

Case C-86/09

Future Health Technologies Ltd

Case

The Commissioners for Her Majesty's Revenue and Customs

(VAT and Duties Tribunal, Manchester)

(Reference: C-86/09)

«The Commission has asked the Court to give a preliminary ruling on the interpretation of Article 132(1)(b) of the VAT Directive, in the light of the case-law of the Court, in relation to the question whether the exemption provided for in that provision applies to the supply of goods and services by a company which is not a taxable person, but which is established in a Member State and which is subject to the VAT system of that Member State.»

Reference is made to the Commission's questions.

1. The Commission asks the Court to give a preliminary ruling on the interpretation of Article 132(1)(b) of the VAT Directive, in the light of the case-law of the Court, in relation to the question whether the exemption provided for in that provision applies to the supply of goods and services by a company which is not a taxable person, but which is established in a Member State and which is subject to the VAT system of that Member State.

(Reference: 2006/112, Article 132 § 1, VAT Directive)

2. The Commission asks the Court to give a preliminary ruling on the interpretation of Article 132(1)(b) of the VAT Directive, in the light of the case-law of the Court, in relation to the question whether the exemption provided for in that provision applies to the supply of goods and services by a company which is not a taxable person, but which is established in a Member State and which is subject to the VAT system of that Member State.

(Reference: 2006/112, Article 132 § 1, VAT Directive)

1. The Commission asks the Court to give a preliminary ruling on the interpretation of Article 132(1)(b) of the VAT Directive, in the light of the case-law of the Court, in relation to the question whether the exemption provided for in that provision applies to the supply of goods and services by a company which is not a taxable person, but which is established in a Member State and which is subject to the VAT system of that Member State.

(??, ?????? 47, ????????. 1)

2. ? ???? ??????? «????? ??????????????» ?? «????????????????? ? ??????? ??????????» ???
??? ?????? ??? ?????? 132, ??????????? 1, ?????????? ??, ??? ??????? 2006/112, ??????? ??
?? ?????? ??????? ?????? ?????????????????? ??????, ??? ???? ?????? ??? ??? ??????????
????????????? ?????????????? ????? ?????????? ?????????????? ??? ?? ??????? ?????????? ??????????
?????? ??????????????, ??? ??????? ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ?????? ???
????? ???????????, ??? ?????????????? ??? ?????????????????? ??? ?????????? ?????? ??? ??????????????
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?????????????????????.

(??, ?????? 52, ????????. 2)

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??? 10?? ??????? 2010 (*)

«????? ?????????????????? ?????? – ?????? 2006/112/? – ?????????? – ?????? 132, ?????????????? 1,
????????? ?? ??? ? – ?????????????????? ??? ??????? ?????????????? ?????? ??? ?????? ??????????????
?? ?????? ??????? – ??????? ?????????? ?????????????? ?????????????????????????? ??? ???????
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????? ??????? C786/09,

?? ?????????????? ??????? ?????????? ?????????????????? ?????????? ?????????? ??? ?????? 234 ??,
??? ??????? ?? VAT and Duties Tribunal, Manchester (????????? ??????????) ?? ??????? ???
23?? ?????????????? 2009, ? ?????? ?????????? ??? ?????????????? ?????? 27 ?????????????? 2009, ???
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Future Health Technologies Ltd

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The Commissioners for Her Majesty’s Revenue and Customs,

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

????????????? ??? ????? J. N. Cunha Rodrigues, ?????????? ??? ??????????, P. Lindh, A. Rosas, A. Ó
Caoimh (?????????) ??? A. Arabadjiev, ??????????,

????????? ??????????????: E. Sharpston

5 ?? ????? 2 ??? ???????? 2006/112 ?????? ?? ?????:

«1. ????? ??? ??????????? ?? ?????????? ?????????:

?) ?? ??????????? ??????? ?? ??????????????????????? ?? ?????????? ??????? ?? ????????? ?????
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?) ?? ?????????? ???????????, ??? ??????????????????????? ?? ?????????? ??????? ?? ????????? ?????
????????? ??????? ?? ?????????????? ????? ?????? ?? ?????????? ?? ??? ?????????? ??? ?????,

?) ?? ??????????? ???????.

[...]»

6 ?? ????? 131 ??? ???????? 2006/112 ?????????? ?? ????? ?????? ?? ??????????? 1 ???
????????? ?? ??? ?????????? ??????, ??? ????? ????????? «????????? ??????????» ??? «????????????»,
???????????????. ?? ?????? ?????? ??????? ?? ?????:

«?? ??????????? ?? ??????????????? ?? ?????????? 2 ??? 9 ??????????????? ?? ??? ???????????
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????? ?????????????? ??????????????, ?????????????? ? ??????????»

7 ?? ????? 132, ????????????? 1, ?????????? ?? ??? ??, ??? ????????? 2006/112, ?? ?????
?????????????????? ?? ?????????? 2 ??? ??????? IX ??? ????????? ??????, ??????? ?? ?????:

«1. ?? ?????? ?????? ??????????????? ?? ?????????????? ?????????:

[...]

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

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

[...]».

8 ?????? ?? ??????????????? ???????????, ?? ??????????? ?? ??????? 132, ????????????? 1,
?????????? ?? ??? ??, ??? ????????? 2006/112 ??????????????????? ?? ?????????????????? ?????? ??
????? 13, ?, ????????????? 1, ?????????? ?? ??? ??, ??? ?????? ??????????. ?? ??????? ??
????????????????? ??????????? ?? ??????????????? ?????? ?????????????? ??????? ?? ?????:

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

9 ?? ????? 133 ??? ??????? 2006/112 ?????? ?? ? ???? ???? ??????? ?? ???????, ??????? ?? ???? ??????????, ??? ? ?????????? ?? ?????????????, ?????? ?? ????????????? ?????????? ?????????, ?????????? ?? ?? ???? ?????????? ?? ?????????????? ?????????????? ?? ?????? 132, ?????????? 1, ?????????? ??, ??? ?????????? ?????? ?????????? ?? ?? ???? ???? ? ?????????????? ?? ???? ????????????????

10 ???? ? ???? 134 ??? ??????? 2006/112:

«?? ????????????? ?????? ?? ? ????????? ????????????? ?????????????? ?? ?? ?????????? ?? ?????????????? ?? ???? 132, ????????????? 1, [?????????] ??, [...], ??? ? ?????????? ??????????????:

?) ?????? ?? ???? ?????????????? ?? ? ? ?????????????? ?? ?????????? ?? ?????????????????? ?? ????.

?) ?????? ?????????????????? ?????? ? ? ?????????????????? ?????? ?????????????? ?????????????????? ?????? ?? ???? ?????????????????? ?????????? ?? ?????????? ?????????? ?????????????? ?????????????????? ?????? ???»

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

11 ?? ????? 31 ??? ?????? ?? 1994 ???? ?????? ?????????????????? ?????? (Value Added Tax Act 1994) ??????? ?? ? ?????????? ??????? ? ? ??????? ?????????????? ?????????????????? ?? ???? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????????????? 9 ???? ?????? ??????.

12 ?? ????? 7 ?? ? ?????????????????? 9 ?? ? ???? ?????? ?????????????? ?? ?????????????, ??????? ??????, ?????????????? ?????????????? ?? ?????????????????? ?? ??????:

– ? ?????? ?????????????? ?? ?????????? ?????????????????? ?? ?????? ?? ?????????? ? ?????????????? Health Professions Order 2001 (Statutory Instrument 2002 ?????. 254).

– ? ?????? ?????????????? ? ?????????? ? ?????????????????? ?????? ?? ? ??????????, ?? ?????????? ???, ?????? ? ? ?????????????????? ?????????????? ? ?????????? ??????.

– ?? ?????????? ?? ?????????????????? ?? ?????????????? ?????? ?? ?????????????????????? ?????????, ??

– ?? ?????????????? ?????? ? ?????? (????????????????????????????? ?? ??????????????) ?? ?????????????????? ? ?????????????????? ?????????? ? ?? ?????????? ??????.

13 ?? ?????????????????????? ?????????? ?? ?????????????? HMRC ??????????????, ?? ?????????? ?????????, ?? ? ? ?????????????? ?? ?????????????????? ?? ?????????????????????? ?? ?????????????? ?????? ?? ?????????? ?????? ?????????????????????? ?? ?????? ?? ?????????????????? Health Professions Order 2001 ?????????????? ?? ?????????????????? ?????? ?? ? ?????????????????? ?? ?????????????????? ?? ?????????? ?? ?????????? ?? ? ? ?????????? ?????????????????????? ?? ???.

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

14 ? FHT ????? ?????????????? ??? ??? ?????????? ?????????????? ?????? ?? ?????????? ?????????? ?????????????????? ??? ?????????? ??? ?????????????? ?????????????? ?????? ?????? ?????????? ?????????????????, ?????????? ?????????? ?? ?????????? ?????????????????? ?????? ?????????????? ?????????????? ??? ?? ?????????? ?????????? ?????????? ??????, ?????? ?????????? ??? ?????? ?????????? ??? ?????????????????? ??? ?????????? ??????, ??? ?????? ?????????????, ?????? ?????????????????? ??? ?????????????????? ??? ?????? ??????.

15 ?? ?????????? ?????? ?????????? ??? ??? ?????? ?????????????? ?????????????? ?????????????? ?????????????????????? ?? ?????????? ??? ?????????? ??? ?????????????? ?????????????? ?????? ?????????????????? Health Professions Order 2001. ?? ?????????????????? ?????????????????? ?????? ?? ?????????? ?? ?????? ??? ?????????????????? ?????????????????? ?????? ?????????? ??? ?????????? ?????????????? (????????????? ??????) ? ?????? ?????????????? (????????????? ? ?????????????? ??????). ?????????? ??? ?????????????? ?????????? ??? FHT ??? ??? ? ??? ?????????? ??? ?????????? (??? ?????: ??????????), ?? ?????????????????????? ??? ?????????????????????? ??? ?????????????????? ? FHT ?????????????????????? ?????? ??? ?????????? ?????????? ?????????? ?? ?????????????????????? ??? ?????????? ? ??????????????????.

16 ?? ?????? ??????????????, ?? ?????????????????? ??? ?????????????????? ? ?????????????????? ?? ?????????????????? ??? ?????? ?????????????????? ??? ?????????????????? ?????????????? ?????????????????? ??? ?????????? ??? FHT ?????? ?? ??????:

?) ?????????????????? ?????????????????? ?????????????? ?????????????? ?????????????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????????? ??????????.

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

?) ?? ?????? ?????????????????? ??? ?????????????? ?????????????? ?????????????? ?? ?????????????????? ??? FHT. ?????????????????? ??? ?????????? ?????????????????????? ?????? ?????????????? ??? ?????????????????????? ?????? ?? ?????? ?????????????????? ??????????.

?) ?? ?????????????????? ??? FHT ?????????????????? ?? ?????? ?????? ?? ?????????????????????? ??? ??? ?????? ?????????????????? ??? ?????????????????? ?????? ??? ?????????????????? ?????????????????? ? ?????????????? ?????? ?????????????? ?????????? ?????? ?? ?????????????????? ?????????????????????? ??? ??????????????.

?) ??? ?????????????? ?? ?????? ?????????????????? ?????????????????????? ?????? ?? ?????????? ?????????? ?????????????????????? ?????????????????? ??? ?????????????? ??????????.

??) ?? ?????????? ??? ?????????????????????????? ?????????????? ??? ?????????????????????? ?????????? ?????? ??????????.

?) ?? ?????????? ?????????????????????? ?????? ?????????? ??? ?????????????? ?????????????? ??????????, ????

?) ?? ?????????? ??? ?????????????????????????? ?????????????????????? ?????????????? ?????????????? ??? ?????????? (????????? ?? ?????????? ??? ?????? ?????????????????????? ?? 18? ?????? ??? ??????????????) ??? ?? ?????????????????????????? ??? ?????????????? ?????????????? ??????????.

17 ? ?????????? ?????????????????? ??? ?????????????? ??????????????. ?????????????? ?? ??? ?????????? ??????????, ? ?????????????? ?????????????????? ??? ?????????????????????? ?????? ??? ?? ?????????? ??? ?????????????? ?????? ?????????? ?????? ?????????????? ?????????????????????? ?????? ?????????????????? ??? ?????????????? ??? ?????????, ?????? ?????????? ??? ?????????????? ?????????? ?????? ??? ?????????????? ??? ?????????????????????? ?????? ?? ?????? ?????????????????????????? ?????????????? ?????? ?? ?????? ?????????????? ?????? ?????? ?????? ?????????????????? ?????? ?? ?????????????? ?????? ?????? ?????? ?????????????????? ?????? ?? ?????????????? 20 ????. ? ?????????????? ?????????? ?????? ??? ?????????? ?????????? ?????????? 995 ?????? ?????????????? (GBP), ?????? ?????? ?????????????????? ??? ?????? ?????????? ?????? ?????????? 30 GBP. ?????? ??? ??????????

?????, ? ????????? ?????? ?????????? ?? 1 295 GBP.

18 ?????? ?? ??? ?????? ??? ??????????, ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????:

– ? ?????? ?? ??? ?????????????? ??? ????? 16 ??? ?????? ?????????? ?????????? ?????? 15 % ??? ?????????? ?????? ??? ??? ?????? (???????????? ? ?????????? ????? 200 GBP).

– ? ?????? ?????, ??????, ??? ?? ?????? ?????? ?? ??? ?????????? ?.

– ?? ?????????? ?? ??? ?? ??? ?????????????????? ??? ????? 16 ??? ?????? ??????????, ????? ? ?????????? ??? ?????????????? ??? FHT, ? ?????????????, ? ?????????? ??? ? ?????????, ?????????????????? ??? 62 % ??? ?????????? ?????????? ??? ??? ?????? (????????????? ? ?????????? ????? 795 GBP).

– ? ?????????? ???, ?????? ? ?????????????, ?????????????? ??? 23 % ??? ?????????? ?????????? (????????????? ? ?????????? ????? 300 GBP).

19 ?? ?????? ??? FHT ??? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????????????? ?? ?????:

– ?????? ??? ?????????????? ?????????? ?????????? ?????????? ??????: 7%.

– ?????????????, ?????????, ?????????? ??? ?????????????????? ??????????: 91%.

– ?????????????? ??? ?????????????????? ??????????: 2%.

20 ?? ?????????????? ?????? ??? ?????????? ??? ?????????? ?????????????? ??? ??? ?????? ??? ?????????????? ??? ?????????? ?????? ??? ?????????, ??? ?????? ??? ?? ?????????????????? ?????????????????? ??? ?????????? ? ?????? ??? ?????????? ?????????????? ??? ??? ??????????????, ?????? ??? ?????, ??? ?????????? ?????? ??????????

21 ???' ?????, ?????????? ??? ??? ?????????? ?????? ?????????????? ??? ? ?????????? HMRC ?????? ??? ?????? ??? ? «????????» ??? ? ?????????? ??? ?????????????????? ?????????????????? ??? ?????, ?? ?????????? ?? ??? ?????????????? ?????, ?????????? ??? ?????????????????? 9, ?????? 7, ?????? 8, ??? ?????? ?????? ?????? ?????????????????? ?????? ??? 1994 [????????? ?????????????? ?????????? ? ?????? (????????????????????????? ??? ??????????) ?..]. ??? ??? ?????? ?????? ?????????? ??? ? FHT ?????????????? ?????? ?????????????????? ??? ??? ?????????????????? ??????????

22 ? ?????????? HMRC ?????????????? ?????????? ??? ? ?????? ?????????? ?????? ? ?????????????? ??? ?????????????????????, ?????? ??? ??? ?????????? ?????????? ??????, ??? ??? ? ?????????? ??? ? ?????????????????? ??? ?????????? ?????? ?????????????????? ?????????????????????? ??????, ?????? ??? ??? ?????????? ?????????????? ??? ?????????? ??????, ? ?????????? ??? ? ?????????????????? ??? ?????????????????????? ??? ?????, ?????? ??? ?????? ??? ?????????????? HMRC, ?????????????????? ?? ?????????? ??????????????

23 ? FHT ?????? ?????????? ?????????? ??? VAT and Duties Tribunal, Manchester, ?????????????????? ???:

– ?? ?????????????? ??? ?????????? ?????????????? ?????????? ?????????? ?????????? ?????????????????? ?????????? ?????????????????? ?????????????????? ?????? ?????????? ??? ?????? 132, ?????????????? 1, ?????????? ??, ??? ?????????? 2006/112, ?

– ????????? ?????? ??????? ????????? ?????????????? ? ????????? ?????????????? ? ?????? ?????? ?????????????? ?? ?????? ?????????????? ????? ?????????? ??? ??????? 132, ????????????? 1, ??????????? ??, ??? ?????????, ?

– ?????????????, ?????? ?? ?????????????? ??? ??? FHT ?????????? ??? ?????????? ?????? ?????????? ?????????, ??? ???? ??? ??? ?????????? ?????????, ???????, ??????????, ?????????????? ??? ?????????????????, ??? ???? ??? ? ?????????? ?????????? ??? ?????????????????? ??? ?????????? ??? ?????????????????? ???????, ??????? ?????? ?????????????????? ?????????? ??? ??????? 132, ????????????? 1, ?????????? ?? ??? ??, ??? ?? ????? ?????????.

24 ??? ??? ?????????????? ??????, ?? VAT and Duties Tribunal, Manchester, ?????????? ?? ?????????????? ??? ?????????? ??? ?????????????? ??? ?? ?????????? ??? ?????????????? ?? ?????????? ?????????????????? ?????????????:

«1) ?????? ?? ?????? ?????? ?????????? ??? ?? ?????????? ?????????????? ??? ?????????????? ??? ??????? ?? ?????????? ?? ?????????? ?????????? ?????????????????? ??? ??? ?????? ??????? ?? ?????????????? ? ??????? ?????????? ?????????????????? ??? ?????????????? ??? ??? ??????? ??? ??????? 132, ????????????? 1, ?????????? ??, ??? ?????????? “????????????????? ??? ?????????? ??????????????” ??? ??????? 132, ????????????? 1, ?????????? ??, ??? ??????? ??? ?????????????????? ?? ??????? ? ??????, ??? ? ?????????????????? (??? ??????) ?????????? ??? ??? ?????????? ?????????????????? (??? ?????????????????? ?????????????????? ??? ?????????????????? ??????? ??????????????????):

?) ?????? ?????? ??????? ??? ??????? ??? ??? ?????? ?????????? ?????? ??? ?????????? ?????????????? ?????????????? ?? ??? ?????? ?? ?????????? ? ?????????????? ??????? ??? ?????????????? ??? ??????? ?????????????? ?????? ??? ?????????? ??????? ?????? ???????.

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

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

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

?) ?????????? ??? ?????????? ?????? ?? ?????????? ?? ??????? (????????? ?????? ?? ?????? ?????????????????? ?? 18? ?????) ??? ?????? ??? ?????????? ?????????? ?????????;

2) ?????????????????, ????? ? ?????? ?????????? “?????? ?????????????????” ?? ?????????????????? ??? ?????????? ?????????????? ?????? ?? ??????? 132, ????????????? 1, ?????????? ??, ??? ?????????? ?????????? ??? ??? ?????????? ??? ?????????????????? ?????? ? ?????????????? (??? ??????) ??? ??? ?????????????????????? ?????????????;

3) ??????? ?? ??????? ?????? ?????????? ??? ?? ?? ??? ?????? ?????????????? ?????????????? ??? ? ??? ??? ?????????? ?????? ? ?????????????????? ?????????????????? ?????????????????? ???????, ????? ? ?????????? “????????? ?????????? ??????????????????” ??? ??????? 132, ????????????? 1, ?????????? ??, ??? ?????????? ??????????

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

??) ?????? ????? ?????? ?? ?????? ?? ?? ???? ?????????? ?????? ?? ??????????
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?????? ?? ?????????? ?????? ?? ?? ?????????? ?????? ?? ?????????? ?????? ?? ??????.

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

?) ?????????????? ?? ?????????? ?????? ?? ?? ???? ???? ???? ?????????? ?????????? ???????????????
????????? ?? ? ???? ?????????????? ?????????????????? ?????????????? ?? ?????????????? ??????????
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?) ?????????????? ?? ?????????? ?? ?? ?????????????????? ?? ?????????????????? ??????????
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?????????????. ??/?

?) ?????????? ?? ?????????? ?????? ?? ?????????? ?? ??????? (????????? ???? ? ???? ??????????????
?? 18? ???? ???? ???? ???? ?????????? ?????????? ?????????;»

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

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25 ??????????????, ??????????????????, ?? ?????????????? ??, ???? ???? ? ???? ??????, ? ??????
2006/112 ??????, ?? ???? 2, ?????????? ?? ??? ?????????????????? ?????????, ?? ???? ???? ?????
????????????? ?? ?? ???? ?????????????????? ?' ???? , ?????? ?? ???? ?????????? ??????, ??
????????????? ?????? ?? ???? ???? ???? ?????? ?????????????? ?? ?????????????????????? ? ????
???????? ???? ?????????????? ???? ???? ???? ?????????????? ???? ???? ???? ????????? ???? ????
???????? (?? ?' ?????????, ?????, ??????????? ???? 21?? ?????????????? 2006, C?255/02,
Halifax ?., ????????? 2006, ? I?1609, ????? 49- ??? 14?? ?????????????? 2006, C?401/05, VDP
Dental Laboratory, ????????? 2006, ? I?12121, ????? 22, ?? ???? 11?? ????????????????? 2010,
C?88/09, Graphic Procédé, ?? ?????????????????? ????? ???? ?????????, ????? 15). ?? ????? 132
?? ????????? 2006/112 ?????????????, ??????, ?? ???? , ???? ???? ?? ?????? 13 ?? ????
????????, ?????????? ?????????.

26 ???? ??????????? ???? ?? ?????????? 4, 6 ??? 8 ??? ?????????? ??????????, ? ?????????? ????
???????? 13, A, ?????????????? 1, ?????????? ?? ??? ??, ?? ?????? ?????????? ?????? ?' ????
????????????????? ?? ?????? ?? ??????? 132, ????????????? 1, ?????????? ?? ?? ??, ?? ???????
2006/112, ? ?????????? ?? ? ?????? 131 ??????. ??????????, ?????????? ?? ???? ???? ????
?? ?????? ??????????????? ?????? ???? ????????? 2006/112 ??? ? ?????? ?????? ???? ?????????, ???
?????, ? ?????????? ?????????????? ?????????? ? ???? ?? ???? ?????????????? ??????????????

27 ?????????, ?? ?????? 13, A, ?????????????? 1, ?????????? ?? ??? ??, ?? ?????? ?????????? ??
?? ?????? 132, ?????????????? 1, ?????????? ?? ??? ??, ?? ????????? 2006/112 ?????? ?
????????????????? ?????? ?? ???? ???? (?? ??????, ?' ?????????, ?? ?????????? ???? 6?
????????????? 2008, C?291/07, Kollektivavtalsstiftelsen TRR Trygghetsrådet, ????????? 2008, ?
I?8255, ????? 23). ?? ? ???? , ? ?????????????????? ?????????????? ???? ???? ??????????????????
????? 13, ?, ?????????????? 1, ?????????? ?? ??? ??, ?? ?????? ?????????? ??????????????

???? ? ?????.

33 ?? ?? ????? ????????, ?? ?????? ??????????? ?????? ??, ?????? ?????? ?????? ???????
??? ?? ?? ????? ??????????? ??????????? ?? ? ?? ???? ?????????? ????? ? ??????????????
????????????? ?????????????? ???????, ????? ? ????????? «????????? ?????????? ??????????????» ???
??????? 132, ??????????? 1, ?????????? ??, ??? ????????? 2006/112 ??? ?????? ???
????????????????? ?? ??????? ??? ??????????? ??? ?????????????????? ????? ??????????????? ?????? ???
?????????? ??????????? ?, ??????????????, ??? ? ?????????????????? ??? ?????? ???, ????? ????????????,
????? ? ??????.

34 ??????, ??? ??????????? ?????????????? ??? ?? ??????????????? ??? ?????? ??? ??? ??????
?????????????, ??? ??????????????????? ??????? ??? ?????????? ??? ??????? ?????? ???, ???????, ???
????? ?????????? ??? ??????? 132, ?????????????? 1, ?????????? ??, ??? ????????? 2006/112, ? FHT
??????? ?? ?????????? ?? ??????? ?????????? ??????????????????? ??? ??? ?????? ??????? ??
?????????????? ? ??????? ?????????? ??????????????? ???, ??????????, ??? ????? ?????????? ??? ??????
?????????????, ?????????? ??, ?? ??????????? ??? FHT ?????????????? ??? ????????? ??????????
?????????? ??? ?????????????????? ???????????????, ????? ?????????????????? ??? ?? ??????????????????
??????? ??????.

35 ?????????, ???' ?????, ?? ?????? ??? ?? ?????? ?????????? ?????????? ??????????????? ???
?????????? ??? ????????? «????????????????? ??? ?????????? ??????????????» ??? ??????? 132, ??????????????
1, ??????????? ??, ??? ????????? 2006/112 ??? «????????? ?????????? ??????????????» ??? ??????? 132,
?????????????? 1, ?????????? ??, ??? ?????? ??????????.

36 ??? ???? ???? ?????? ??????????? ?????????? ???????, ???????????, ????, ??? ??
????????????? ??? ?? ?????? 13, ?, ?????????????? 1, ?????????? ??, ??? ?????? ?????????? ?????? ???
????????? ??? ?????????????????????????? ?????? ???????????????, ??? ?? ?????????? ?? ?????? ???
????????????? ?????? ??? ?????????? ?????????????? ??? ?????????????? ?????? ???????????????, ????? ???
????????????? ?????????? ??? ?????????????? ??? ?????????????? ?????? ??? ?????? ??? ???? ?????????? ?
????? (??., ?????????, ????????? ??? 10?? ??????????????? 2002, C?141/00, Kügler, ????????? 2002,
?. I?6833, ?????? 36). ?? ??? ?????????????? ?? ??? ?? ??? ??????? 13, ?, ?????????????? 1, ??? ??????
?????????, ??? ?????? ?? ?????? ?????????????? ??????????, ??????????? ??? ?????????????? ??? ??????????
??? ?????????? ??? ?????????????? ??? ??????????? ?????????????? ??? ?????? ??????? (??, ?????????????
Kügler, ???????????????????, ?????? 36, ??? ??? 8?? ?????????? 2006, C-106/05, L.u.P., ?????????
2006, ?. I?5123, ?????? 26).

37 ?????????, ??? ???? ??? ?????? ?? ??????????????, ? ?????? ??? «?????????? ??????????????»
??? ??????????????? ??? ?????? 13, A, ?????????????? 1, ?????????? ??, ??? ?????? ?????????? ??? ?
??????? «????????? ?????????? ??????????????» ??? ??????????????? ?????? ?????? ?????????????, ??????????
??, ?????????? ?????????????? ?????????? ??? ?????????????? ??? ??????????, ?????? ?????????????? ???, ???
????? ??? ?????????, ??? ?????????? ?????????????? ? ?????????????? ??? ??????? (??., ?????????????? ???
6?? ????????????? 2003, C-45/01, Dornier, ????????? 2003, ?. ?-12911, ?????? 48 ??? ??????
????????????????? ?????????????, ?????? ??? L.u.P., ?????????????????????, ?????? 27).

38 ??? ??????????? ??? ?? ?????? 27 ??? ?????????? ???????????, ?? ??? ???? ??? ?????? ??? ??????
?????? ??? ?????????????????????? ?????????? ??? ?????????????????? ??? ?????? 132, ??????????????? 1,
?????????? ? ???? ??, ??????????????, ??? ?????? ??????????.

39 ??' ?????? ??? ??????????, ??????????????? ? ??? ?????? ?????????? ??? ?????? ??? ???
????????? ???????????????, ??? ??? ??????? ??? ??' ?????????? ?? ?????? ?????????? ?? ??????????????????
??, ??? ?????????????????? ?????? ?????? ??? ?????????? ??? ??????? ??????, ?? ??????? ? ?????? ???
????????????? ??? ?????????????????? ?????? ?????????? ?????????????? ??? ?? ?????????? ?????????? ??????????
?????? ?????????????????, ?????? ??????? ??? ?????? ?????????? ??? ?????????????????? ??? ?????????? ??????

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

40 ?????????????? ??????? ??, ?????? ? «???????? ??????????» ?? ? «???????? ?????????
?????????????» ?????? ? ?????? ????????????? ?????, ??? ?? ?????????? ???' ?????????? ?? ?
???????????????? ?????? ??? ?????????? ?????????? ?????????? ?????? ?????????? (?.
???????????? ?? 11?? ????????????? 2001, C?76/99, ?????????? ??? ?????????, ????????? 2001, ?.
I?249, ????? 23- ?? 20?? ?????????? 2003, C?212/01, Unterpertinger, ??????? 2003, ?.
I?13859, ????? 40, ?? L.u.P., ?????????????????, ????? 29).

41 ?????????, ?? ?????????? ?????????? ?? ?????????????? ?? ?????? ?? ?????????? ??
??????, ?????????????????????? ?? ?????????????? ? ?? ?????????????????? ??, ?????????? ???
????????? ?? ?????????? ?? ????? 13, A, ????????????? 1, ?????????? ?? ?? ??, ?? ?? ???
????????? (?., ?? ??? ?? ??????, ?????????????????? ?????????? Unterpertinger, ??????? 40
?? 41- d'Ambrumenil ?? Dispute Resolution Services, ??????? 58 ?? 59, ?????? ?? L.u.P.,
????? 29).

42 ??? ?????????? ?? ? ???? 27 ?? ?????????? ??????????, ? ??? ?????? ?? ?????
????? ? ????? 132, ????????????? 1, ?????????? ? ?? ??, ?? ????????? 2006/112.

43 ? ???? ??????????, ? ?????????? ??? ?????? ??? ??????????, ??? ?? ??? ??
????????????? ?? ?? F?, ??? ? ?????????? ?????????????? ?? ? ?????????? ?????????? ??????????
????? ??????????????, ??? ?????? ?? ? ?????????? ?? ?????????????? ?? ?????????? ?????? ??,
??? ??????????, ? ?????????????? ?? ?????????????????? ?? ?????????? ?????, ?????????? ???
????????????? ??? ??????????, ?? ?????????? ?? ?????????????????? ?????? ?? ? ??????????, ??
????????????????? ?? ? ?????????? ?? ?????????????? ? ?? ?????????? ?? ??????, ?????? ??????
????????? ? ?????????? ?????? ?? ?????????????????? ?? ? ? ??????????, ?????????? ??
????????????????? ?? ????????

44 ???????, ?????? ? ?????????? ?????????? ?????? ?? ?????????????? ?? ?????????? ???
?? ?? ? ?????????????????? ??????? ?? ?????????????? ?? ?????????? ?????????????????? ???????
????????? ?????, ?? ? ? ?????????????? ??, ?????, ?? ? ? ?????????, ?????????? ?? ?
????????????????? ?? ?? FHT ?????????? ?????????????? ?????????????????? ?? ??????????????
????????????????????? ?????????????? ?????? ?? ?????????? ?????? ?? ? ?????????? ?????????? ??
?????? ? ?????????? ??????????, ??? ?? ??? ?????????? ??????????, ?????????? ? ?????????
?????????????, ?????? ? ?????????????? ?? ?????? ? ??? ?????????????? ?????????????? ? ? ? ?????????
?????????????. ? ?? ?????? ?????????????, ?????? ?? ?????????????? ?? ?????? ?????????????? ??
????????????????? ?????? ?? ? ?????????????????? ?????????????? ?? ?????????? ?? ?????? ???
?????????????, ?????????????? ?????? ? ?????????????? ?????? ?????? ?????? ? ? ? ?????????????? ?
????????????? ?????????? ? ?????????????????? ? ? «????????????????? ?? ?????????? ??????????» ??
?????? 132, ????????????? 1, ?????????? ??, ?? ????????? 2006/112, ??????, ? ? ? «????????
????????????? ??????????????» ?? ??????? 132, ????????????? 1, ?????????? ??, ?? ????????? 2006/112,
???????????

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

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

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