

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

??? 12?? ?????????????? 2013 (*)

«???????? ????????????? — ????? ???? ????????????????????????????? — ?????? ??? ????????????? ?????????? ???
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????? ?????????? C7362/12,

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????????? ?? Supreme Court of the United Kingdom (????????? ??????????) ?? ?????????? ??? 25??
????????? 2012, ? ?????? ?????????????? ??? ?????????????????? ?????? 30 ?????????? 2012, ??? ?????????? ???
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Test Claimants in the Franked Investment Income Group Litigation

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Commissioners of Inland Revenue,

Commissioners for Her Majesty’s Revenue and Customs,

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

????????????????? ??? ?????? M. Ilešić, ?????????? ??????????????, C. G. Fernlund (?????????????), A. Ó Caoimh, C.
Toader ??? E. Jarašić, ?????????????,

????????????? ??????????????????: M. Wathelet

?????????????????: L. Hewlett, ??????? ?????????????????? ??????????????????,

????????????? ?????? ??? ?????????????? ?????????????????? ??? ?????????????? ??? ??’ ?????????????????? ?????????????????? ???
26?? ?????????? 2013,

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– ? Test Claimants in the Franked Investment Income Group Litigation, ?????????????????????? ???
??? G. Aaronson, QC, ?????????????????????? ??? ?????? P. Freund ??? P. Farmer, barristers, ???’
????????????? ??? S. Whitehead, solicitor,

– ? ?????????????????? ??? ?????????????????? ?????????????????? ??? ?????????????? ?????????????????? ??? ??? ??????????
?????????????????, ?????????????????????? ??? ??? H. Walker, ?????????????????????? ??? ??? D. Ewart, QC, ???
??? K. Bacon, barrister,

– ? ?????????????????? ??????????????????, ?????????????????????? ??? ??? A. Rubio González,

– ? ?????????????????? ??????????????????, ?????????????????????? ??? ??? R. Lyal ??? W. Mölls,

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

2013,

1. The first question is whether the test claimants in the *Test Claimants in the Franked Investment Income Group Litigation* (the *Test Claimants*) are entitled to relief from tax on their income. The Commissioners of Inland Revenue (the *Commissioners*) argued that the test claimants were not entitled to relief from tax on their income.

2. The second question is whether the test claimants are entitled to relief from tax on their income. The *Test Claimants* argued that they were entitled to relief from tax on their income. The *Commissioners* argued that they were not entitled to relief from tax on their income.

3. The third question is whether the test claimants are entitled to relief from tax on their income. The *Test Claimants* argued that they were entitled to relief from tax on their income. The *Commissioners* argued that they were not entitled to relief from tax on their income.

4. The fourth question is whether the test claimants are entitled to relief from tax on their income. The *Test Claimants* argued that they were entitled to relief from tax on their income. The *Commissioners* argued that they were not entitled to relief from tax on their income.

5. The fifth question is whether the test claimants are entitled to relief from tax on their income. The *Test Claimants* argued that they were entitled to relief from tax on their income. The *Commissioners* argued that they were not entitled to relief from tax on their income.

6. The sixth question is whether the test claimants are entitled to relief from tax on their income. The *Test Claimants* argued that they were entitled to relief from tax on their income. The *Commissioners* argued that they were not entitled to relief from tax on their income.

7. The seventh question is whether the test claimants are entitled to relief from tax on their income. The *Test Claimants* argued that they were entitled to relief from tax on their income. The *Commissioners* argued that they were not entitled to relief from tax on their income.

8. The eighth question is whether the test claimants are entitled to relief from tax on their income. The *Test Claimants* argued that they were entitled to relief from tax on their income. The *Commissioners* argued that they were not entitled to relief from tax on their income.

9 ?????? ?????? ?????????? ??? ?????????? ?????? ?????????????????? ?????????? ?????
????????? ??? ??? ?????? ?????????? ? ?????????? ??? 8?? ????????? 2001, C?397/98 ??? C?410/98,
Metallgesellschaft ?.?. (????????? 2001, ?. I?1727). ?? ??? ?????????? ????? ?? ?????????????? ???????
??? ?????????????? ??????? ??? ?????????????? ?????????????????? ??? ?????? ?????????? («advance
corporation tax», ??? ?????: ACT), ?? ?????? ?????????????????? ??? ?????????? ?????????? ??? ?? 1973
??? ?? 1999, ????? ?????????????? ?? ??? ?? ?????? ??????????????.

10 ??? ?????????? ?????????????????????? ?????????????????? ??? ?????????????? ??? ?????? ??????????????????
?????????????, ?? High Court of Justice (England & Wales), Chancery Division, ?? ??? ?????????? ???
18?? ?????????? 2003, Deutsche Morgan Grenfell ????? Inland Revenue Commissioners ([2003] 4
All ER 645), ??????? ??? ?????? ?????? ??? ?? ?????????? ?????????? Kleinwort Benson ?????????? ??
????????????????????? ?????? ?????????????? ?????? ?????????????????????? ?????????????? ?????? ??? ????????.
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11 ?? ?? ?????? ?????????????????? ?????????, ?????????, ??? ? ?????????????? ??? ?? ?????????? ??????????
Kleinwort Benson ?????????????? ?????????????????? ?????? ? ?????????????????????? ??? ?????? 32, ?????????????????? 1,
????????????? c, ??? ?????? ??? 1980, ?????? ??? ??? ??? ??? ?????? ??? ? ?????????? ?????????????????? ???
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12 ????? 8 ?????????????????? 2003 ? ?????????????????? ??? ?????????????? ?????????????????? ??????????????????
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????????????????????? ?????? ?????????????????? ??? ?????????????? ??? ?????????? 320 ??? ?????????????????????????? ?????????? ???
2004, ? ?????????? ?????????????????? 24 ?????????? 2004 (Finance Act 2004, ??? ??????: ?????? 320).

13 ?? ?? ?????? ?????? 320 ??????????????????:
«?? ?????? 32, ?????????????????? 1, ?????????????? c, [???? ?????? ???] 1980 [...] ([?????????????????] ??????????????
??? ??? ?????????? ?????????? ?? ?????????????????? ?????????) ??? ?????? ?????????????? ?????? ?????????????????? ??? ???????
????? ?? ?????????? ?????????? ?? ?????????????????? ?????????? ??? ?????????????????????? ??? Commissioners [...].
? ?????????? ?????????????????? ?????????????????? ?????? ?????????? ??? ?????????????????? ??? ??? 8 ??????????????????
2003 ??? ??????????»

14 ?? ?????????? ??? 4?? ?????????????????? 2005, ?? Court of Appeal (England & Wales) ??????????????
??? ?????????????????????? ?????????? ??? High Court of Justice (England & Wales), Chancery Division,
Deutsche Morgan Grenfell ????? Inland Revenue Commissioners. ? ?? ?????? ?????????? ??? Court of
Appeal ?????????????????? ?? ?? ?????? ??? ??? ?? House of Lords ????? 25 ?????????????? 2006. ?? House
of Lords ?????????????????? ??? ?????????? ??? High Court ??? ?????????????????? ???, ?????????????????? ??
????????????? ??? ?????????????????? ??? ?????????????????????? ?????????, ?? ??????????????????????
????????????????? ?? ?????????????????? ??? ?? ?????????? ?????????? Woolwich, ?? ?????? ?????????????????????? ??????
????????????? ?????????????????? ?????????????????? ?????? ??? ?????????????? ?? ?????????? ?????????????????? ??? ??????????
?? ?????????? ??? ??? ?????? ?????????????????? ??? ??????, ?????? ?? ?????????? ?????????? Kleinwort Benson, ??
?????? ?????????????????????? ?? ?????? ?????? ?? ?????????? ??? ?????????????????? ?? ?????????? ?????????????????? ???
????????????? ?? ?????????? ??? ??? ?????? ??? ? ?????????? ?????????????????? ??? ?????????? ?????? ?? ?????????? ? ??
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15 ?????????? ??? ?????????????????????? ?????????????????? ??? House of Lords ??? 25?? ?????????????? 2006,
? ?????????????????? ??? ?????????????????? ?????????????????? ?????????? ??? ?????????????????? ??? ??????????????????
????? ?????????????? ??? ??? ?????????? ?????????????????? ? ?????????? ??? 12?? ?????????????????? 2006, C?446/04,

22 ???? ???? Aegis, ? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?
????????? ??? ??????? 320 ?????????????????? ??? ?????????????? ?????????????? ??? ??????????????
????????????? ??? ?????????? ?????????????? Kleinwort Benson ?????? ?????????????? ??????? ??? ?
????????? ?????????? ?? ?????????????? ??????? ??? ?????????????????? ??? Commissioners ??? ??????????
?? ?????????????? ?????????? ??????? ??? ?????? ?????? ?? ?????? ?????????? ?????? ??? ??????????????????
?????????????, ??????????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????????????? ??? ?????????? ???
?? ?????????? ??? ?????????? ?????????????? ??????????, ?? ??? ??????????

23 ?? Commissioners for Her Majesty's Revenue and Customs ?????????????? ???' ??????? ???
?? ??????? ??? ??????? ?????????? ?????? ??? ??????? ?????? ?????????????????????? ??????????
?????????????? ???? ?????????? ??? ?????????????????? ??? ??????????????? ??? ?? ?????????? ??? ?????????? ??
????????? ?????????? Woolwich ??????? ??? ??????????? ??????. ??????? ??? ?????????? ?????????? ??????????
?????????????? ??????????????, ??????? ?????? ??????????? ?? ?????????? ??? ?? ??????? 320 ?????????????? ??
????????????????? ??????????????? ?????????????????? ?????? ?????????????????? ?????????? ??????????????? ??? ??????????
??????????, ?????????????????? ?? ??? ?????????????????? ?? ??? ?????????????? ??????????????? ??? ??????????
????????????????? Woolwich.

24 ????????????????? ??????????????? ?? ?????? ?? ??????????? ??? ????????? 320 ?? ?? ?????????? ???
????????, ?? Supreme Court of the United Kingdom ?????????????? ?? ?????????????????? ??? ?????????? ???
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«1) ????? ?????? ??? ?????????? ?????? ?????????? ?????????? ? ?????????????????????? ?????????? ?? ??????????????
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????? ??????????????????? ?? ?????????????? ?? ?? ??????? 49 ?????? ??? 63 ?????? ??? ? ??? ??? ??????? ???
?????????? ?????????? ?????????????? ?????????????????? ?????????????????? ???????????????, ??????? ?????????? ?? ???
????????? ??? ?????????????????????????????????, ??? ?????????????? ?????????? ??? ??? ?????????????????? ???
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2) ????? ?????????? ??? ??? ?????????????? ??? ??????? ?????????? ??, ?????? ??? ??????? ?????? ??? ???????
? ?????????????????????????? ?????????? ??? ??????? ??? ?????????????????????????????? ?? ?????????? ?????? ??? ??????????????
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????????????????????????????? ??? ?????????? ??????? ?????????? ?????? ?????????????????????? ??????? i) ?????????????? ??? ii)
????? ?????????????? ?????????????????, ??? ?????????????????????? ?????????????? ??? ??? ?????????????? ?????????????????? ??????
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25 ?? ?? ??????? ?????????? ??? ?? ?????????? ?????????????????? ??????? ???' ?????????? ??, ?????? ??????????????
???? ?? ?????????????????????????? ??????? ?????????? ??? ?????????? ?????????? ?????????????????? ?????????????? ??????????
???? ?????????????? ?????????????????? ?????? ?????????????? ??????? ?????????????????????? ?????? ?????????????????? ??? ??????????????
???? ?????????, ?? ??? ???? ?????? ?????????????? ?????????????????? ?????????????????? ??????????????????, ???????
????????????? ?????? ??? ??????? ??? ?????????????????????????????????, ??? ?????????????? ??????????? ??? ???
????????????????? ??? ?????????????????????????? ?????????????????????? ? ??? ??????? ?????????????????????????? ???
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26 ? ?????????????? ??? ?????????????? ?????????????????? ?????????????????? ??' ??????? ??? ?? ?????????? ???
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????????? ?? ??? ?????? ??? ??????????????????????????. ?????????????, ?? ?????? ??? ?????????? ???
??? ?????????????????? ?????????? Marks & Spencer ??? ?????? ?????????? ?????? ?????????? ??? ???????
?????. ? ?????????????? ??? ?????????????? ??? ?????????????? ?????????????? ??? ?????????? ??????????????
Kleinwort Benson ?????? ?????????????? ?????????? ?????? ?? ?????????? ?????????????? ?????????????? ???????
??? ?????????????????? ??? Commissioners ?????????? ?????????????? ??? ?????????????? ?????????????? ???
????????? ?????????????? Woolwich, ?? ?????? ?????????? ?? ??? ?????? ??? ??????????????????????????
??? ?? ?????? ? ?????????? Aegis ?????????? ??? ?????? ?????????? ?? ?????????? ?????? ?????????? ???
????????????????????? ?????? ?????????????? ??? ?????????? ??? ?????????? ??????.

27 ? ?????????????? ??? ?????????????? ?????????????? ?????????????? ??? ? ?????????????? ?????????????? ???????
????????????????????? ?????????????? ?????????? ?????? ?? ?????????? ?????????????????????? ??????? ?????????????????? ??
????????? ?? ??? ?????????????????????? ?????????? ??? House of Lords ??? 25?? ?????????????? 2006, ?????? ??
?????? ?????????????????????? ??? ?????????????? ??? ?????????? ??? ?????????? Aegis. ?? ??? ?????????? ??????????????,
?? ?????????? ?????????????????????? ?????????????????????? ??? ?????????? ?????????? ?? ?????????????? ??? ??
????????????????? ??? ?????????????????? ?????????????????????? ?????? ?????????????????????? ??? ?????????????????? ??????????????
????????????????? ??? ?????????????? ?????????????????? Kleinwort Benson. ?????? ??????????????, ??? ??????????????
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28 ? ?????????????? ??????????????????, ??????????????, ??? ?????????? ?????????????? ?????????????? ?????????? ???
????????????????? ??? ?????????? ?????????? ??? ??? ?????????????????? ??? ??? ?????????? ?????????????? ? ??????????????????????
????????????? Marks & Spencer. ?????????? ???, ?????????? ??? ?? ?? ?????????? ?????????????? Woolwich ??????????,
?????? ??????????????, ?????????????????????????? ?????? ?????????? ?????????????? ??????????????????, ?????????? ??? ??????????????????
???? ?? ?????????? ?????????????? Kleinwort Benson ?????????????? ?? ?????????????????? ?????????????????????????? ???
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29 ?????? ??? ??????????????, ?????????? ??? ?? ?????????????? ??? ?????? ??? ?????????? ??? ??????????????????????
????????????????????? ??? ?????????? ?????????? ?????????????? ?? ?????? ??? ?????????????? ??? ?????????????
????????????????? Kleinwort Benson ?????? ?????????? ??? ??????????????????, ?? ?????????????????????????? ??????????????
????????? ?????????????? ?? ?????????????? ??? ?? ?????????? ?????? ?????????????? ?? ?????????????????? ?????????? ?????? ??
????????? ?????? ?????????? ?????????????? ???, ?? ?? ??????????, ?????????????????????? ?????????? ?????? ?????????? ???
?????????????????. ??????????????, ?? ?????????? 320 ?????????? ?????????????? ?????? ??? ?????? ???
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????????????????? ??? ?????????????????????????? ??????????????????????. ?????? ?????????? ??? ?????????? ?????????? ?? ??????????
?? ?????????????????? ?????????????? ?????????? ?????????? ??? ?????????????????????? ??? ?????????????????? ?????????????????? ???
????????? 320 ??? ??? ?????????? ??? ?? ??????, ?????? ?????????? ?????? ?? ?????????????????????????? ?? ?????????? ??
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30 ?????????????????????? ?????????????????????? ???, ?????? ?????????? ??????????????, ?? ?????????????? ??????
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?? ??????????????????. ?? ?? ??????????, ?? ?????????? ?????? ?????????????? ?????? ?????????? ?????????????????? ??????
????????????????????????? ?????? ?????????????????? ??? ?????????????? ??? ?????????? ?????????? (??, ?????????? ??? 19??
????????? 2012, C?591/10, Littlewoods Retail ?.??., ?????? 24 ??? ?????? ??????????????????????
????????????????).

31 ?????????????? ?????????????????????? ?????????????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ??????????????
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?? ?????? ?? ??????? ?????????????? ?????? ?? ?? ?????????? ??? ??????????????
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????????????? ?? ?????????????? ?? ?? ?????????????????? ?????????? ?? ?? ?????????? ?? ?????????? ??
????? ?? ?? ?????????? ?????????? ?? ??????????????????, ?? ?????? ??????????????, ??? ??????????????????
????????????? ?? ?? ?????? ?????????????? (??, ?????????? ?? 27?? ?????????? 2013, C?93/12,
Agrokonsulting-04, ?????? 35 ?? ?????? ?????????????????? ?????????????).

32 ?? ?? ??????, ?? ?????????????? ?????????????????? ?????????? ?? ?????? ?????????? ??????????
????????????????? ?? ?????????? ?????? ?????????????? ?? ?????????????????? ?? ?? ?????????????????????? ??????????
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????????????? ?????? ?????????? ?????????????????? ?????????????????? ?????????? (????? ?? ??????????????????) ?? ??
????????? ?? ?????? ?????????????????? ?????? ?????????? ?????? ?? ?????????????? ?????????????? ?????????? ?
????????????????? ?????????? ?? ?????????? ?? ?????????????????? ?? ?????????????????? ?? ?? ?????????? ?????? ??
????????? (????? ?? ??????????????????????????????????) (??., ?????????? ??????, ?????????? ?? 18?? ?????????
2010, C?317/08 ?? C?320/08, Alassini ?.??., ?????????? 2010, ?. I?2213, ?????? 48 ?? ??????
????????????????????? ??????????????, ?????? ?? ?????????????????????????? ?????????? Agrokonsulting-04, ?????? 36).

33 ?????? ?????? ?? ?????????????? ?????? ?????, ?? ?????????????? ?????? ?????????????????? ?? ?????????
????????????? ?? ?? ?????????? ?? ?????????? ? ?????????????????? ?????????? ?????????????????? ??????????????
??? ?????? ?????????????????? ?????? ?? ?????????????? ?? ?????????????? ??????????, ? ?????? ??????????????????
????? ?? ?????????????????????? ?? ?? ?? ?????????? ??????. ??????????, ?????????? ?????????? ??????????????????
?? ?????? ?????????? ?? ?????????????????? ?????????????? ?????????? ? ?????????????????? ?????????? ?? ??????????
?? ?????????????????? ?? ?????????????? ?? ?????????? ?? ?????????? ?? ?????????? (?????????????????????
????????? Marks & Spencer, ?????????? 35 ?? 39 ?????? ?? ?????? ?????????????????????? ?????????????).

34 ?????? ?????? ?? ?????????????? ?????????????????? ?????? ?????????????????? ??????????????????????, ??
????????????????? ?????? ?????????? ?? ?? ?????????? ?????????????????? ?????????????????? ?? ?????????????????? ??????????
? ?????? ?????????? ?? ?????????? ?? ?? ?????? ?? ?????????????? ??????????????, ?????????????? ?????????? (??.
????????????????? ?? 17?? ?????????????? 1998, C?228/96, Aprile, ?????????? 1998, ?. I?7141, ?????? 19,
?? ?? 24?? ?????????????????? 2002, C?255/00, Grundig Italiana, ?????????? 2002, ?. I?8003, ??????
34). ?????? ?????????????, ?? ?????????? ?????????????????? ??????????????????, ?????? ? ?????????????? ?? ?? ?????????
????????????? Woolwich, ? ?????? ?????????? ?? ?????????? ?? ?? ?????? ?? ?????????????????? ?????????????
????????, ??????????????, ?????? ?????????????, ?????????.

35 ? ?????? ?? ?????????????????????????????????????? ?? ?????????????? ???' ?????? ?????? ?? ??????????????
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?? ?????????????????????? ?????????? ?? ??????????????????????, ?????????? ? ?????????????? ?? ?????? ?????????? ??????
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Italiana, ?????? 35).

36 ??????????, ?????????? ?? ?????????????????????? ?????????????????????? ?????????????????? ??????????????????
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????????????????????????????????????? (????????????????????????? ?????????? Grundig Italiana, ?????? 36).

37 ?????????????, ?????? ?????? ?????????? ?? ?????????????????? ?? ?? ?????? 38 ?? ??????????????????????
????????????????? Marks & Spencer, ?????????????? ? ?????? ?? ?????????????????????????????????????? ?? ??????????????????
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38 ?????????? ?????????????? ??? ? ?????? ??? ?????????????????????????????????????? ?????????????? ?? ?????????
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?????????? ??? ?????????? (??., ??? ?? ?????????? ?????, ?????????????????????? ?????????? Marks & Spencer,
?????? 47).

39 ?? ?????????? ??? ?????? ?????????? ??? ??? ?????????? ??????????? ? ?????????????????????? ??????????
Marks & Spencer ? ?????????????????????? ?????? ??? ?????????? ??? ??? ?????? ?????????? ??????????, ???
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40 ?? ??????????????, ??????????????? ?? ?????????????? ?? ?????????????? ??? ?????????????? ??????
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41 ??? ?? ?????????????? ??? ??????????????? ??? ??????????????? ?????????????? ???, ????? ??? ??
????????? ??? ?????????? 320, ?? ?????????????????????? ?????? ?? ??????????????? ?????????? ??????????
????????????????? ?????????????????? ?? ?????? ?????? ?? ?????????, ??? ?????????????????? ??? ??????????
????????????????? Kleinwort Benson, ?????? ?????????? ?????????????????? ?????????????????????? ??????, ??????
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????????????????????? ??? Commissioners. ?? ?? ?????????, ?? ?????????? ??? ?????????????????????? ??????
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??? ?? 1997 ??? ?? 1999.

42 ??????, ?????????? ??? ?????????????????? ?????? ?????? ??? ?????????????????????????????????????? ?????? ?
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?????? ?????????????? ??? ?????????????????? ??????, ?????? ?????????????? ??? ?? ?????? 34 ??? ??????????
?????????????, ?????????? ?????????, ?????????? ?? ??? ?????????????? ??? ?????????????????? ??? ?????? 37 ???
????????????? ??????????????, ? ??? ?????????????????? ?????????? ?? ?????????????? ?????????????????? ?????????????? ??
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43 ??? ?????????? ??? ?????????????? ?????? ?????????????????? ?????????????????? ?????????????????? ??????????

