? ???? Banco de Protugal, ? ???????????? ??????? ?????? ??

?????????? ??? ?? ???? ?????? ????? ??? ????????? ??? ??????????? ???????? ???? Banco de Protugal ????? 10 ????????? ?????? ??? ??? ??????? ??? ???????.

7. ???? ??????????? ??? ?????????? 6, ? ???????????? ??????? ?? ?????? ?? ??????????? ?? ??????????? ???? ???? Banco de Portugal ????? 10 ????????? ?????? ??? ??? ?????????? ????????.»

9 ?? ????? 6 ??? ???? ????????? ?? ????:

«1. ?? ??? ? ???????? ??? ?? ??????????? ???????? ??? ????????? ??????????? ??? ??????? ??????????? ??????????? ????????? ??????? ??? ??????????? ????????, ? ??????????? ??? ?????? 3, ?????????? 2, ???????? b, ????????? ???? ?? ????? ??? ?? ????? ??? ??????????? ????? ?? ???? ???????.

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

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

4. ?? ?????? ??? ??????????? ???????? ??? ????????? ??? ???????? ??? ???????? ?? ????? ????? ?????? ?? ??????????? ???? ????????? ??? ????????? ??????????? ??? ???? ?????? ??? ??? ?????????? ???????? ??? ??????? ??????????? ??????????? ??? ??????????? ??? ??????????? ?????????? ????.

5. ? ?? ?????? ??? ????????? ?????? ??????? ??? ????????? ? ??????????? ?????????? ??????????? ??? ????????? ????????? ??? ???????? ?? ????? ?? ?? ???? ??? ?? ????????? ?? ??????????? ? ??????? ??????????? ??? ?????? 2, ?????????? 2, ???????? b, ????? ??? ???????? ???????????????? ????? ???????????? ???? 5 ??????????? ???????.»

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

10 ??????? ???????????, ? ???????? ????????, ???? 19 ?????????? 2005, ??????? ???????? ???? ??? ??????????? ?????????, ????????? ??? ?? ?? ???? ?????? ????? ?????? ??? ??????????? ??? ?????? ??? ?? ????? 56 ?? ??? ?? ????? 40 ??? ????????? ??? ??? ??? ??? ????? ??? ????????, ??? ??????? ??? ????, ??????????? ?????????? ???? ??????????? ??? ??????????? ????????? ??? ??????????? ?? ??????? ??? ??????????? ???????? ? ??? ??????????? ????????? ??? ??????????????? ?? ??????? ??? ??????????? ???????? ?? ???????? ????? ??? ?????????? ???????? ??? ???????? ??????????? ???????????? (??? ????: ??????? ????????).

11 ?? ??????? ??? 27?? ??????????? 2006, ? ??????????? ?????????? ???????? ??? ??????? ?? ??? ????????????? ?????? ?? ????? ????? ?? ???? ??? ????. ???? ?? ?? ???? ?????? _____, ????????? ??? ?????? ??? ?? ?????????? ??? ????, ??? ?? ?? ?????? ??? ???????? ??????????, ?????? ?? ???????? ??? ? ?????? ????????? ???????????, ??????? ? ????????? ??? ?????? ? ????????? ?? ???? ??????? ???????? ???? ?????? ?? ??????. ???? _____ ??? _____, ?? ?? ???? ?????? _____ ?????????? ??? ??? ?????? ?? ?????????? ??????????? ???? ?? ?????? ??? ?????? ??? ???, ?? ???? ??????????, ?? ??????? ???????? ????????????? ??? ?????? ??????? ??????????? ?????????????? ??? ?? ?????? ??? ??????, ?????????? ?? ??? ??? ?????? ??? ??????????? ??? ??? ???????????.

12 ? ???????? ??? ???????? ??? ??? ???????? ???? ??? ???? 11 _____ 2007 ???????? ???? ??????????? ?????????? ????????????? _____ ?? ??? _____ ??????????? ?? ?????????? ??? ????????????? ????????? ??????? ?? ?? ???? ??? ???? ??? ??????? ??? ?? ???? ?????? _____ ??? ???????? ??????? ?????????? ??????????? ???? _____ ??????? ???????? ?????? ???????? ??? ??????????? ????????. ? ???????? ?????? ??? ??????????? ?????????? ?? _____ ?? ???????? _____ ??????????? ?? ??????????? ???? ??? ?? ???? ????????????? _____ _____ ?????????? ??? _____ ??? ?? ???? ???.

13 ????????? ??? ? ??????????? ?????????? ???????? ???? ?? ???? ???????????? _____ ?????????? ???? ??????????? ???? ???, ? ???????? ????????? ?? ??????? ??? ??? _____ ????????.

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

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

14 ? ??????????? ?????????? ?????? ??? ? ???????? ??? ?????? ? ???????? _____ ?????????? ??? ??? ??????. ??????, ??????? ??????????? ?????? ??? ???????? ???????? ??? ??? ????????????? ?????? ??? ????????????, ??????????, ???? ??????? ??????? 10 ??? 12 ??? ???????? ?????????. ????????, ????????? ??? ?? ????, ??? ?? ?? ?????? ?? ??????? ????????, ?????? ?? ??????, ? ?? ???? ???????? ????????? ???????????.

??? ??? _____ ??? ??????????? ??? ????????? ??? ??????????? ?????? ??? ???????? ???????? ??? ??? ????????????? ??????

– ??????????? ??? ????????

15 ???? ??? ??????????? ??????????, ?? ???????????? ??? ????????? ??? ? ???????? ???????? ?????????? ???? ??????? ??????????? ??? ?????? ??? ??????????? ???????? ?? ???????? ??? ?? ???? ??????????? ????????, ???? ??????????? ?? ?? ??????? ???????? ??? 19?? ??????????, ???? ???? ?? ???? ??????? ???????? ?????? _____ ?????? _____ ??? ?????? ??? _____ ?????? _____ ??? ????????? ??? ??? ??? ??????????? _____ ?? ??? ???????????? _____ ??? 11?? _____ 2007, ???? ???? ?? ???? ??? ???????? ?????????? ?? 2005. ????????, ?? ??????????? ??? ?????????? ???? ??????????? ?? ??? ?? ???? ???????????? _____ ??? ????????? ?? ?? ??????????? ??? ???????? ????????.

16 ?????????, ? ???????? ?????? ??? ??? ???????????? ??????????? ?????? ??? ???????? ???????? ??? ??? ????????????? ?????? ???? _____ ?? ??????????? ??? ????????? ?????????. ?? ??? ???????????? _____, ? ???????? ??????? ???????????? ??? ????????? ??????? ??? ???????????? ??? ???????? ? ??????????? ?????????? ???? ???????? ??? ??????? ????????, _____ ?????? _____ ?? ?????????? ???’ ?????????? _____ ??? ????????? ??? ?? ?????? ???? ???? ?????????? ?? ?? ?? ???? ??????? ????????. ??

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

– ???????? ??? ???????????

17 ???? ????? ?????????, ? ?????? ??? ??? ??? ???????? ??? ????????? ??????????? ???????? ??? ?? ?????????? ??? ?????? ?????? ????? ? ??????????, ??????, ?? ??????????? ???? ??? ??????????? ??? ??? ????????? ??? ?? ?????? ??? ?????? ???, ????????, ?? ???????? ????????? ???? ?????????? ??? ??????????? ???? ??? ????????? ??? ?????????? ? ???????? (??., ?????? ?????, ????????? ??? 10?? ????? 2001, C-152/98, ???????? ???? ???? ?????, ??????? 2001, ?. ??3463, ????? 23, ??? 5?? ????????? 2002, C-476/98, ???????? ???? ????????, ??????? 2002, ?. I?9855, ????? 46, ??? ??? 8?? ???????? 2008, C-337/05, ???????? ???? ???????, ??????? 2008, ?. ?-2173, ????? 19).

18 ?? ???????? ??? ??????????? ????? ??????? ??????? ??????? ??? ??????? ? ???? ??? ???? ??? ??? ????????? ??? ??????????? ??? ??????? ??????? ??????, ???? ??? ??? ?? ??????????? ??? ? ?????????? ??? ?? ??????? ??????????? ??????? ??? ??????????? ?? ???? ?? ??????????? ??? ????? ??????????? ??????? (??., ?????? ?????, ?????????????? ??????? ???????? ???? ????????, ????? 46, ??? ??????? ??? 10?? ???????? 2008, C-442/06, ???????? ???? ???????, ??????? 2008, ?. ?-2413, ????? 22).

19 ?? ????? ????????? ??? ?? ??????? ???????? ???? ?? ?????, ??????, ?? ??????????? ?? ??????????? ??? ???????? ??? ?? ???????? ??? ?????? ????? ??? ???????? ?? ???????? ??? ??????????? ??? ?? ???????? ???????? ??? ??? ??????????? ??? ?????? ??? ???, ????????, ?? ??? ????? ?? ?????????? ?? ??????????? ???? ?? ?????????? ????????? ??? ????????? (??., ?????? ?????, ?????????????? ????????? ???????? ???? ????????, ????? 47, ??? ??? 10?? ???????? 2008, ???????? ???? ???????, ????? 22).

20 ???????????? ?????? ???, ???????? ? ???????????? ????? ?????? ??? ?? ??????? ?? ?????? ????????? ??? ?????????? ???? ?????? ??? ???????? ??? ???????? ?? ?????????? ??? ????????? ??? ?? ?????? ????? ?????? ?????? ??? ??? ??????????? ??? ?????? ??? ?? ???????, ?? ??????? ???????? ??? ?????? ?? ????????? ?? ???? ????????? ????? ????????, ???? ??? ????? ?? ??? ????????? ?????? ?? ???????? ???? ???? ??? ????? ??????? ???????? ??? ????????. ????????, ?????? ??? ????????? ??? ???????? ?? ??????? ??????????, ?? ??? ???????????? ?????, ??? ????????? ??? ????????? ???? ?????? ????? ??? ??????? ???????? (??., ?????? ?????, ????????? ??? 31?? ?????????? 1984, 74/82, ???????? ???? ????????, ??????? 1984, ?. 317, ????? 20, ??? 28?? ??????? 1985, 274/83, ???????? ???? ???????, ??????? 1985, ?. 1077, ????? 21, ??? ??? 6?? ????????? 2003, C?358/01, ???????? ???? ????????, ??????? 2003, ?. I?13145, ????? 29).

21 ?? ??????????, ?? ??????? ???????? ????????? ?????? ???? ??????????? ?????????? ?? ??????????? ?? ???? ??? ????????? ??? ??? ???????? ? ???????? ?????????? ??? ?? ???? ?????? ????? ?? ?????????? ?? ??????????? ??? ????? ???. ???????? ???, ?? ?? ??????? ????????, ? ???????? ????????? ??? ??????? ??????????? ??? ?????? ???????? ?????? ??? ??????????? ???????? ?? ????? ?? ?? ????? ??????????? ???????? ??? ???????????? ??? ????, ???, ?? ??? ???????????? ?????, ?? ?? ???? ??????? ?????? ??????????? ???? ??????? ??? ??????????? ???????? ???? ?? ???? ??????? ???????? ?????? ???????? ????? ?????? ????? ??? ?????? ??? ????? ?????? ????? ??? ????????? ??? ??? ???. ????????, ???? ????????? ??? ? ??????? ??????????? ?? ?? ?????? 21 ??? ????????? ???, ??? ?????? ?? ??????????? ??? ?? ?? ???? ??????????? ???????? ????????? ?????? ?????????? ??? ?????? ??? ?????? ???????? ?????? ??????????? ??? ?????, ??? ????? ??????????? ??????????????????.

22 ????????, ? ???????? ????? ??????????, ?? ??? ????????????? ?????, ??? ????????? ??? ???? ??????? ?? ?? ??????? ????????. ?????????? ?????, ?? ?? ???? ??????? ??????? ?????????? ?? ?????????? ??? ???????? ??? ?????????? ?????????? ??? ?????? ???????? ?????? ??? ??????????? ???????? ?? ????? ?? ???? ??????? ???????? ?????? ??? ???????? ???? ????? ???? ??? ?????? ??? ???? ????? ???? ??? ????????? ??? ??? ???, ????? ?? ?? ????????? (??., ???????, ??????? ??? 9?? ????????? 1999, C?365/97, ???????? ???? ???????, ??????? 1999, ?. I?7773, ????? 25, ???, ???’ ????????, ??????? ??? 18?? ????? 2006, C-221/04, ???????? ???? ????????, ??????? 2006, ?. ?-4515, ????? 33).

23 ???? ????????, ?????? ?? ?????????? ? ????? ?????????? ??? ????????? ??? ?????????? ?????? ??? ???????? ???????? ??? ??? ????????????? ?????? ??? ? ?????? ?????????? ??? ??? ?????????? ??????????.

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

– ??????????? ??? ????????

24 ? ?????????? ?????????? ????????? ??? ? ???????? ????? ?????????? ???? ????????? ???????????. ?? ???? ?????????? ??? ???????? ??????? ????????, ????? ?? ? ???????? ?????????? ????? ??????????? ???????? ?? ?????? ????? ? ?????? ??? ????? ??????????, ???? ?? ?????????? ???? ??????????????? ?? ???????????? ????????? ?? ?????????? ???? ?????????.

25 ????, ? ???????? ???? ?????????? ??? ?????? 226 ?? ????? ?????????? ???? ? ???????? ??? ?????????? ??? ????????? ??? ?? ?????? ??? ?????? ???? ?????? ???? ?? ???? ??? ?????????? ??? ?????? ? ???????????? ?????. ????? ?????? ?? ??????????, ????????? ??? ???? ?? ????? ??? 2005 ??? ?????? ????? ?????????? ????????? ??? ???????? ??????????. ???????????, ??? ?? ????????? ?? ???????? ??? ?? ???? ?????????? ?????????? ?????????? ???? ? ???????? ??? ?????????? ????? ??????? ?? ?? ??????????? ??? ?????????? ????????, ?????? ???, ???? ?? ????? 5, ?????????? 2 ??? 3, ??? ????, ?????? ?? ????? ?? ???????? ????? ???? ????????? ?????? ??? ??? ?????????? ???????? ??? ??????? ?????????? ???????????, ? ????? ?????? ?? ?????????????? ?? ???????? ???? 16 ?????????? 2005.

26 ?? ??????????, ??? ??????????? ?????? ??????? ????????. ???????????, ? ???????? ???????? ???? ?????????? ? ?????????? ????? ???????? ????????? ???????. ?? ?????????????????? ?????????? ??? ???????? ??? ????? ??? ??????? ?????? ?? ????????? ?? ???????? ??? ??????????? ??????????? ????? ???? ?? ??????? ?????? ??? ?????????????????? ? ???????? ??? ????? ??? ????????? ??? ??? ???????? ??? ?????????? ??? ????????? ?? ????. ????? ????? ??? ? ??? ??????? ??????? ???????? ?????? ??? ??? ??????? ??? ????????? ?? ? ???????? ???????? ????????? ??? ?? ??????????? ??? ???? ?? ???? ??? ?????????? ??? ??????? ?? ??? ????????????? ?????.

27 ???? ??????? ??? ?????? ???, ? ?????????? ?????????? ??????????, ?????? ?????, ?? ????? 73 ??? ????????? ??? 4?? ????? 2006, C?508/03, ???????? ???? ???????? ????????? (??????? 2006, ?. I-3969), ???? ??? ????? ???????? ?? ??? ????? ???????? ? ????????? ?????????? ? ?????, ???? ??? ?????? ??? ?????????? ??? ??????? ?? ??? ???????????? ?????, ??? ????????? ????? ????? ?????????? ?? ?????????? ???????????.

28 ?????????, ? ???????? ?????? ??? ? ??? ????? ???????? ????? ?????????.

29 ? ???????? ?????? ??? ? ??????????? ?????????? ??? ?????? ??????????? ?? ???????? ???????? ???? ??????????? ??? ???????????. ?? ???? ?????? ?? ?????? ????? ?? ???????? ????, ??????? ??? ?? ??????, ???? ?????????. ? ?????????? ?????????? ?????? ?? ?????????? ??????????? ?? ??????????? ?? ?????? ????? ?????? ??? ??????????? ??? ??????, ????? ??? ?? ? ??????? ????????? ???? ?????, ?????? ??????????? ?? ????????? ???????? ?? ?????????? ? ?? ???? ??????????. ???? ??? ????????, ?????? ???????? ?????? ?? ????????? ?????????? ???? ?? ??????????? ?????????? ?????? ????? ?????? ?????????. ?? ??????? ??? ??? ????? ?? ?????????? ?? ?????? ??? ????????????? ??? ??????????? ??????????? ??????????? ??????????? ?? ??????????? ?????????? ????????? ??? ?????? ??? ????? ??????????? ? ?????????? ????. ?? ?????????? ????? ??????? ?????? ???????????, ????? ??? ???? ??? ??????????????.

30 ???? ??? ??’ ??????????? ????????, ? ???????? ???????? ??? ? ??????? ?????????? ??? ???????????? ??? ???????? ?????????? ???????????? ??? ??? ???????? ????????, ???? ??? ????????? ??? ????? ?? ??????? ?????? ???????? ?????? ??? ??????????? ???????? ?? ?????? ????????? ?? ?????? ????????? ??? ??????????? ?????????? ??????????? ??? ???? ??????? ?? ???? ?? ??????????? ???? ?????? ???? ???? ?? ???? ??????? ??? ??????? ???????? ??????????? ????? ???? ??? ??? ??????? ??? ??????? ??????????? ???????????, ??????? ?? ?? ????? 6, ?????????? 4, ??? ????.

– ???????? ??? ???????????

31 ????????, ???????????? ???, ???? ????? ????????, ? ?????? ?????????? ?????? ?? ????????? ?? ??????? ??? ????????? ??? ??????? ?????? ???? ?? ???? ??? ?????????? ??? ??????? ?? ??? ???????????? ????? (??., ?????? ?????, ????????? ??? 27?? ????????? 2005, C?525/03, ???????? ???? ???????, ??????? 2005, ?. I-9405, ????? 14, ??? ??? 6?? ?????????? 2007, C-456/05, ???????? ???? ????????, ??????? 2007, ?. I-10517, ????? 15).

32 ?? ??????????, ? ????????? ??? ??????? ???? ??????????? ?????????? ?? ??? ???????????? ????? ??? ?? ?????????? ??? ???? ?? ????? ???? ????? ???? ?? ???????? ??? ??????? ??? 2007.

33 ?? ?? ??????, ?????? ?? ????????? ???? ?????, ???? ??? ????? ??????, ?? ??????? ???????? ???????????? ?? ??????? ??????????? (??., ???????, ????????????? ??????? ??? 27?? ????????? 2005, ???????? ???? ???????, ????? 16, ????????????? ??????? ??? 18?? ????? 2006, ???????? ???? ????????, ????? 25, ??? ????????????? ??????? ??? 6?? ?????????? 2007, ???????? ???? ????????, ????? 16).

34 ???????, ??? ?? ???? ????????? ??? ?? ???????? ??? ?????????? ????? ????????? ??? ??? ?????????? ??? ????????? ??? ??????????? ??? ?? ?????????? ??????????? ?????, ?????? ??? ?????? ?? ????? ????? ???? ????????? ?????? ??? ??? ??????? ??? ??????? ??????????? ???????????. ? ??????? ??? ??????? ????? ?????? ?? ??????????????, ???? ?? ????????? ??? ????? 5, ?????????? 2, ??? ????, ???? 16 ?????????? 2005 ?? ????????.

35 ????????, ???????????? ??? ?? ?????? ???????? ?????? ???????? ??? ??????????? ???????? ???? ??????? ???????? ????????????? ??? ??????????? ?? ?????? ??? ???????? ??????????? ???????????, ??????, ???? ?? ????? 6, ?????????? 4 ??? 5, ??? ????, ?? ??????????? ???? ?????? ??? ?????????? ??? ??????? ????????

?????????? ????? ???? ??? ??? ??????? ??? ??????? ??????????? ????????????, ??????????? ??? ??????????? ?????????? ????, ????? ?? ?? ???? ????????????? ??????? ?? ?????????? ?? ??????? ?????? ??? ????? ??? ???????????? ???? ???????? ??? ??????? ?????????? ???????????? ??? ??? ????? ??? ????? ????????? ????? ??? ???????? ??????????, ????? ??????????????? ????? ???????????? ???? 5 ??????????? ???????.

36 ????????, ???? ????????? ??? ? ??????? ??????????? ?? ?? ?????? 49 ??? ????????? ???, ?? ?????? ??? ??? ??????? ??????????? ??? ???? ?????? ?? ??????? ?????? ???? ???? ???? ??? ????????? ??? ????? ???? ??? ??? ??????? ??? ??????? ??????????? ???????????, ???? ?????? ??? ?????? ??? ????? ??????? ??? 2008, ?? ????????, ??? ??? 16?? ?????????? 2008, ?? ????????.

37 ??????????? ?????? ??? ?? ????? 6, ?????????? 5, ??? ???? ??????? ??? ?? ???? ?????? ????? ?? ?????????? ?? ?????????, ????? ??? ???????? ????????? ??? ????, ??? ?????? ?????????? ??? 5 %, ????? ??????????????? ?????, ????? ?????????????? ??? ??????????? ???? ??????? ???????? ?????? ???????? ??? ??????????? ????????, ? ?????? ??? ?????? ???? ???????????? ??? ???????? ??? ??????? ?????????? ??? 2,5 %, ???? ??? ????? ??? ????? ???? ??? ??????, ?????????? 4, ??? ????. ????????, ????? ??? 16 ?????????? 2008, ? ??????????? ?????????? ???? ??? ???????? ?? ???????????? ??????????? ???? ?????????????? ??? ??????????? ???? ??????? ???????? ?????? ???????? ??? ??????????? ???????? ?? ????? ?? ???????? ??? ??????????? ???? ?? ???? ??????? ???? ????????? ????. ???? ????????, ???????????? ??? ? ???????? ???? ???????????? ?? ????????? ???? ??? ????? ?????? ??? ?????????? ??? ???? ?????? ??? ?? ?????????? ???? ??? ???????????? _____.

38 ??? ?? ??????? ????????? ??? ?? ??????? ???????? ???????????? ?? ??????? ?? ??????????? ??? ???? ?? ???? ??? ?????????? ??? ??????? ?? ??? ???????????? _____.

39 ???? ??? ??’ ??????????? ????????, ? ??????????? ?????????? ?????????, ???’ ??????, ??? ? ???????? ??? ??? ????????? ??? ??????? ????????? ??????????? ??? ?????? ???????? ?????? ???????? ??? ??????????? ???????? ??? ??????? _____ ????, ? _____ ??????? ???? ???????? ??? ???????? ?????????? ???????????, ???? _____ ??? ??? _____ ?? ???????? ??? ??????? ??????????? _____ ???????? ?????? ??? ???????? ???? _____ ???? ??? ?????? ? _____ ???? ??? ????????? ??? ??? ???. ???? ?? _____ ?????? _____ ????, ? ??????? ????????? ??? ??????? ??????????, ???? _____ ??? ???? ?????????????? ?????????????? _____.

40 ???????????? ?????? ??? ???? ? ?????????????????? ??? ??????????? ??????????? ??? _____ ????????? ??? ?? ?????????? ?? ?? ??????? ???????? ???? ?????????? ? ??? ??? ?? ??????????? ??? ???? ?? ???? ??? ?????????? ??? ??????? ?? ??? ???????????? _____.

41 ????????, ?????? ?? ?????????? ??? ? ???????? ???? ?? ???????? ?? ??????? ???????????? ??? ???? ?? ?????? ???????? ??? ??? ????????, ??? ?? ????? ????, ??? ??????? ??? ?????? ??? ?? ?????????? ????? ?????????? ??? ?????????? ??? ????????? ??? ?? ?????? ????, ?? ????? ??? ????? ???? (??. ????????? ??? 1?? ?????????? 2001, C-333/99, ???????? ???? ???????, ??????? 2001, ?. I-1025, ????? 23, ??? ??? 2?? ??????? 2005, C-394/02, ???????? ???? ???????, ??????? 2005, ?. I-4713, ????? 15). ?? ??????????, ? ???????? ????? ???????? ?? ??????? ??? ?? ?????????? ?? ?????????? ??? ?????? ??? ????????? ?????????? ??? ?? ??????? ??? ?????????? ????????? ?? ?????? ??? ???????? ???? ????? ?? ??? ??????????, ???? ?????????? ?? ?????? ????? ????, ?? ?????????? ???????? ?????????? ???? ??????????? ??? ????????? ?? ????????????? ??????????.

42 ??????? ??? ??????? ??? ????????????, ??? ????? ?? ?????????? ?? ????????? ?? ?????????? ??? ??? ????????????? ??? ????????? ??? ?? ???????????????? ?????????? ??? ???????? ??? ??? ??????? ??????? ?? ?????? ??? ???????? ?????????? ??????????? ?? ????? ?? ?????? ??? ????? ?????????? ? ?????????? ???? ???????, ?? ??????, ??????? ?????????? ??? ???????? ??????????, ???????????? ??? ?? ?? ???? ???????? ???????????? ?? ??????? ??????????? ???? ??? ????? ??? ????? ???????? ??? ??? ???????? ??? ?????????? ??? ?????????, ????? ?????? ?? ?????????? ? ????? ??? ????????? ??? ??????? ??????????? ??? ????????? ?????.

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

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

43 ? ???????? ????????? ???? ?????????? ?????????? ??? ?????? ?? ????? 56 ?? ??? ?? ????? 40 ??? ????????? ??? ??? ??? ??????? ?????????, ??? ??????? ??? ????, ??????? ?????????? ??? ?????? ???????? ?????? ???????? ??? ??????????? ????????.

44 ? ???????? ?????????? ??? ?? ????? 2 ??? 6 ??? ???? ?????????? ??? ? ?????????? ??? 5 %, ??? ?????????? ???? ???? ??? ???????????????? ??? ?????? ?????????? ??????????? ??????????? ????????, ????????? ??? 2,5 % ???? ????? ???? ?????????? ???????? ?????????? ?? ??????? ??? ??????????? ???????? ???? ?? ???? ?????????? ????????, ?????? ? ???? ???? ???? ???????????? ?? ???????? ??????? ???? ??? ?????????? ???????? ??? ?? ???? ????????.

45 ? ????????, ???????? ??? ?????????? ?? ??????? ??? ?? ?????????? ??? ?? ????? ?????? ???????? ?????? ???????? ?? ????????? ???????? ???????????, ????????, ?????? ??? ? ?????????? ?????????? ?????????? ??? ?????????? ???? ?? ?????????? ???????? ??? ????????????? ??? ?????????? ?? ??????? ??? ??????????? ???????? ???????? ?????????? ??? ????????? ?????????? ??? ????????? ???????????? ??? ?? ????? 56 ??, ??? ????? ??? ?? ????????????? ?? ?????? ?? ????????? ?? ????????? ?????? ??? ??? ???????? ??? ???? ????????????? ??? ?? ?? ????????? ?? ???????????? ?????????? ???? ???????? ??? ???? ????? ???? ??? ?????? ??? ??????????? ????????. ???? ??? ????????, ??? ?????????? ???? ??????? ??? 21?? ????????? 2002, C?436/00, X ??? Y (??????? 2002, ?. I?10829, ????? 70), ?????? ?????????? ??????? ??? ??????? ?? ????????? ???? ?????????????? ??? ?? ?? ????????????? ?????????? ?? ???? ????? ???? ??????? ?????????? ??? ????????? ?????????? ??? ????????? ??? ??? ?????? ??? ?????? 56 ??. ?? ??????? ???? ?????? ?????? ??? ? ?????????? ????? ??? ?????? ?? ???????????? ????? ??? ?????? 58, ?????????? 1, ??.

46 ???? ??????? ??? ?????? ???, ? ???????? ?????????? ??? ??????? ??? 6?? ???????

2000, C?35/98, Verkooijen (??????? 2000, ?. I?4071, ??????? 43 ??? 44). ??? ????????? ?????????????? ?????????????? ????? ??? ??? ???????? ??? ??????????? ??????????? ???????????, ??? ????? ??? ???? ?? ?????????????? ?????????????? ?????????? ?? ??????????? ????, ?????????????? ??? ?? ??????? ???? ?? ???????????? ?? ?????????? ???? ?????????.

47 ?? ?? ???????? ??? ??????????, ? ???????? ????????? ??? ? ?????? 2003/48/?? ??? ??????????, ??? 3?? ??????? 2003, ??? ?? ?????????? ??? ??? ????? ????? ??????????? ??? ????????????? (?? L 157, ?. 38), ??? ?????? ?? ????????????? ??? ??????? ??????????? ??? ????????????? ????? ??????? ??? ??????? ?? ??????????? ???????.

48 ? ??????????? ?????????? ?????? ??? ?? ??????? ???????? ?????????????? ??? ??? ????? ??????? ??????????? ??? ????????, ??? ? ?????? ?????????? ???? ?????? ??? ??????????? ??? ??? ???????????. ??? ??????? ????, ?? ?? ???? ?????? ????? ????????, ???? ??????? ??? ????????????? ???, ?? ????? 58, ?????????? 1, ???????? ??, ??, ?????????????? ?????????? ??? ?? ??????? ???????? ?????????? ?????? ??? ?????????? ??? ?????????? 3 ??? ?? ???? ??????, ??? ?????????? ???????? ???? ????? ??? ??????????? ????? ??????? ???????????, ??????????? ??? ??????? ??? 15?? ??????? 2004, C?315/02, Lenz (??????? 2004, ?. I?7063, ????? 27).

49 ? ??????????? ?????????? ??????????? ??? ?? ???? ?????????? ?????? ??? ??????????? ??????????? ??????????? ???????? ??? ????? ???????? ??? ??? ??????????? ????? ??? ???????????. ??? ??????? ????, ? ???????? ????? ?????????????? ?? ?????????? 2,5 % ? 5 % ?????????? ???? ????? «????? ???????????» ??? ??????????? ??????????? ??? ????????????? ????????. ?? ?? ??????, ? ???????? ???? ?????????? ??? ????? ??????????????? ??????????? ??? ???????? ?????? ??? ???????? ??? ??????????? ??????????? ?????? ??? ??????????? ???????? ???? ????? ?? ??????????? ???????? ??? ???????????? ??? ??????.

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

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

52 ????????, ?? ??????? ???????? ????? ??????? ?? ?? ?????? ??? ?????? ??? ??????? ???? ??? ??????????? ????? ??? ????? ??? ??????????? ?? ??? ????? ?????????????? ???????? ?????? ??? ?? ????? ???????? ??? ???????? ????????????? ??? ??????.

53 ? ??????????? ?????????? ?????????? ?????? ???? ?????? 2003/48. ???????? ??? ? ?????? ???? ??????? ????? ??? ?????? ?? ???????????? ??? ?? ??????????? ???????? ??? ?????????? ??? ?? ???????, ??????? ?? ???? ?????? ?????? ?????? ?? ?????????, ??? ??????? ??? ???????? ??? ????, ??????? ??????????? ??? ?????? ???????? ??? ??????????? ????????.

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

– ??? ??? ???????? ??????????? ??? ????????? ??????????? ??? ?????????

54 ????????????? ??? ????? ??????????? ??? ?????? ????? ??? ????? ????? ?? ??????????? ???? ????????? ??? ??? ?? ?? ????????? ?????? ? ?? ?????????? ?? ?????????? ?? ???? ????? ???? ????????? ??????????? ??? ????????? ??????????? ??? ????????, ??? ??? ?????? ??? ?????? 56 ?? (??., ???????, ????????? ??? 14?? ????????? 1995, C?484/93, Svensson ??? Gustavsson, ??????? 1995, ?. I-3955, ????? 10, ??? 16?? ??????? 1999, C?222/97, Trummer ??? Mayer, ??????? 1999, ?. I-1661, ????? 26, ????? ??? ??? 14?? ????????? 1999, C?439/97, Sandoz, ??????? 1999, ?. I-7041, ????? 19).

55 ?? ??????????, ??? ????????????? ??? ?? ????????????? ??? ???????? ??????? ???????? ?????? ???????? ??? ??????????? ???????? ????????? ?? ?????? ???????? ??????????? ???????????, ????????????? ??? ????? 6, ?????????? 1, ??? ????, ?? ????? ?? ???? ?????????????? ??? ???????? ??????? ???????? ?????? ???????? ????? ?????? ?????. ???????????, ??? ?? ?????????? ??????? ?? ?????????? ???? ??? ???????????? ???? ???????? ?????????? 5 % ??? ??? ????? ??? ??????????? ????????? ??? ?????????????? ??? ?????? ???? ??????????? ???????????, ?? ????????????? ??? ????? ????????? ?? ??????? ???????? ?????? ???????? ??? ??????????? ???????? ????????? ???? ?? ???????? ?????????? 2,5 % ??? ?? ????? ??? ??????????? ???? ????????? ??? ????????? ?? ???????? ???????. ????????, ??????? ?? ?? ????? 6, ?????????? 2, ??? ????, ? ?? ???? ????????? ??????????? ??????????? ?????? ?? ??????????? ???? ??????? ??????????? ???????? ??? ??? ??? ??? ? ???? ??? ???? ???????????? ?? ??????? ??? ??????????? ???????? ???? ??? ????? ???????? ??? ??????? ??????????? ???????????.

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

57 ?? _____ ????????? ??? ?? ??????? ???????? ??????? ?????????? ??? ????????? ??????????? ??? ????????? ??? _____ ????????????, ????????, ?? _____ 56, ?????????? 1, ??.

– ??? ??? _____ ??? ??????????? ??? ?????????? ??? ????????? ??????????? ??? ?????????

58 ?????? ?? ????????? ?? ? ??????????? ??????????? ??? ????????? ??????????? ??? ????????? ?????? ?? ???????????? ???????????? ??? ?????? ?????????? ??? ??????????? ?? ?????? ??? ??????.

59 ???? ?????????????? ???? ?????? ?? ??????????, ? ???????? ?????????? ??? ????????? ?????? ?? ??????????? _____ ?? ?????????????? ??? ???? ??? ???? ?????? ??? ???????????? ??? _____ 58 ?? ? ??? ??????????? ?????? ??????? ??????????? ???? ??? ?????? ??? ?????????? ??? ??????????? (??., ???????, ????????? ??? 4?? ??????? 2002, C?367/98, ???????? ???? ??????????, ??????? 2002, ?. I?4731, _____ 49, ??? ??? 14?? ??????????? 2008, C?274/06, ???????? ???? ????????, _____ 35).

60 ??? ???????????? ??? ?? ?????? ??? ??????????? ???? ?????? ??? ???????????

??? ??? ??????????? ??? ???? ??????? ??????????? ? ??????????? ?????????? ??????? ?? ?????????????? ?????????? ??? ????????? ??????????? ??? ????????? (??., ???????, ???? ????? ??? ?????? ??? ???????????, ??????? ??? 26?? ??????????? 2000, C?478/98, ???????? ???? ???????, ??????? 2000, ?. I?7587, ????? 39, ???, ???? ????? ??? ?????? ??? ???????????, ??????? ??? 19?? ????????? 2009, C?540/07, ???????? ???? ???????, ??????? 2009, ?. I?10983, ????? 55).

61 ?????????, ? ??????????? ??? ????????? ??????????? ??? ????????? ?????? ?????? ?? ????? ????????? ??? ?? ?????????? ??? ????????? ??? ?????? ????? ??? ?? ??? ?????????? ?? ????? ??? ????? ???????? ??? ??? ???????? ???? (??., ???????, ?????? ?????, ?????????????? ??????? ??? 19?? ????????? 2009, ???????? ???? ???????, ????? 57).

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

63 ???????????, ????????????? ??? ?? ??????? ???????? ????????, ??? ??????? ??? ?? ???? ??????????? ???????????, ??? ???????? ??????????? ??????????? ??????????? ???????? ??? ?? ?? ????????? ??????????? ???????? ??????????? ??????? ???????? ?????? ???????? ??? ??????????? ???????? ? ??????? ???????? ?????? ???????? ????? ?????? ?????, ??? ?? ?????? ??????? ??? ???? ??? ????? ???????? ????? ?????????????? ??? ??????????? ?? ????????????? ?? ?????????? ???? ????????? ??????????? ??????????? ??? ??????? ??????????? ??? ???????????? ?????????.

64 ???? ????? ?? ?????????? ??? ??????????? ??????????? ??? ? ??????? ??? ??????????? ??????????? ?????????????? ??? ?? ??????? ??? ? ???????? ??? ????? ??? ???????????? ???? ?????????? ???? ??????? ?????????????? ?????????? ? ????? ???????, ???' ??????, ?? ????? ?????????? ??? ??? ?????????????? ?????????? ??? ??????? ??????? ???????? ????? ?????? ?????, ????? ?????????? ???? ?????, ???? ??????????? ??? ? ??????? ??????????? ?? ?? ?????? 89 ??? ????????? ???, ?? ?????????? ????????????? ???? ???????????? ??????????? ??? ??? ???????? ?????????? ??? ????????? ?????? ?? ??? ???????? ??? ?????????? ?????? ??????????? ??????, ???? ??? ?????? ??? ?????????? ???? ??????????? ??? ???????? ??????????? ?????? ??? ?? ?????? ?????? ?????.

65 ???????, ????? ? ???????? ???, ???? ????? ????????, ?????? ?????? ??????????? ?????? ??? ?????? ?? ??????????? ?????????? ??????????? ?????????? ?????????????? ??? ?? ??????? (??., ???????, ??????? ??? 28?? ???????? 1998, C-120/95, Decker, ??????? 1998, ?. I?1831, ????? 39· ?????????????? ??????? Verkooijen, ????? 48, ??? ??????? ??? 8?? ??????? 2010, C?171/08, ???????? ???? ??????????, ??? ??? ???? ????? ??????????? ??? ???????, ????? 71).

66 ???? ????? ?? ?????????? ??? ??????????? ??????????? ??? ? ?????? 2003/48 ?????? ?? ???????????? ??????????? ??????????? ?????? ??????????? ?????????? ??? ?????????? ??? ?? ??????? ??? ???????? ?????????? ??? ?????????? ??? ???????, ???????????? ???, ????? ??? ?? ???????? ??? ? ?? ???? ?????? ???????? ??? ???????? ??????? ?????????? ??????????? ???????????, ???????? ????? ??? ??????? ?? ???????????? ??????????? ??????????? ?????? ?????? ??? ????? ??????, ????, ?? ??????????, ?????? ???????? ?????? ???????? ??? ??????????? ????????, ??????, ???

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

67 ????????, ? ??????????? ??? ????????? ??????????? ??? ????????? ??? ??????????? ?? ??????? ???????? ??? ?????? ?? ???????????? ??? ???? ?????? ??? ??????????? ? ??????????? ??????????.

68 ???? ?? ????? ??? ?? ????????? ??? ?????? 40 ??? ????????? ??? ??? ??? ????? ?? ???? ?????? ??????????? ?? ??? ???' ?????? ?????????? ????????? ??? ?????? 56 ?? (??. ????????? ??? 11?? ??????? 2009, C-521/07, ???????? ???? ???? ?????, ??????? 2009, ?. ?-4873, ????? 33, ??? ??? 6?? ????????? 2009, C?562/07, ???????? ???? ????????, ??????? 2009, ?. I?9553, ????? 67), ???? ?? ??????????? ??????????? ???????, ??? ??????????? ???? ????? ??? ??? ????? ????????, ?? ???????? mutatis mutandis ??? ?? ???? ?? ?? ???? ????? 40.

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

70 ???? ????????, ???????????? ??? ? ??????????? ??????????, ??????? ????????, ??? ??????? ??? ???? ??? ??????? ?? ??? ???? 39-A/2005, ??????? ?????????? ??????????? ??? ???? ??????? ???????? ?????? ??? ?????????? ??????????? ??? ?? ??????????? ???????, ?????? ??? ??????????? ??? ?????? ??? ?? ????? 56 ?? ??? ??? ?? ????? 40 ??? ????????? ??? ??? ???.

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

71 ??????? ?? ?? ????? 69, ?????????? 2, ??? ?????????? ??????????? ??? ???????????, ? ???????? ???????? ???????????? ??? ????????? ?????, ?????? ?????? ??????? ?????? ??? ?????????? ????????. ????????? ??? ? ???????? ?????? ?? ??????????? ? ??????????? ?????????? ??? ????????? ????? ??? ? ????????? ????????, ?????? ?? ??????????? ??? ????????? ?????.

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

1) **? ??????????? ??????????, ??????? ????????, ??? ??????? ??? ??????????? ?????????? ??????????? ???????????? ???????????? ????????? ??? ??? ??????????? ?? ??????????? ?????? ???? 31 ?????????? 2004 («regime excepcional de regularização tributária de elementos patrimoniais que não se encontrem no território português em 31 de Dezembro de 2004») ??? ??????? ?? ??? ???? 39-A/2005, ??? 29?? ??????? 2005, ??????? ?????????? ??????????? ??? ???? ??????? ???????? ?????? ??? ?????????? ??????????? ??? ?? ??????????? ???????, ?????? ??? ??????????? ??? ?????? ??? ?? ????? 56 ?? ??? ??? ?? ????? 40 ??? ????????? ??? ??? ?????? ?????????? ????, ??? 2?? ????? 1992.**

2) **??????????? ??? ??????????? ?????????? ??? ????????? ?????.**

(????????)

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