

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

??? 9?? ?????? 2016 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? – ?????? 77/388/??? –
????? 17, ?????????? 5, ????? ?????? – ????? ?????????? – ?????????? ??? ?????? ??? ????
????? – ????? ??? ?????????? ??? ?????????????? ?????? ??? ?????????????? ?????? ???
??? ??? ?????????????? ??? ??? ?????? (????? ??? ?????????? ?????? ??????) –
????? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????? ???
????????, ????, ?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ???
????????????? ?? ????, ?????? ??? ?????????? ?????? ?????????? ??? ?????? ???, ?? ???,
????? ??? ??? ?????? ?????? ??? ?????? – ?????????? ??? ?????? ?????????? ??? ??????????
??? ??? ?????? ?????????? ??? ?????????? ??? ?????? – ?????? 20 – ??????????????
??? ?????? – ?????? ??? – ?????????? ??????»

???? ?????? C?332/14,

?? ?????????? ??? ?????? ?????????????? ?????????? ?????? 267 ????, ???
????? ?? Bundesfinanzhof (????????????? ?????????? ??????????, ???????) ?? ??????
?? 5?? ?????? 2014, ? ?????? ?????? ??? ?????????? ??? 9 ?????? 2014, ??? ??????
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Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR

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Finanzamt Krefeld,

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

????????? ??? ??? L. Bay Larsen, ?????? ??? ?????? ???????, ?????????????? ???
????????? ???????, J. Malenovský (????????), M. Safjan, A. Prechal ??? K. Jürimäe,
???????,

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

?????????: K. Malacek, ??????? ??????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
9?? ?????? 2015,

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

– ? ?????????? ???????, ?????????????? ??? ??? T. Henze ??? ??? K. Petersen,

– ? ?????????? ??? ?????? ???????, ?????????????? ??? ??? J. Kraehling ??? ??? L.
Christie, ?????????????? ??? ??? R. Hill, barrister,

– ? ?????????? ???????, ?????????????? ??? ??? M. Wasmeier ??? G. Braun, ???
??? ??? ??? C. Soulay,

????? ?????? ??? ?????? ??????????? ??? ??????? ??? ?????????? ??? ?????? ?? ???????????
??? 25?? ?????????? 2015,

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1 ? ?????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 17, 19 ??? 20 ???
????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ???
????????? ??? ?????? ?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? — ???
?????? ??? ????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49),
???? ?????????????? ?? ??? ?????? 95/7/?? ??? ??????????, ??? 10?? ?????? 1995
(?? 1995, L 102, ?. 18) (???: ??? ?????).

2 ? ?????? ??? ?????????? ??? ??????? ??????? ??????? ??? Wolfgang und
Dr. Wilfried Rey Grundstücksgemeinschaft GbR (???: Rey Grundstücksgemeinschaft) ???
??? Finanzamt Krefeld (????????? ?????????? ?????????? ??? Krefeld), ??????? ?? ??? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ???
????????????? ??? (???) ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????? ???
?????????, ?????????, ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????????????? ???
?? ??????????????, ?? ????, ?????? ??? ?????????? ?????? ?????? ?????? ?????? ???, ??
?????, ?????? ??? ??? ?????? ?????? ?????? (???: ????: ?????? ??????
??????).

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3 ?? ??? 17 ??? ????? ??????, ??? ??? ????? «?????? ??? ?????? ??? ?????????? ???
????? ??????», ?????????? ?? ????:

«1. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ????.
2. ??? ?? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????????????? ??? ??
????????????? ??? ?????????????? ???, ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??
????????? ??? ??? ???, ??? ??? ?????? ?????? ??????:
?) ?? ?????????? ? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ?? ??? ??? ??? ?????????? ? ?????????? ?? ??? ?????? ??? ?????? ??? ??? ??? ?????????? ???
??? ??? ?????????? ? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???.

[...]

5. ??? ?????? ?? ?????? ??? ??? ?????????? ??? ?????????????????? ??? ?????????????? ???
????? ??? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????????? 2
??? 3, ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ????, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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? ?????????? ??? ?????????????? ??? ?? ?????? ??? ??????? ??? ?????????????????? ??? ??
?????????? ????, ??????? ?? ???? 19.

?????????, ?? ?????? ??? ??????:

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

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

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

[...]»

4 ?? ?????? 19 ??? ?? ??? ??????, ??? ?? ??? «????????????? ??? ?????????? ???
?????????», ????, ??? ?????? ??? 1, ?? ???:

«? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? 17, ?????????? 5, ??? ?????? ???,
????????? ??? ?? ??? ?????? ??? ??????????:

– ??? ?????? ?? ?????? ??? ?????? ??? ??????? ?? ?????? ?????????? ???, ??? ?????
????????????? ???, ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ???
???????, ??? ?????? ?? ??? 17, ?????????? 2 ??? 3?

– ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???, ??? ?????
????????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ???,
????? ??? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????. [...]

[...]»

5 ?? ?????? 20 ??? ?????? ??????, ?? ??? «????????????? ??? ??????????», ????, ????:

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

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

?)) ???? ??? ???? ?????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????, ??? ?????? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? [...]

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

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

???? ?????? ?? ??????? ?????? ??????????, ? ?????????? ??? ?????????? ??? ?????????? ?? ?????????????? ?? ???
????????????? ??? ?????????????? ?????? ?? ?????????????? ?????? ?? 20 ???.

[...] »

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

7 ?? ?????? 15 ??? UStG ??????????? ???:

«(1) ? ?????????????????? ??????? ?? ?????????? ?? ?????????????? ????? ?????? ?????? ?????? ?????? ??????;»

1. ??? ??? ??? ??? ???? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????????????? ??? ?? ?????? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???

[...]

(2) ???????????? ? ?????? ??????? ??? ?? ??????????????, ??? ?????????? ??? ??
????????????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?? ?????????????? ?
????????????? ??? ?? ?????? ?????? ??????:

1. ??? ?????????????????? ?????????

[...]

(4) ??? ? ?????????????? ?????????????? ??? ??? ?????????????? ??? ??? ?????? ??? ??????????????,
????????? ? ?????????????? ??? ?????????????? ??? ?????????????? ? ?????????? ??? ??? ?????????????? ??
????? ??? ?????????????? ?? ?????????????????? ?????????? ??? ?????????????? ??? ?????????? ???
????? ???????, ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????? ??????????????
????????????? ??? ?? ??? ?????? ??????. ? ?????????????? ?????? ?? ??????????
?? ??? ???? ?????? ?????? »

8 ? Steueränderungsgesetz 2003 (?????? ??? ?????????????? ??? ?? ???????????
?????????? ??? 2003), ??? 15?? ?????????? 2003 (BGBI. 2003 I, ?, 2645), ? ?????? ????

????? ??? 1? ??????????? 2004, ?????????? ?????? ?????? ???? 15, ?????????? 4, ??? UStG, ? ?????? ?????????? ?? ????:

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

9 ?? ?????? ?? ???? ??????????????? ??????, ????, ????? ?????????????? ????? ?????? ?????? ?????????? ??????????????????
??????????, ?????? ?? ????:

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

? ??????????? ???. ??????????? ???. ???????, ????. ?? Bundesfinanzhof [(?????????????
?????????? ???. ???????, ????.)] ??????, ?? ???. ??????? ???. ???. 17?. ?????????? 2001
[...], ???. ???. ??????? ???. ??????? ???. ??????? ???. ?????????????? ???. ???. ??????? ???.
????????? ???. ??????? ???. ??????? ???. ??????? ???. ?????????? ???. ?????????? ???. ??????? ???.
?????? ???. ??????? 15, ?????????? 4, ??? [UStG].

???????, ? ?????????? ??? ??????? ?????????? ?? ??? ????? ??? ????? ?????????? ?? ??????
????????? ?????????? [??? ?????????? ?????????? ??? ??? ??? ????? ??????]. ?? ??????????
????????? “?????????” [...] ??? ????? ?????????? ??? ?? ????? ????, ?????????? ?? ???
???????, ?? ??? ?? ????? 17, ?????????? 5, ????? ????, ?? ?????????? ????????
????????? ??? ?????????? ??? ?? ??? ????? ???????.

10 ?? ???? 15a ??? UStG, ??? ??? ????? «????????????? ??? ?????? ??? ??? ??????»,
??????, ??? ?????????? ??? 1 ??? 2, ???:

«(1) ?????, ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ??????????, ???????????
????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????????? ??? ?????? ???
????????? ?????????????? ??????????, ??? ?????????????? ?? ?????????? ??????????????, ??? ???
????????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??????, ??? ??? ?????? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?? ?????? ?????????????? ?? ??????????
????????? ??? ??????????. ?????????? ??? ?????? ??? ??????, ?????????????????? ???
????????? ??? ??????????, ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?? ??????, ? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ??????????
????? ???.

(2) ??? ??? ???? ??????? ??? ?????????????? ??? ????? ?????????? 1 ??????????????, ??????????
?????, ??? ??? ???? ?????????????? ??? ??? ?????????????? ??? ????? ??????????, ???
????????????????? ??? ??? ????? ?????????? ??? ?????????????? ??? ????? ?????????????? ?? ??? ??? ?????,
??? ??? ?????????????? ??? ?????????? ??????? ??????????????, ?? ??? ????? ??? ????? ???
????? ??? ??? ?????????? ??? ?????????? ?? ?????? [...]».

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

11 ????. ?? ????????. ???. ????. 1999 ???. 2004, ? ??????. ??????. ??????. Rey
Grundstücksgemeinschaft ??????, ??? ?????????? ??????. ???, ?????? ??????????????
?????. ??????. ??? ??????. ??????. ??????. ??? ??????. ??? ??????. ?? ??????. ???
?????. ??????. ?? 2004 ??? ??????. ??? ??????. ??????. ??? ??????. ??? ??????. ???
?????. ????. ??????. ??????. . ??????. ?? ??? ?? ??? ??????. ??? ??????.
?????. ????. ????. ??????. ??? 2002.

12 ??? ??? ??????????? ??????? ??? ?? 1999 ??? ?? 2003, ? Rey Grundstücksgemeinschaft
?????????? ?? ??????? ?? ??? ?????? ??? ?????????????? ??? ?????????????? ?? ??? ?? ??? ??????
????????????? ?? ??? ?????????? ?????????????? ?????? ?????????? ?? ??? ?? ??? ??????
????? ?? ??? ?????? ??????? ?? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?? ??? ??????
? ??? ?????????? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????
????????????? ?? ??? ?????? ?????? ?????????? (??? ????: ?????? ?????????? ?? ??? ?? ??? ??
????? ??????). ?????? ?? ??? ?? ??? ?????? ??????????, ?? ?????? ??? ?????? ??? ?????? ???
????????? ?? 78,15 %. ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ???
Finanzgericht Düsseldorf (?????????? ??????????? ??? ???????????, ???????) ??
?????????? ?? ??? ?? ??? ?????? ??? ?????? 2001 ?? 2002, ? ??????
?????????? ?????? ??? Krefeld ?????? ?????? ??? ?? ??? ?????? ??????? ??????????.

13 ????? ?? ???? 2004, ?????????? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????????? ??????? ?? ?????????? ??? ??? ???, ??? ? ?????????? ?????????????? ???
?? ?????????????????? ??? ??? ?????????????? ?????????? ?????????????? ??? ??? .
????????????? ??? ??? ?????????????? ??? ?????????? ??? ?????? ??? ??? ??????, ? Rey
Grundstücksgemeinschaft ?????????? ??? ?????????? ?????? ??? ??? ? ???? 2004 ???
????????????? ??? ??? ?? ?????? ?????????? ?????????????? ??? ?????????? ??? ?????????? ??? ???
??? ?????? ??????????. ??? ?????? ???, ? Rey Grundstücksgemeinschaft ?????? ???
????????? ??? ???, ??? ?????? ?????????? ?????? ??? ?????????? ?????????? ??? ??? ? ???? ,
????????? ??? ?????????? ??? ?????????? ?????? ??? ??????. ?? ?????????? ??? ??? ??? ??? ?????? ???
????????? ??? Rey Grundstücksgemeinschaft ???????, ??????? ?? ??? ??? ??????????????
??, ?? ??????? 3 500 ???.

14 ?? ?????? ??????????? ?????????????? ?????? ??? 1?? ??????????? 2006, ? ???????
?????????? ???????? ??? Krefeld ??????????? ?? ?????????? ?????? ?? ???? ??????? ???,
???? ??? ?????? ??????, ??? 1? ??????????? 2004, ??? ?????? 15, ?????????? 4, ?????
?????????, ??? UStG, ? ??????? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????????? ???
?????? ??? ?? ?????????? ?????????? ?????????? ?? ??? ?????? ?????? ?????????? ?????????? ???
?????? ??? ?????????? ??????? . ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ???
?????????? ???????, ??? ??????? ??? ?????? ?????? ?????? ???????????, ??? ?????? ??? ???????
??? ?????????????? ??? ?? ??? ?????????? ? ??? ?????? ?????????? ?????????? ?????????? ???
?????? ?????????? ?? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?? ?????????? ???
????????? ?????? ??? ?? ??? ?????????? ??? ?????? ?????????? (?? ????: ?????? ?????????? ??
????? ?? ???????), ? ??????? ??? ?????? ??? ? Rey Grundstücksgemeinschaft ?????? ??
????????? ??? ?? ??? ?????? ??????. ?? ?? ??????, ?????????? ?? ??????? ?????????? ??? ?????? ??
38,74 %, ?? ?????? ??????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ? ??????????
?? ?????? ?????????? ?? ???, ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ?? ??????????
?? Rey Grundstücksgemeinschaft ?? ?????? 950 ??? ?? ??? 2004.

15 ?? Finanzgericht Düsseldorf (?????????? ?????????? ?? ??????????????) ??????? ??
?????? ?? ??????? ?? ?????????????? ?? ?????????????? ?? ??????? ?? ??????? ?? ??????? ??
?????????? ?? ??????? ?? ??????? ?? ?????????? ?? ?????????? ?? ??????? ?? ??????? ??

??? ??????? ??? ?????????????????? ??? 1?? ?????????? 2004. ?? ?? ??????, ????????, ??? Rey
Grundstücksgemeinschaft ??? ?? ??? 2004.

16 ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? (Revision) ????
??? ?????????? ?????????? ?????? Bundesfinanzhof (????????????? ??????????).

17 ??? ?? ?????? ??????????, ? ?????? ??? ??????, ??????, ?????????? ??????? ??
??? ?????????? ??? ?????? 17, ?????????? 5, ??? ?????? ?????? ??? ?? ?????????? ???
?????? ??? 8?? ?????????? 2012, BLC Baumarkt (C-511/10, EU:C:2012:689).

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

19 ??????, ?? ?????? ?????????? ?????????? ???' ?????? ???, ??? ?????? 19 ???
????????? ??? 8?? ?????????? 2012, BLC Baumarkt (C-511/10, EU:C:2012:689), ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ?????? ?????????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??? ?????????? ??? ????
????? ??? ??? «????????? ???, ??? ? ?????? ?????? ?????? ?????? ?????? ??????». ???,
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ???? ?????? ??? ??? ?????? ???
??? ?? ???, ?????????? ? ?????? ?????? ??????. ??? ??????, ?? ?? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ???.

20 ??????, ?? ?????? ?????????? ?????????? ??? ?? ??????????, ??? ??? ??????
??? ??? ??? ?????????? ?????????? ??? ?????? ?????? ?? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 20 ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ?????? ???,
????????? ??? ??? ?????? ??? ?????? ??? ?????? ???.

21 ??????, ?? ?????? ?????????? ?????????? ???, ??? ?????? ??? ?????? ??? ??????
?????, ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??????, ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? 15, ?????????? 4, ??? ?????? ???, ??? UStG ?????? ?? ??? ??
????????? ?????????? ???, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ??? ??? ?? ??? 70 ??? ?????? ??? 29?? ?????? 2004, Gemeente Leusden
??? Holin Groep (C-487/01 ??? C-7/02, EU:C:2004:263), ?????? ??? ? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????????? ??? ??? ????? ??????? ????. ?????. ? ?????? ??? ??????? ??? ??????? ??? ??????? ???
??? ??????? ??? ?????? ?????? ??? ????? ?????? ? Rey Grundstücksgemeinschaft ????
????? ??? ?? ???? ?????????? ??? ????? ?? ???? ?????????? ??? ?????? 2001 ?? 2002,
????? ?????? ??? Finanzgericht Düsseldorf (????????? ??? ?????????? ???).
?????????????.

22 ??' ??? ????? ?? ???????, ?? Bundesfinanzhof (????????????? ??? ?????????? ??? ??????????)
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??
????????? ?????????? ??? ??????????:

«1) ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?? ?????? 17, ??????????
5, ?????? ??????, ??? [????? ??????] ?????????? ??? ?????? ??? ??????????, ?? ??????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????, ??? ?????? ? ?????? ?????? ?????? ?????? ?????? ??????, ?????????? ??? ??????
?? ?????? ??? ?????????? ??? ?????? ?????? ??????, ??? ?????? ?????????? ?? ?????? 19,
????????? 1, ??? ?????? ?????, ??? ??? ?????????? ??? ? ?????? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????? (????????? ?? 8??
????????? 2012, BLC Baumarkt, C-511/10, EU:C:2012:689).

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

?) ?????? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ??????
?? 8?? ?????????? 2012, BLC Baumarkt (C-511/10, EU:C:2012:689), ?????? ??? ? ??????????
?? ??? ?????????? ??? ?????????? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ??? ?? ??????, ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????;

2) ??? ?? ?????? 20 ??? [????? ??????] ??? ?????? ??? ? ?????????????? ??? ??????
???? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????????
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? 19, ?????????? 1, ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? [?? ??? ???] ????
????????? ?? ??? ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????;

3) ?? ?????????? ?????????? ??? ?????? ??? ?????? ??????: ?????????? ?? ??????
??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? 20 ??? [????? ??????], ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ????
??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ????
????????? ?????? ??????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? [?? ??? ??? ??? ?????? ??????] ????
????????? ??? ?? Bundesfinanzhof [????????? ??? ?????? ??? ??????] ?? ?????? ??
?????????;»

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

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

23 ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ??? ?????? ???' ?????? ?? ??????????

?? ?? ?????? 17, ?????????? 5, ??? ?????? ?????? ?????? ??? ?????? ???, ??? ?????????? ???
?????? ?????????????? ??? ?? ?????????????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ???, ?? ?????? ???
????????????? ?? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ??????
????????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

24 ?????????????? ?????????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ???
????? 17, ?????????? 5, ??? ?????? ?????? ?????? ?? ?????? ?????????? ??? ?? ??? ??
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?? ??????, ?? ??
????? ?????? ?????? ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??????
17, ?????????? 5, ??? ?????? ??????.

25 ?????????????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ??? ??
?????????. ????????????, ??? ?? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??
????????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? 17, ?????????? 2, ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????????? ??? ?? ???
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?? ???, ??
?? ?????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? 17, ?????????? 5,
????? ??????, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ??? ???? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????.

26 ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??? ??
????????? ?? ??? ??, ?? ?????? ??? ?????? ??????????, ???????, ?? ?????????? ??? ??
????????? ??? ??, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ??????
?????????, ???????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ??????
?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??????
?? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ???, ??? ?????? ??? ??????
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? 17, ?????????? 5, ??? ?? ?????? ??????.

27 ??? ?????, ???????, ?? ?????? ??????, ??? ?????? ??????, ??? ?????? ?????? ??? ?????? ????
????? ?????? ??? ?????? ??????????????, ?? ??? ?????? ?????? ??? ?????? ??????
????????? ?????? ??? ?????? 17, ?????????? 5, ??? ?????? ??????, ?? ??? ??
??????, ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ??? ??
????????????? ??? ??? ?????? ?????? ?????? ??? ?????? ?????? ???, ??? ?????? ??????
????????????? ??? ?????? ?????? ?????? ?????? ???, ?? ?? ?????? ??? ??????
?????????????.

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

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

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

30 ??? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?
????? ??? ?????????????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????, ?????????? ? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

31 ???????, ??? ?????, ?? ?????? ??????, ??? ??? ?????????? ??? ??? ?????? ???
????, ???????????, ?? ??? ?? ??? ?????? ??? ??? ?????? ??? ?????? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??? ?????? ???
????? ??????, ???, ??? ?? ??? 17, ?????????? 5, ?????? ???, ??? ?????? ???, ??
????? ??? ?????????? ?????? ??? ?????? ?????? ?????????????, ??? ?? ?????? ???
????? ??? ?????????????? ? ?????? ???, ?????? ??? ?? ??? ?????? 19 ??? ??????
????, ???' ?????? ??? ?????? ??? ?????? ?? ??? ??? ?????? ???.

32 ?? ?????????? ??? ?????? ??????, ??????, ??? ?? ?????? ??? ??????, ??? ?????? ???
????????? ?? ??? ?????? ??? ?????? ?????? ??? ?????? 17, ?????????? 5, ?????? ???,
??? ?? ??? ??????, ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???,
????? ???, ??? ? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ?????? (??., ??? ??? ?????? ???, ?????? ??? 8?? ??????
2012, BLC Baumarkt C?511/10, EU:C:2012:689, ??? 24).

33 ? ?? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ? ?????????? ??? ?????? ???
??' ?????? ?? ??? ?????? ?????? . ???????, ??? ?????? ??? ? ?????? ??? ??????????
?? ?????? 90 ??? ?????? ???, ?? ?????? ??? ?????? ??? 8?? ?????????? 2012,
BLC Baumarkt (C?511/10, EU:C:2012:689), ?????? ?????? ? ?????????? ??? ??
????????? ?????????? ??? ?????? ?? ?????? ?? ?????? ?? ?????????? ??? ??
?? ?????? ?????? ?? ??? ??? ?????? ?????? (??, ??????, ??? ??? ?????? ???,
????? ??? 10?? ?????? 2014, Banco Mais, C?183/13, EU:C:2014:2056, ??? 29).

34 ???????, ??? ???????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????, ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????, ?????????? ?? ???
????? ?????? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ??????????
?? ?????????? ??? ? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????.

35 ? ?????????? ??? ?????? ???????, ??? ??????????, ??? ?????? ??? ?????? ??
?? ?????????? ??? ?????? ??? ?????? ?????? ?? ?????????? ?? ??? ?????????? ???,
??? ?????????????? ?? ??? ?????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

36 ??????? ??? ??????? ??? ?????????????? ???????, ??? ?????? ??????? ?????? ???
????? ? ?????????? ??? ?? ????? 17, ?????????? 5, ??? ?? ????? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????????????? ?????????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ???????, ?? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ???????, ????, ????, ?????????? ? ?????????? ??? ?????? ??????
?????????, ???????, ?? ?????? ??? ?????????????? ???????, ???? ? ?????????? ??? ?????
????????? ??????????????, ??????????, ??? ?????? ??? ?????????? ??? ???????, ??? ?????? ??? ??????
??? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????
??? ?????????? ??? ?????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ?????????? ??? ?????? ?? ?????? ?????????? ???' ?????????? ?????????? ?????????? ???
????? ??? ?????? ?????????? ?, ??? ????? ?????????? ??? ? ?????????? ??? ?????? ?????????? ??????????
????????? ??? ?????????? ??? ??????????, ?? ?????? ??? ??????.

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

37 ?? ?? ??????? ??????? ???, ?? ?????? ?????????? ?????? ???' ?????? ??
????????????? ?? ?? ????? 20 ?? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ? ?????????? ??? ??????????
??? ?????? 17, ?????????? 5, ??? ?????? ????, ??? ?????? ??????????, ???? ?? ??????
??? ?????????????? ?????????? ??????????????, ??? ?????? ?????????? ??? ?????? ??? ???
????????????? ??? ??? ?????????? ??? ?? ?????? ??????.

38 ?????????????? ??????? ??? ?? ?????? 20, ?????????? 1, ?????????? ??, ??? ?? ???
????????? ?????????? ??? ?? ?????? ?????????????? ?????????? ??? ?????? ?? ?????????? ??
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????????? ? ??????, «?????» ?? ?????????? ?????????? ?????????? ? ??????????
?????????. ? ?? ??? ?????? ??? ?????????? «?????» ?????????? ??? ? ?????????? ???
????????? ??? ??? ?????? ??????????.

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

40 ??? ???????, ?????????? ?? ?????????? ?? ?????????? ?? ? ?? ??? ?????? ?????????? ?????????? ???
????????? ???????, ?????? ?? ?????????? ?? ?????? ?? ?????? ??? ?????? ?? ?????? ???
????????? ?? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? (??., ??? ?? ?????? ???,
????? ????, ?????? ??? 27? ?????? 2003, Zita Modes, C?497/01, EU:C:2003:644,
????? 34).

41 ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? 20, ?????????? 1,
????????? ??, ??? ?????? ??????, ??? ?? ?????? 17, ?????????? 5, ??? ?????? ???????, ??
????????? ?? ?? ?????? 19, ?????????? 1, ??? ?????? ??????, ?????????? ??? ?? ??????????
????? ??? ??? ?????? ??????, ??? ?? ??????, ?? ?????????? ?????? ??? ?? ??????????
????????? ?????? ?????? ?????????? ???' ?????????? ?????????? ?????????? ? ?????? ???

?? ?????? ? ?????????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ??????????, ? ??? ??????????
????????? ?????????????? ??????? ?? ?? ?????? 17, ?????????? 5, ????? ??????, ??? ?? ???
??????, ??? ?????? ??? ? ?????? ??? ?????? ?????, ?? ????? ??? ???????????
??????????????, ??? ?????? ?????????????? ?????????????? ?????????????? ??? ?? ??? ??????????? ???
????????? ?????????? (??., ??? ?? ?????? ???, ??????? ??? 8?? ?????????? 2012, BLC
Baumarkt, C?511/10, EU:C:2012:689, ??? 24).

42 ????????, ? ?????? ??????????? ???, ?? ?? ??????, ? ?????????????? ??????
??????????? ?? ???? ?? ?????????? ?????????? ?????????? ?? ?????? ?????????? ?????
?? ?? ?????? ??, ?? ?????? ?????? 20, ?????????? 1,
?????? ??, ?? ?????? ??????.

44 ????, ????, ??????????? ???. ???? ?????? 32 ??? 33 ??? ?????????? ???????????, ????. ????.
?? ?????? ??? ???. ?????????? ??????? ???????, ? ?????????? ??? ???. ?????? ?????? ?????? ????.
?????????? ???. ?????? ??????? ???. ?????????? ? ????. ?????? ?????? ?????? ?????? ????.
?? ?????????? ???. ?????? ???? ???? ???? ?????? ?????????? ?????????? (??., ??? ???.
????? ???, ?????? ???. 8?? ??????? 2012, BLC Baumarkt, C?511/10, EU:C:2012:689,
????? 24).

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

46 ????, ??? ???. ????????. ??? ?????????? ??? ??????? 20, ?????????? 1, ????????, ??, ???.
????? ????????. ??? ???. ?????? ??? ?????????? ???. ??? ?????????? ???. ??? ?????????? ???. ??? ??????????
????????????? ???. ??? ?????????? ???. ??? ?????????? ???. ??? ???. ??? ?????? ???. ??? ?????? ???.
????????????? ???. ??? ?????????? ???. ??? ?????????? ???. ??? ?????????? ???. ??? ?????? ???.
????????????? ???. ??? ?????????? ???. ??? ?????????? ???. ??? ?????????? ???. ??? ?????? ???.

47 ?????????????? ?????? ??? ??????? ??? ?????????????? ??????????????, ?????? ?? ????
??? ??????? ??????? ? ??????? ??? ?? ?????? 20 ??? ?????? ?????? ??? ?? ?????? ???
?????? ?? ?????????? ?????????????? ??? ?????????? ??? ?? ??? ?????????????? ???
????? ? ?????????? ??? ?????????? ??? ?????? 17, ?????????? 5, ??? ?? ??? ?????? ???
??? ??????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??????????????, ??????
????????? ??? ??? ?????????????????? ??? ??? ?????????? ??? ?????????? ?????? ? ???
????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ? ???
?????.

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

48 ?? ?? ?????? ??????? ???, ?? ?????? ??????????? ?????? ???' ?????? ?? ???????????
?? ?? ??????? ???, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??,
?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??,
?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??,
?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??,
20 ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??,
?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????? ??,

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

49 ?????????????? ?????????????? ??? ?? ?????? ??? ?????? ?????????????? ??? ?????????????? ???
????????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? . ?? ?? ??????, ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?? ??????
????? ??? ??????, ??? ?? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ?? ?????? ??? ?????? (?????? ?? 29?? ??????? 2004, Gemeente Leusden ???
Holin Groep, C?487/01 ??? C?7/02, EU:C:2004:263, ????? 57).

50 ???????, ??????? ?? ?????? ?????????? ??????? ?? ??????? ?????????? ?? ??????? ??????????
?????????? ?? ??? ?? ?????? ?? ??? ?????? ?? ??? ?????? ?? ?????? 20 ??? ?????? ??????? ??????? ??
?????????? ?? ??? ?? ?????? ?? ?????????? ??????? ?? ??? ?????? ?????????? ??
????????????? ???????????, ?????????? ?? ?????????? ?????????? ??????? ?? ?????? ??? ?????? ??? ??
?????????.

51 ???????, ??? ?????? ??? ?????????? ??????? ?? ?????? ??? ??????, ??? ?? ??? 20 ??? ??
????? ??????, ?????? ?? ???????????, ??? ?????? ??? ???????, ??? ?????? ??? ?????? ??????? ?? ???
????? ?????? ??? ??????? ?? ??? ??????? ??, ???????????, ?? ??? ?????? ??? ?????? ??? ???????
????? ??? ??? ?????????? ??? ?????????????? ?????????????? (??., ??? ?? ??? ??????
????, ?????? ??? 29?? ??????? 2010, M ?.??., C?340/08, EU:C:2010:232, ????? 64).

52 ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ???????, ?? ?????? ?????????? ??? ? ??????? ???
????????? ??? ?????? ?????, ??? ?????????? ?????? ?????????????? ?????????????? ?? ??????????
????????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
??, ??? ?????????????? ??? ?????? 47 ??? ?????? ?????????? ?????????, ?????? ??????????
????????? ??? ??? ?????????? ??? ?????? 20 ??? ?????? ??????.

53 ??? ?????? ???????, ?? ?????? ??? ?????????? ??? ???????, ??? ?????????? ??? ? ??????? ???
??? ?????????? ??? ?????? ??? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
??????, ?? ??? ???????, ??? ?????? ??? ??????, ??????? ?? ??? ?????? ??? ?????? ??? (??., ??
??? ?????? ???, ?????? ??? 27?? ??????? 2000, Océano Grupo Editorial ??? Salvat Editores,
C?240/98 ??? C?244/98, EU:C:2000:346, ????? 31).

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

55 ???????, ??? ?????? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????? ???
?????? ???, ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ??? «????????? ??????» ?? ?????????? ?? ??????, ?? ?????? ??? ?????? ??? ?????? ???
?????? ??? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

56 ?????????????? ?????? ???, ???????, ?????? ?????????? ?? ??? ?????? ??? ?????? ???
?????? ??? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

57 ???????, ?? ??????? ??????????????, ???? ?? ?????? ??? ?????????? ??????? ?? ????
?????????? ?? ???? ?????????????? ?????????????? ?? ?????????, ? ??????? ??????
????????? ?????????????? ?? ???? ?????????? ?????? ?? ?????? ??????????????.

58 ????, ????, ????????????, ??, ??????, ????????????, ?? ????????????, ??? ?????? ?????? ???
?????? ?? ?????????? ?????????? ?? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ??????????
?????? ?? ???? ?????????? ?? ?????????????? ?????????????? ?????????????? ?? ?????? ???????, ??????????
?? ????????????, ?? ??????????? ? ?????? ?????????? ?????????? ?????????? ?? ?????? ?????????? ??? ???
?? ??????????? ???? ????, ?? ?????? ?? ?????? ?? ?????? ??? ?????????? ?????? ??? ??
????????????? ?? ???? ??????????, ?? ?????? ??? ? ?????????????? ?????? ??? ??
????????? (??., ??? ??? ?????? ???, ??????? ??? 29?? ??????? 2004, Gemeente Leusden
?? Holin Groep, C-487/01 ?? C?7/02, EU:C:2004:263, ??? 70).

59 ???????????, ?? ??????????? ???? ??? ?????? ?? ?????????? ?????? ?????????????? ???
? ?????????? ??????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????? ??
?????????? ?????????? (??., ??? ??? ?????? ???, ??????? ??? 11?? ?????? 2015,
Berlington Hungary ?.??., C?98/14, EU:C:2015:386, ????? 87).

60 ?????? ??? ?? ????????, ????, ??? ?????? ?????????????? ??? ?????? ?????????? ?????????????? ???
????????????? ?? ?????? ?????????????? ??? ?????????????? ??? ?????????? ?????? ?? ?????? ?????????? ?? ??????????
????????? ??? ????????????, ??? ?????????? ??? ?? ?????????? ?? ?????? ?????????? ?????????????? ???
????? ?????????????? ?????????????? ?????????????? ??????????, ?? ?????? ?????????????? ??? ??
????????????? ?????? ??? ?????? ?????????? ??????????, ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ?????? ??????.

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

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

63 ?????? ??????, ??????, ?? ??????? ???? ?????? ?????????? ?????????? ??????????????, ????. ? ?????? ? ?????????? ????
????????? ??? ?????? ??????, ?????????????? ???? ?????? ?????????? ?????? ?????????? ??? ?????????????? ??? ?????????????? ???
????????? ??? ? ?????????????? ?????? ?????? ?????? ?? «????????????» ??? ??? ??? ??? ???? ??????
????????????? ?????? ??? ??????? ?????? ??????, ?????????????? ??? ?? ?????? ??? ???? ?????? ???
????????? ?????? ??? ??? ?????????? ??? ?????? ?????????? ?????? ?????????????? ??????????????, ??? ?? ??? ????
?? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??????????????
?? ?????? ?? ?????????? ?? ?????? ??? ?????? (?).., ???' ??????????, ??????? ??? 14??
????????? 2010, Stadt Papenburg, C226/08, EU:C:2010:10, ????. 46 ??? ???
????????? ??????????).

64 ?? ?????? ??????????, ??????????, ??? ?????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? «????????????» ??? ??? ?? ??? ?????? ?? ?????? ?? ??????

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

65 ??? ?? ??????? ?? ?????????????? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
?????? ?? ?? ?????????? ?????????? ?? ??????? ?? ?????????????? ?? ?????????????? ?? ?????????????? ?? ??????????????
????? ?? ?? ??????? ?? ?? ?????????????? ?? ??????? ?? ?????????????? ?? ??????? ?? ??????????? ?? ??????? ??
?????????? ?? ??????? ??????????????, ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? 20 ?? ?? ??????? ?? ???????, ??
????? ?? ?? ???????, ?? ?? ?????????? ?? ??????? ?? ?????????? ?? ??????? ?? ?????????? ?? ??????? ??
?????????????? ?? ?? ?? ?????????? ?? ??????? ?? ?????????? ?? ??????? ?? ?????????? ?? ??????? ?? ?????????? ??
??????, ?? ?? ?????????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?????????? ??
???? ?? ?????????? ?? ?? ??????? ?? ??????? ?? ?????????? ?? ?? ?????????? ?? ?? ??????? ?? ?????????? ??
???? ?? ?????????? ?? ?? ??????? ?? ??????? ?? ?????????? ?? ?? ??????? ?? ??????? ?? ?????????? ??

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

66 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ,?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ?????????? ??????
????? ?????????? ?????????? ??? ?????????? , ??? ?????????? , ??? ??? ?? ??? ?????? , ??? ?????????? , ??? ?????????? .

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

1) ?????? 17, ??????? 5, ??? ????? ?????? 77/388/??? ??? ??????????, ???
17?? ??? 1977, ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?? ??? ????? ?????? ?????? — ?????? ?????????? ??? ????? ??????????????
?????: ?????????? ?????????? ???, ??? ?????????????? ?? ??? ?????? 95/7/?? ???
??????????, ??? 10? ??????? 1995, ??? ??? ?????? ???, ??? ?????????? ???
?????? ?????????????? ??? ??? ?????????????? ?????????? ?????????? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ??? ?????????? ?????????? ???
??????, ?? ??? ????? ??? ?????? ?????????????? ?? ?????????? ??? ?? ?????? ??? ??
????????? ??? ?????????? ?? ?????? ??? ?????? ?????? ?????? ???????, ??????, ?????,
????????? ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???????, ??????, ?? ?????? ???
????????????? ???????, ??? ? ??????? ??? ?????? ?????? ?????? ?????? ???????????????,
??????????, ??? ???????, ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???
?????? ?? ??? ????? ??? ??? ?????????? ??? ?????????????? ?????????????? ???
????????? ??????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ??????? ??? ?????? ?????? ?? ?????????? ???' ?????????? ???????
????????? ?? ??? ??? ??? ?????? ???????, ?, ??? ??? ?????????? ??? ? ??????? ???
????????? ?????????? ?????? ??? ?????? ??? ???????, ?? ??? ??
??????.

2) ?? ?????? ??? ?????? ??????? 77/388 ??? ?????? ??? ??????? ??? ??????? ??
?????????? ?????????????? ??? ?????????? ??? ?????? ?????? ?????????????? ??? ??
????????????????? ??? ??? ?????? ? ?????????? ??? ?????????? ??? ?????? 17,
????????? 5, ??? ?? ??? ?????? ??????? ??? ?? ??????, ??? ?? ?????????? ??
????????? ??? ?????????? ??????????????, ??????? ?????????? ??? ??
????????????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ? ?????? ??????????
??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ? ???
????? ???.

3) ?????????? ?????? ??? ??????? ??? ?????? ??? ?????? ??????????? ??????? ??? ???
?????????? ??? ?????????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ???
????????????? ?? ?????????????? ?????? ?????????? ? ?????? ??? ?????? ??? ?????????? ???
?????????????, ???? ??? ?????? ??? ?????? 20 ??? ?????? ??????, ??? ?????? ???
??? ??????, ???? ??? ?????????? ??? ?????? ?????? ?????????? ??? ??? ??? ???

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

(?????????)

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