

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

??? 28?? ???????????? 2013 (*)

«????????? ??? ??? ?????????? ???????????? ??? ?????????? ?????? ??? ?????????? ?????????? ?????????? ??? ??? ?????????? ?????? ???, ??????, ??? ??? ?????????? ?????????????? ?????????? ?????????? – ??? ???? – ?????????? – ?????????? ?????? ?????????? ?????? – ?????????? ?????? ?????? ?????? – ?????? – ?????????? ?????? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? – ?????? – ?????? ??? ?????? ?????? ?????? – ?? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? – ?????? ??? ?????? ?????? ?????? ?????? ?????? – ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? – ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? »

???? ?????? C-425/11,

? ? ?????????? ??? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ??? ?????? ?? Finanzgericht Baden-Württemberg (?????????) ?? ?????? ??? 7?? ?????? 2011, ? ?????? ?????? ??? ?????????? ??? 16 ?????? 2011, ??? ?????? ??? ???

Katja Ettwein

????

Finanzamt Konstanz,

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

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

????? ??????????: N. Jääskinen

?????????: V. Tourrès, ?????? ??????,

? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????? ??? 4?? ?????? 2012,

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

- ? K. Ettwein, ?????????????? ??? ??? T. Picker, Steuerberater,
- ?? Finanzamt Konstanz, ?????????????? ??? ??? N. Rogall,
- ? ?????????? ????????, ?????????????? ??? ??? T. Henze, ??? A. Wiedmann ??? ??? K. Petersen,
- ? ?????????? ????????, ?????????????? ??? ??? A. Rubio González,
- ? ?????????? ????????, ?????????????? ??? ??? W. Mölls ??? T. Scharf,

? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ??? 18?? ??????? 2012,

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

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1 ? ??????? ?????????????? ??????? ?????? ??? ?????????? ??? ?????????????? ??
????????????? ?????????? ??? ?????????? ??? ??? ?????????? ?????????????? ??? ?????????? ??????
??? ?????????? ?????????? ??? ??? ?????? ?????? ???, ??????, ??? ??? ??????????
????????????? , ?????? , ??? ?????????? ??? ?????????????? ??? 21 ?????? 1999 (??
2002, L 114, ?. 6, ??? ?: ?????? ??-??????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ?????? ??? K. Ettwein,
????????? ????, ??? ??? Finanzamt Konstanz (??? ??? ??? ?????????? ??? Konstanz),
??? ??? ???? ?????????? ??? ?????? ??? ???? ?????????? ?????????? ??? ?????????? ??
????? ??? ??? ?????? ???, ?????? ?????????? ?????????? (??? ????: ? K. Ettwein ??? ?
?????? ???), ???????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???????, ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ??????????
????????? ??? ?????????? ??? ??????????.

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

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

3 ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??-???????, ??
????????????? ??? «????? ?????????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ?????? ??? ?????????? ??? ??????????».

4 ??? ? ? ????? 1, ?????????? ?? ???, ??? ?????????? ??-???????, ?????? ??? ? ? ???
????????? ????, ????, ?? ??????????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ????, ??? ?????? ??? ?????? ??? ?????????? ??????????????, ?????????? ????,
?????????, ??? ?????? ??? ?????? ?????????? ??????????????, ?????????? ?????????????? ???
??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????????? ???
????????????? ????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??????????, ??????????
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????.

5 ?? ?????? 2 ?????????? «?? ??????» ??? ?????? ?? ???:

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

6 ?? ?????? 4, ??? ?????????? «????????? ?????????? ??? ?????????? ?? ?????????? ?? ??????????
?????????», ??? ?? ???:

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

7 ?? ?????? 11, ??? ?????????? «????????? ??? ??????????», ?????????? ??? ?????????? 1
?? ???:

«T? ?????? ?? ?????? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???????.»

8 ?? ?????? 16, ??? ??????????? «??????? ??? ?????????? ??????», ??? ? ? ????:

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

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

9 ?? ?????? 21, ??? ??????????? «????? ?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ????
??????????», ?????? ??? ?????????? 2 ?? ????:

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

10 ?? ?????????? | ??? ?????????? ??-????????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ?? ?????????? || ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? 9 ??? ?????????? ???, ??? ??????????
«????????? ??????????» ?????????? ?? ????:

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

2. ? ?????????? ?????????? ??? ?? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ???
3 ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????????? ?????????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ???.

[...]»

11 ?? ??????? III ??? ?? ??? ?????????? | ??? ?????? ??? «????????? ??????????».

12 ?? ?????? 12 ??? ?????? ??? ?????????? III ?????????? «????????? ??? ??????» ??? ??????
????? ?????????? 1 ?? ????:

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

13 ?? ?????? 13 ??? ?? ??? ???????, ??? ?????????? «????????? ??? ?????? ???
?????????», ?????? ?? ????:

«1. ? ?????????????? ?????????? ?????????????? ?????? ?????? ?????? ?????????????????? ??????
??? ??? ? ? ?????? ??? ??? ?????????? ?????? ?????? ?????????????? ?????? ??? ?? ???? ??
?????? ?????????????? ??? ?????? ?????? ?????? ?????????????? ?????? ?????????????? ???
????? ?????? ??? [?????????] ?????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

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

[...]»

14 ?? ??? 15 ??? ??? ?????? ?????? ??????, ?? ??? ?????? ?????????? «??????
?????????», ?????????? ?? ???:

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

2. ?? ?????????? ??? ?????? 9 ??? ?????? ?????????? ?????????????? ?????????????? , ???' ??????,,
????? ?????????? ?????????????? ??? ?????????? ??? ?????? ?????? ??????..»

15 ?? ????????? V ??? ?? ??? ?????? ?????????? | ?????? ?? «?????? ??? ??? ??????
????????? ??????????». ?? ??? 24 ??? ?????? ?????? , ??? ?????????? «??????
?????», ?????? ??? ?????? 1 ?? ???:

«????? ?????? ??? ?????????????? ?????? ??? ?????? ?????? ?????????? ?????????????? ???
????? ?????? ??? ??? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ???
??? ?????? ????:

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

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

[...]»

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

16 ?? ?????????? ?? ?????????? ?????????? ?????? ?? ?????????? ??? ?????? ??? ??
????????? ?????????? (Einkommensteuergesetz, ??? ????: EStG), ??? ?????????? ???
19 ?????????? 2002 (BGBI. 2002 I, ? 4212) ??? ?????????? ??? 20 ?????????? 2007 (BGBI.
2007 I, ? 3150).

17 ?? ?????? 1 ??? EStG ?????? ?? ???:

«1. ?? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ????. [...]

[...]

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

????????????? ??? ??????????? ?? ?????? ??????????? 90 % ??? ?????????? ???
????????? [...]

[...]»

18 ?? ????? 1a, ?????????? 1, ??? EStG ????? ??????????? ?? ???:

«??? ??? ?????????? ??? ?????? ??? ?????????? ?????? ? ??? ?????? ??? ???
????????? ? ?????? ??? ?????? ?????????? ?????o [??? ????: ?????????? ??? ???
???] [...] ?? ?????? ??????????, ?????? ??? ?????? 1, ?????????? 3, ??? ?????????? ???
????? ?????????? ??? ?????? ??????????, ?????? ?? ?????????? ?????? ?? ??? ???
????? [...] ??? ?????? 26, ?????????? 1, ?????? ??????:

1. [...] ?????????? ??? ??? ? ?????????? ??? ?????????? ? ?? ?????? ?????? ???
??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ? ?????? ??? ???
????????? ? [????????? ??? ??? ???].

[...]

2. ? ?????? ??? ??? ?????? ?? ?????????? ??? ??? ?????? ??? ?????????? ? ?? ?????? ??????
??? ??? ?????????? ?????????? ??? ?????? ?? ?????? ??? ?????????? ?????? ?????? ??????????
????? ??? ?????????? ?? ??? ??? ?????? ??? ?????? 26, ?????????? 1, ?????? ??????.
?? ?????? 1, ?????? ??????, ?????????? ?????????? ??? ??????????. ??? ??? ??? ??????
??? ?????? 1, ?????????? 3, ?????? ??????, ?? ??? ?????????? ?? ?????????? ???
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
[...]»

19 ?? ?????? 26, ?????????? 1, ??? EStG ?????? ??? ?????????? ?? ??????????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ? ?????????????? ?? ???
????? ?????????? ?? ??? ?????? ??? ?????????? ??? ?? ?????? ?????????? ??? ?????? ???
????? 26a ??? ?????? ?????? ??? ?? ?????????? ?????????? ??? ?????????? ??? ?????? ???
????? 26b.

20 ?? ?????? 26b ??? EStG, ??? ?????????? «????????? ?????????? ??? ?????????? ???
?????», ?????? ?? ???:

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

21 ?? ?????? 32a ??? EStG, ??? ?????????? «????????? ??? ?????? ?????????? ???,
????????? ??? ?????? 5 ?? ???:

«[...] ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
??? 26b, ? ?????? ?????????? ??? ?????? [...] ??? ?????? ??? ?????? ??? ?? ??????
????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? 1 (???????? splitting).»

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

22 ? K. Ettwein ??? ? ?????? ??? ?????? ?????????? ?????????? ??????????????, ? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????????????, ? ??
????? ??? ??????. ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? 2007 ?? ?????? Ettwein, ?? ?????, ??? ?????? ??? ??????????, ?????????? ???
Lindau (????????), ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????

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

23 H K. Ettwein ??? ? ??????? ???, ?????? ??? ?????????????? ??? ?????? ??? ???
??????????? ??? ?? ?????????? ??? 2008, ?????? ?? ?????????????? ??? ?????? ???
?? ?????? ??? ?????????? ??? ?? ?????? ?????? splitting, ??? ? ???? ??
????????? ??? ?????????? ???, ?????????? ??? ?? ?????? ?????????? ??????????
????????? ??? ??????.

24 ?? ??? ?????? ?????? ????????, ?? Finanzamt Konstanz ??????? ?? ?????? ???.
?? 1? ?????????? 2009 ??? ?? Finanzamt ??????? ??? ?????? ???, ?? ?? ??????????
?? ? ?????? ?????? ??? ?????? splitting, ? ?????? ?????????? ??? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ???, ??? ?????? ?? ??????????, ?????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ??????
?? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?? . ?? ?????? ?????? ???
?? 22? ?????? 2010, ?? Finanzamt ??????, ?????? ???, ?????? ?????? ?? ??????
?? ?????? ?????? ??????????. ? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?? ???
????? ??? ???????, ?????? ? K. Ettwein ?????? ?????? ?????? ??? Finanzgericht
Baden-Württemberg ?? ?????? ??? ?????? ??? ?? ??????.

25 ?? ?? ??? ?????? ?????????? ??? ?????? ??? ? ?????????????? ??? ? ?????? ??? ??
«????????? ??? ?????????? ??????????», ??? ? ???? ?????? ??? ?????? 13, ?????????? 1,
?? ?????????? 1 ? ?? ?????????? ??-??????, ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? . ?????? ??? ?????????? ??? ?????????? ???
????? 9, ?????????? 2, ?? 15, ?????????? 2, ?? ?????????? 1 ? ?? ?????????? ??-
?????????, ?? ?????????? ?????? ?????? ?????????? ??? ??????, ??? ?????? ??? ?????? ???
?? ?????????? ?????? ?????? ???, ?? ?????? ?????????? ??? ??????????
????????? ?? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ?????? ??? ??????????
????? ??? ??? ?????? ??? ? ?????? ??? ?????????? ?????????? ??? ?????? ?? ??????????
?? ?????? ??? ?????? ??? splitting ??? ?????? Ettwein, ??? ? ???? ??? ?????? ??? ?
??? ?????????? ??? ?????? ???, ?????????? ??? ?????? ?????????? ??? ?????????? ??-??????.

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

27 ?? ?????? ?????????? ?????????? ??? ?????? ??? ? ?????????? ??? ? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? (????????? ??? 14? ?????????? 1995, C-279/93, Schumacker,

?????? 1995,?. I-225, ??? ??? 27?? ?????? 1996, C-107/94, Asscher, ?????? 1996, ?. I-3089).

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

29 ?? Finanzgericht Baden-Württemberg, ??????????? ??? ?? ?????, ??????????? ??
?????????? ??? ??????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ?? ??????????
?????????? ????:

«????? ?? ??????? ??? [?????? ??-??????], ??? ??????? ?? ??? 1, 2, 11, 16 ??
21 ??? ?? ??????? I, ??? 9, 13 ?? 15, ??? ??????? ??? ??????????? ?? ??? ???????????
????? ??????? ??? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ?? ??????????
??? ?? ?? ?????????? ?????????? ??? ?????????? ?? ??? ?? ?????????? ?????????? ???
??? ?? ?????? ??? ?????????? ??? ?????? ??? ????? splitting;»

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

30 ??????????? ???, ??? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ? ??????? ??? splitting ???????, ??? ??? ??????? ??? ?????????? ??? ??????
?? ??????? ??? ???????, ??????????? ???, ??????? ?? ??????? ??? ??????
?????????? ??? ?? ??? ??????? ??? ??????. ??? ??? ??????????? ?? ???????????, ?
?????? ??? ?????????? ?? ??? ??? ??????? ??? ?????????? ?? ?????????????? ??? ??????
????? ???????????. ? ?? ??? ??????? ??????? ??? ?????????? ??? ?????????? ??? ??????????
?????????? ??? ??????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? 50 % ??
??????????. ?? ?? ??????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
??????, ?? splitting ??? ?? ?????????? ?? ??????? ??? ?????????? ??? ?????? ??? ????
?????? ??? ?????????????? ??? ?????????? ??? ?????? ?????????? (????????????? ???
?????? Schumacker, ??? 7).

31 ???????, ?????? ?? ?? ?????? ???, ? ?????? ??? ?????????????? ??? ?????? ???
?????? ??? ?????? ??? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?. ? ??????? ??? ?????? ??? ?????? ?????? ??? ??????
??????????.

32 ??? ?? ??? ??????? ??????? ??? ?????? ?????????, ?????? ??????? ?? ?????????? ?? ???
????????? ??? ??? ??? ????? Ettwein ??????? ??? ?????? ?????????? ??? ?????????? ??
?????????.

33 ??????? ??????? ??????? ??????? ?? ??????????? ?? ??????????? ??? ???????????
?????????? ??? ?? ??????????? ??????????? ??? ? ??????????? ??-????????? ??? ?? ???????
???? ?? ??????????? ??????????? ??? ???????????, ?????? ??? ?? ??????? ???
?????????????? ??????? ??????? ???????????, ??? ?????? ??? ????? ??????????????? ???????, ???
?????????????? ??????? ??? ???????????, ?????? ??????? ?? ??????? ???
?????????????? ??????? ?? ???????????, ?? ??????????? ??????????????? ??? ?? ??????????? ?? ???
?????????????? ???????????, ??????????? ??? ??????? ??? ?? ??????????? ??-????????? ??? ??
?????? ??? ?????? ??? (??., ??????? ????, ??????? ??? 1?? ??????????? 2011, C-257/10,
Bergström, ??????? 2011, ?. ?-13227, ??????? 27 ??? 34).

34 ??? ?????? ??? ??????????? ??? ??????????? ??? ??????? ??? ?????? ??? ??????????? ???
?????????? ??-????????? ??? ?? ??????????? ?? ??????? ???????????, ??????????? ?? ???????????
??? ?? ??? 13, ??????????? 1, ??? ??????????? | ??? ??????????? ??? ?????? ??? ???????, ??
???? ?? ??????? ???, ??? ??????????? ??? ??????? Ettwein. ???????, ? K. Ettwein ??? ?
?????? ??? ?????? ??????? «???? ??????????????? ???», ??? ??????????????? ???????????
??? ???????????, ??????????? ??? ??????? «???? ??????????????? ???», ??? ??????????????? ???
????????? ???????????????, ??? ??????? ?? ??????? ??????????????? ??? ??????? «???? ????
?????????????? ???», ?????? ??? ??????????????? ??????????????? ??? ???????.

35 ? ?? ??? ?????? ??????? ??? ??????? ??????? ??? ?????? ??? ??????????? ? ???????????, ???
?????????? ??? ??????? ??? ??????????????? ???, ??? ??? ?????? ??? ??????? ?? ???????????
??????????????, ? ??????? ??? ?? ??????????? ??? ??????? ??? ?????? ??? ???????????????
??????, ??? ?? ??????????? ??? ?????? ??? ??????????? ??? ???????????????, ??? ???????,
?????? ??? ??????????? ???, ? K. Ettwein ??? ? ??????? ??? ??????? ?? ??????????????? ??
«?????????????? ??? ??????? ???????????????» ?????? ??? ??????????? ??? ??????????? ??-
??????, ?? ??????? ??? ??????? ??? ??????????????? ??? ??????? ??? ?????? ??? ??????? ???
?????????????? ??? ????? ??????????????? ??? ?????? ??? ??????????? ???.

36 ??????? ??? ??????? ?? ??????? ??????? ?? ??????????? ??? ??????????? ??????????? ???
??? ??????????? ??? ? ??????? «?????????????? ??? ??????????? ???????????????» ???????????????
???? ?? «?????????????? ??? ???????????» ??? ??????? 12, ??????????? 1, ??? ??????????? |
??? ??????????. ???????????, ??????? ? «?????????????? ??? ??????????? ???????????????» ??? ?
????? «?????????????? ??? ???????????», ??? ??????? ?? ??????? ???????????????, ? ??????
«?????????????? ??? ??????????? ???????????????» ?????? ??? ????? ??????????? ??? ???????????
????????? ??? ??? ??????? «?????????????? ??? ???????????????», ? ?????? ??????????? ??? ?? ??? ???
12, ??????????? 1.

37 ??? ??????? ??? ??????? ?? ??????????? ???, ??? ??????????? ??? ?? ??? 13,
?????????? 1, ??? ??????????? | ??? ???????????, ? «?????????????? ??? ???????
??????????????», ??????? ??? ?? ??????????? ??? ??? «?????????????? ??? ???????» ?? ???
12 ??? ?? ??? ???????????, ??? ??????????? ??? ????? ??????????? ??? ?? ??? ??? ?? ???
??????????????, ? ??????????? ??? ????? ???????????, ??? ????? ??????????? ??? ?? ??? ???
?????????????? ??? ??? ??? ??? ??????????? ??? ????? ??????????????? ???, ?? ??? ??? ??? ??
?????? ??? ???????.

38 ?? ??????? ??? ?? ??????????? ??? ????? ??????????? ??? ?????? ??? ??????????? ??? ???????
??-????????? ??? ????? ??????????? ??? ????? ??????????? ??? ?????? ??? ??????????? ???
?????????? ??? ??????? ??? ????? ??????????? ??? ? ??????????? ??????????? ???????????????
??? ??????????? ?? ??????? ??? ??????????? ??? ??????????? ??? ? ??????????? ???.

39 ? ??????????? ??? ??????????????? ??? ????? ??????????????? ??? ?????? ??? ?? ??? 24,
?????????? 1, ??? ??????????? | ??? ??????????? ??-?????????, ?? ????? ??????????????? ??

? ??????? ? ???????, ?????? ?? ??????? ??? ?????? ??? ?????????????????? ?????? ??
?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????????? ?????? ??????????? ??
??? ?????? ?????? ?????????????? ??????????????????. ?? ?????????? ??? ?????? ?????? ???
?????? ????? ?? ??????? ?? ?????? ?????? ?? ?????????? ??????????, ??? ?????? K.
Ettwein ??? ? ??????? ???, ?? ?????? ?????? ?? ?????????? ?????????? ?? ?????????? ??
????? ??? ?????????? ?????????????? ??? ?????? ??? ?????????? ???.

40 ??? ???????, ?? ?????????? ?????? ??? ? ?????????? ??? ?????? Ettwein ???????
??? ?????? ?????????? ??? ?????????? ??-??????.

41 ??? ? K. Ettwein ??? ? ??????? ??? ????? «????????????? ?????????? ??????????????»,
????? ??? ?????? ??? ?????? 13, ?????????? 1, ??? ?????????????? | ??? ?????????? ??-
????????, ??? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????????????? , ??
????? ?????????? ?? ?????? 15, ?????????? 1, ??? ?????????? ?????? (?. ?????? ??
6?? ?????????? 2011, C-506/10, Graf ??? Engel, ?????? 2011, ?. ?-9345, ????? 23 ??? ??
????????????? ?????????), ??? «???? ??????», ??? ??? ?????? ??? ?????????? ???,
????? ??? ?????????? ??? ? ?????????? ?????? ??? ?????????? ??? ??????????.

42 ???????, ??? ?? ?????????? 2 ??? ?? ??? ?????? 15, ?? ?????????? ??? ?????? 9
??? ?????? ??? ?????? ?????????????? ? ?????????????? ???' ?????????? ?????? ??????????????
????????? ??????????????. ??? ??? ?????????? 2 ??? ?????????? ?????? ?????? ??????????
??? ? ??? ??? ?????? ?????????????? ??? ?? ?????????? ?????? ??????????????.

43 ??? ??? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ?????? ??????????
????????????? ???, ??? ??? ???????, ?? ??? ?????????? ?????????????? ??? ?????? ???
????????? ?????????????? ??? ?????? ?? ?????????? ?????? ?????? ?????????? ??????????
??? ??? ???.

44 ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? 21, ?????????? 2, ??? ?????????? ??-
????????, ??? ?? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????????? ??
????? ??? ?? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ?????????? , ???
????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? , ?????
????????????? ?? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? , ?????? ??? ??????
??? ??? ?????? ???.

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

46 ??? ?? ??????????? ??? ??????????? ?????????? ???, ??? ?????? ??? ??? ????? ???????????,
 ? ?????????? ?????????? ?????????? ??? ??????????, ? ?????? ?????????? ??? ?? ??????
 ??? ?????????? ??? ?? ??? ??? ?????????? ??? ??????????, ??? ???????, ?????? ??
 ?????????? ?????????? ??? ?????? ?????????? ? ?????????? ???, ??? ?????? ??????????????
 ??????? ?? ?????????????? ??? ?????? ??? ?????????? ???, ??? ??? ??? ??? ?????? ??? ?
 ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ??? ??? ??????????
 ??? ?????????? ?????????? (????????????????? ?????????? Schumacker, ?????? 32 ??? 34, ???
 Asscher, ????? 41). ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
 ??? ??? ?????? ? ?????????? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ??????
 ??? ?????????? ??? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ???
 ?????????????? ??? ?????? ?? ?????? ??????, ?????? ?? ?????? ?????????? ??? ?????? ?? ?????? ??
 ??? ?????????? ?? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
 ?????????? (????????????? ?????? Schumacker, ????? 36).

48 ??????? ??????? ?????? ? ??????????? ?????, ??? ?????????????? ? ?????????? ??? ?????? 21,
 ?????????? 2, ??? ??????? ??-????????? ??? ??? ?????????????? ?????? ?? ?????? ??? ?????? ???
 ??????? ??? ???? ??????? ?? ??? ?????? ??????? ??? ?????? ??? ?????? ??? ?????????????? ???
 ?????????????? ??? ?????? ??????, ??? ?????? ?????? ??????? ?? ?????? ??? ?????? ??? ?????????? ???
 ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ???????????, ?? ??????????
 ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????????? ??? ?????? ?????????? ???
 ?????????? ??? ?????? ?????? ??? ?????? ??? splitting, ?????? ?? ?????????????? ??? ?????? ???
 ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ???? ?????? ?????????? ?
 ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ???

49 ????????, ? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????, ?????? ??? ?????? ???
 ?????????? ?? ?? ??? ?????????? ?????????? ?????? ??? ?????? ?????? ?????????? ? ?????????? ???
 ????????????????, ?????????? ??? ?????? 13, ?????????? 1, ??? ?????????? | ???
 ?????????? ??-?????????, ?? ?????????? ?? ?? ?????? 15, ?????????? 2, ??? 9, ?????????? 2,
 ??? ?????????? ?????.

50 ????????, ????, ??? ?????????? ??-????????? ????, ?????? ?? ? ? ????? 1,
????????? ?, ?? ?????????? ????, ?????? ????, ?? ?????????? ????, ?????? ?????????? ?? ??????
????? ?? ?????? ?? ?????????? ?????????????? ?????????? ?????????? ?????? ??????????
?? ?????????????? ?????.

51 ? ????? ???? ?????????? ?????? ??????? ?? ?? ?????????? ??? ?????????????? ??? ?????? ??? ??????
? ?????????? ??? ?????????? ??? ??????????, ??? ?????, ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??-???????, ?? ?????????????? ??? ?????? ??? ?????? ?????????????? ??
????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????

????? ??????, ?? ??????????????, ?? ??? ???? ?????? ?????????????? ?????? ?????? ?????? ??
?????????? ??? ???? ?????? ?????? ??? ??? ??? ??? ??? ??? ??? ??? ??? ?????? ??
????????? ?????????? (????????????????? ?????? Bergström, ?????? 27 ??? 28).

52 ??????? ??? ??????? ???????, ??? ?????????????? ??????? ?????? ?? ??? ???? ?
????????? ??? ?? ??? 1, ??????? ??, ??? ?????????? ??-????????? ??? ?? ??? 9,
????????? 2, 13, ?????????? 1, ??? 15, ?????????? 2, ??? ?????????? | ??? ??????????
????? ??? ???? ?????? ??? ?????????? ?? ??? ???? ?????? ?????? ?????? ??? ?????? ???
? ?????????????? ??? ?? ?????? ??? ?????????? ?????? ?????? ??? ??? ??? ?????? ??????????
??? ?????? ?? ?? ?????? ??? splitting ??? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?? ???
??? ?????????? ?????????? ???, ??? ??? ??? ??? ??? ??? ??? ???? ?????? ???
????????? ??? ?????? ??? ?????????? ??????????????.

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

53 ?????????? ??? ???? ?????? ?????????? ??? ?? ??? ???? ?????? ?????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ??????????????, ?' ???
????????? ?? ?????????? ??? ?????? ?????? ??????. ?? ?????? ??? ?????? ??????????????
????? ?????????? ?????????????? ??? ?????????? ???, ??? ??? ??? ??? ?????? ??? ??????????.

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

? ? ????? 1, ??????? ??, ??? ??????? ??? ???? ?????? ?????? ?????????? ??? ??????????
?????? ??? ?????????? ?????????? ??? ???? ?????? ???, ??????, ??? ???
????????? ??????????????, ???????, ??? ?????????? ??? ?????????????? ??? 21
?????? 1999, ??? ?? ??? 9, ?????????? 2, 13, ?????????? 1, ??? 15, ?????????? 2,
??? ?????????? | ??? ?????? ??? ?????? ??? ???? ?????? ??? ?????? ??? ?????????? ?? ???
? ?????? ?????? ??? ?????? ??? ?????? ??? ???? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ???? ???
splitting ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??? ??? ??? ???? ?????? ???
????????? ??? ?????? ??? ?????????? ???, ??? ??? ??? ??? ??? ??? ???? ?????? ???.

(?????????)

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