

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

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

??? 9?? ??????????? 2017 (*)

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

???? ?????? C-283/15,

??. ?????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???
?????? ?? Hoge Raad der Nederlanden (?????? ?????????? ??? ?????) ?? ??????
?? 22?? ????? 2015, ? ????? ?????? ??? ?????????? ??? 11 ?????? 2015, ??? ??????
??? ????

X

????

Staatssecretaris van Financiën,

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

????????? ??? ??? R. Silva de Lapuerta, ??????? ????????, E. Regan, J.?C. Bonichot
(??????), C. G. Fernlund ??? S. Rodin, ????????,

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

?????????: C. Strömholm, ?????????? ????????,

?????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ???
29?? ?????? 2016,

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

– ? X, ?????????????? ??? B. Dieleman, A. A. W. Langevoord ??? T. C. Gerverdinck,
belastingadviseurs,

– ? ?????????? ????????, ?????????????? ??? M. Bulterman ??? M. Noort,
????????????? ??? J. C. L. M. Fijen, ????????????????,

– ? ?????????? ????????, ?????????????? ??? M. Jacobs ??? ??? J.?C. Halleux,

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

– ? ?????????? ????????, ?????????????? ??? C. Pesendorfer ??? E. Lachmayer
????? ??? ??? F. Koppensteiner,

– ? ?????????? ????????, ?????????????? ??? L. Inez Fernandes, ??? M. Rebelo

??? ??? J. Martins da Silva,

– ? ?????????? ??????????, ??????????????? ??? ?? A. Falk, C. Meyer-Seitz, U. Persson, ??? E. Karlsson ??? L. Swedenborg ????? ??? ??? ??? N. Otte Widgren,

– ? ?????????? ??? ??????? ??????????, ?????????????????? ??? ??? M. Holt,
????????????? ??? ??? R. Hill, barrister,

— ?????????????? ??????????, ?????????????????? ??? ??? W. Roels ??? ??? C. Soulay,

???? ??????? ??? ??????? ??????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ???????
??? 7?? ??????????? 2016,

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

????????

1 ? ??????? ?????????????? ?????????? ?????? ??? ?????????? ??? «????????? ??? ???????
??? ??? ??? ?????????? ?????????????? ??? ??????????».

2 ? ?????? ??? ??????????? ?? ?????? ?????? ?????? ?? X ??? ??
Staatssecretaris van Financiën (?????????? ?? ??????????) ??????? ?? ??? ?????? ??
?????????? ?? ?????????? ?? ????? ?? ??? ?????? ?? «??????????
??????????» ??? ??????????? ?? ?????? ?? ???????.

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

3 ?? ????? 2.3 ?? Wet Inkomenbelasting 2001 (????? ??? ??????????? ????????????)
?? 2001, ?? ???: ????? ?? 2001) ?????? ?? ???:

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

- a) ?? ??????????? ?? ?????????? ?? ??????? ? ???????????????,
b) ?? ??????????? ?? ?????????? ?? ??????? ?? ?????????? ?? ???????,

?

- c) ??? ???? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? »

4 ??? ?????? 2.4 ??? ?????? ??? 2001 ?????????? ??? ????:

- a) ??? ????? ?????????? ??????????????????: ?? ?????????? ????? ?????????????? ??? ??????????????

- b) ??? ????? ?????????? ?????????????????: ?? ?????????? ??? ?????????? ??? ????????

5 ?? ?????? 2.5 ??? ?????? ??? 2001 ??????? ?? ????:

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

[...]»

6 ?????? ??? ?????? 3.120, ?????????? 1, ??? ?????? ??? 2001, ? ?????? ?????? ???
????? ?????????? ?????????? ??? «????????? ??????????» ??? ?????????????? ??????
????????????? ??? ?????? ???.

7 ??? ?? ?????? 7.1, ???????? a, ??? ?????? ??? 2001, ? ?????? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???, ?? ??????
????????? ??? ?????? ??? ?????????? ?????? ???.

8 ?????? ??? ?????? 7.2, ?????????? 2, ??????? b ??? f, ??? ?????? ??? 2001, ???
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ???, ?? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????? ???.

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

9 ?????? ??? ?????? ??? 2001, ? ?????? ?????????? ??? ?????? ?????????????? ???
????? ??? ??? ?????? ??? ?????? ?? ?????????? ??? ???????, ??? ?? ?????????? «???
?????????». ??? ?????? «????????? ??????», ? ?????? ?????? ???
«?????????» ?????? ?????????? ?? ?????? ??? ?????? ???, ?????? ???
«?????????» ?????? ?????????? ?? ?????? ??? ?????? ???, ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ?????? ???
«?????????», ? ?????????? ?????? ??? ?????? «????????? ??????».

10 ??? ??? ?? 2007 ? ?????? ??? ?, ?????? ???, ??? ?????? ??? ?????? ??? ??????????
????? ?????? ????.

11 ??? ?? ?????? ??? ?????? ?????????? ???, ?? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ? ??? ? ??? ??????. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? 60 % ??? ?? ?????? ??? ?????? ?? 40 % ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? 2007 ??? ?????? ??? ?????? ??? ?????? ???, ??? ??? ?????? ??? ??????
? ? ??? ??? ?????? ??? ??????.

12 ?????? ??? ??? ?????????? ?????? ?????????? ???, ?? ?????????? ??????????
????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ???.

13 ??? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ???, ??, ??????,
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????, ?? ??????
????????? ??? ?????? 2.5 ??? ?????? ??? 2001, ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

14 ??????, ? ????? ?????????? ?????????? ?????? ????? ?????????? ??? ?????? ???
?? ?????? ?? ?????????? ?? ??? ????? ?????????? ??? ?????????? ??? ?? ?????? ??????????????????
????????? ??????, ??? ?? ??? ?????? ?? ?????????? ?? ?????????? ??? ?? ?????? ?????? ??? ??
???? ?????????? ?????? ???, ??? ?? 40 % ??? ?????????? ?????????? ???, ??? ??,
????????, ??? ??? ?????? ?????????? ? ?????? ?????? ??? «????????? ??????????» ???
????????? ??? ??????.

15 ? ? ?????????? ??? ?????? ??? ????? ?????????? ??? ?????????? ??? ??????????????
????????? ?????????? ??? ?????????? ?? ?????????? ?????? ?????????? ??? ??????????
?????????????, ?????????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ??????????
????????? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????????????? ??????????
????????? ??? ?????? ??? «????????? ??????????» ??? ?????????? ???, ??? ?? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????????? ??????????
?????????.

16 ?? Rechtbank te Haarlem (????????? ??? Haarlem, ????) ??? ??
Gerechtshof Amsterdam (??????? ??? ??????????, ????) ?????????? ??? ?????????? ???
????? ???, ??????????. ?????? ???, ?? ?????? ?????? ?????? ??? Hoge Raad der
Nederlanden (????????? ?????????? ??? ?????? ???).

17 ?? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? 14? ?????????? 1995,
Schumacker (C-279/93, EU:C:1995:31), ?????????? ???, ?????????? ??? ??? ??????????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???, ?? ??? ?????? ???
????? ? ?????? ?? ?????? ??? ?????????? ?????? ?????? ??? ?? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ?? ??? ?????? ?????? ?? ?????????? ???
????????? ???, ???????, ?? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? X
????? ?? ?????? ???, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 60 %, ??? ??
????? ??? ?????? ??? 40 %.

18 ??? ?? ?????? ??????????, ?? ?????????? ??? 14? ?????????? 1999, Gschwind (C-
391/97, EU:C:1999:409), ??? 12? ?????????? 2002, de Groot (C-385/00, EU:C:2002:750), ???
?? 10? ??? 2012, ?????? ??? ?????? (C-39/10, EU:C:2012:282), ?????? ??
????? ??? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? X ??? ?????? ?????? ?????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

19 ??? ??? ?????? ???, ?? Hoge Raad der Nederlanden (?????? ?????????? ???
????? ???) ?????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??
????????? ?????????? :

«1) ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????? ??? ?????? ??? ??????
????? ??? ??????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? 60 % ??? ??? ?????? ??? ?????? ??? 40 %
??? ??? ??????, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????????????? ?????????????? ??? ?? ?????????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??????????????;
????????? ??? ??? ??????????, ??? ????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??????
????? ??????????, ??? ?????????? ?????????? ??? ?? ?????????????????? ?????????? ?????????? ?????????? ??? ?? ???
????????? ?? ??????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????????????? ???;

2) ?) ?? ?????????? ??????????? ?????????? ??? ?????? ???????, ?????? ??? ?????
????? ??? ?????? ? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???, ?? ??????
????? ???????? ?? ??? ??? ?????????????? ?????????? ??????????; ? ? ???????? ???
????? ???????? ??? ??? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ??????????????
??????????????, ???, ?? ?????????? ???????, ??? ???; ? ?????? ?????? ??? ??? ?? ??
????? ???????? ??? ?????????????? ?????????????? (?? ?????? ??? ?????? ?? ??????
???????) ?? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ?????????????; ???
????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ?? ?????? ??? ???????;

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

4) ???? ??????? ?????? ????? ?????? ?? ?? ? ??????????? ??? ??????? ??????????? ???
????????????? (?? ???????????, ??? ?????????? ??? ????????) ??????? ?? ????? ??
?????????? ?????????? ?????? ?????????? ??????? ?? ?? ?????????? ??????? ???, ???
??? ?? ?????????? ?????????? ??? ??????? ?????????? ??????? ?? ?? ??????????????
????? ?? ?????????? ??? ??????? ??? ?????? ??? ?????? ???;»

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

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

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

21 ???????, ??? ?? ?????????? ??? ?????????????? ??????? ??? ?????????????? ??????????????
?????????? ??? ? ? ??????? ??? ??????????, ??? ?????????????? ???????????, ??
????????????? ??? ??????? ?????????????? ??? ????? ?? ?????? ??? ?????, ??? ?? ?????
??? ?????? ?????????? ?? ?????? ?? «????????? ??????????» ??? ?????????????? ???
??????.

22 ???????, ??? ?????? ???????????, ? ?????????? ??????????? ? ?????? ??? ?????? ??
?????? ?????? ??????, ??????????? ???????????, ? ?????? ?????? ??? ??????
?????? ?????????????? ?? ??? ?????? ?????? ?????? ??????????? ? ?????? ??? ?????? ??
?????????? ?? ??? ?????? ?????????????? ??????? ??? ?????? ??????????? ??? ?????? ??? ??
?????????? ??? ?????????????? ???, ??? ? ?????????? ?????????????? (?????? ?? 18??
?????????? 2014, X, C-87/13, EU:C:2014:2459, ??? 21).

23 ????????, ? ??????? ?????? ??????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??
????????? ??? ?? ?????? ??? ?????????? ??? ?????? 49 ????.

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

24 ?? ? ? ????? ???????, ?? ?????? ??????????? ??????, ???' ??????, ?? ??????????????? ??
?? ?????? 49 ???? ???? ?????? ??? ?????? ?? ???? ?????? ?????? ??? ?????? ??
?????????? ?????????? ?????????? ??? ?????? ??? «????????? ??????????» ???
????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????????????????? ?????? ??????????
???? ?????? ??? ?? ???? ?????? ??? ?? 60 % ??? ?????? ??? ?????????? ??? ?????? ??????????
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????? ??????????.

25 ??? ? ? ?????? ?????????? ??? ?????? ???, ??????????????, ??????????????, ??? ??
????????? ?????????? ?????? ?? ?????? ?? ?????? ??? ?????? ???, ??????????,
??? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????????????? ?
????????? ?????????? ??? ?????? ??? ?????? 49 ???? (??., ???' ??????,
????? ??? 10?? ??? 2012, ????????, C?39/10, EU:C:2012:282, ??? 47).

26 ? ?????????? ??? «????????? ??????????» ??? ?????? ??? ?????????? ??
?????? ?????? ?????????? ??? ?????????? ?????????? ?????????? ?????? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ?????????? ??? ?????????? (??., ??????, ?????? ??? 18??
????? 2015, Kieback, C?9/14, EU:C:2015:406, ??? 19 ??? ??? ?????????? ??????????).

27 ?? ? ? ?????, ??? ?????? ??? ? ?????????? ?????? ?????? ?????? ??? ???
????????????? ?????? ?????? ??? ??????????, ??? ?????? ??? ??
????????????? ?????? ??????, ?????? «????????? ??????????»,
????????????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??????.

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

29 ??????, ?????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ?????? ??
????????? ?????????? ??? ?????? ?? ?????????? ?????? ??? ?????? ?????? ??? ??????
????? ?? ?????????? ??? (??., ?????? ???, ?????? ??? 14?? ??????????
1995, Schumacker, C-279/93, EU:C:1995:31, ??? 30, ??? 18?? ?????? 2015, Kieback, C-
9/14, EU:C:2015:406, ??? 21).

30 ??? ?????? ??? ?????? ??????????, ? ?????? ??? ?????? ?????? ??? ?????? ??
????? ?????? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????? ??????????, ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????
????? ??? ?????????? ???, ? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??., ?????? ???, ?????? ??? 14??
????????? 1995, Schumacker, C-279/93, EU:C:1995:31, ??? 31 ??? 32, ??? ??? ??? ??
18?? ?????? 2015, Kieback, C-9/14, EU:C:2015:406, ??? 22).

31 ??? ?????? ???, ??? ?????? 34 ??? ?????? Schumacker (C-279/93, EU:C:1995:31),
?? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????? ??? ?????????????? ??????? ?? ?????????? ?????? ??? ?????????????? ???
????????? ?????????? ??? ?????? ??? ?????????? ??????????, ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????????? ?????????? ?????????? ? ??? ?????????? ???
????????????? ?????????? (??., ??????, ?????? ??? 18?? ?????? 2015, Kieback, C-9/14,
EU:C:2015:406, ??? 23).

32 ?? ?????????? ?? ?????????? ?????????? ??????????, ??? ?? ?????? ??? ?????? ???
????? ?????????? ??? ?? ?????????? ?????????, ??? ??, ??? ?? ?????? ??? ?????????? ??
????????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????????? ??? ?????????? ??? ??
????????????? ??? ?????? ?????? ?????????, ?? ??? ?????????? ?????????? ??????????????
????? ?? ?????????? ?????????? (??, ?????? ??? 14?? ?????????? 1999, Gschwind,
C?391/97, EU:C:1999:409, ??? 26).

33 ??? ??????????, ????, ???, ??? ? ?????????? ?????????? ??? ??????????????
????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????????????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?????? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ?? ?????????????? ???
????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? (??.,
?????, ?????????? ??? 14?? ?????????? 1995, Schumacker, C-279/93, EU:C:1995:31, ???
36? ??? 16?? ?????????? 2008, Renneberg, C-527/06, EU:C:2008:566, ??? 61, ??? ??? 18??
????? 2015, Kieback, C-9/14, EU:C:2015:406, ??? 25).

34 ??? ?????????? ???, ? ?????????? ?????????? ?????????? ??? ?? ? ?????????? ???
????????????? ??? ?????????? ??? ?????????? ?????????? ? ?????? ??? ?????? ?? ?????????? ???
????????????? ??? ??? ?????? ?? ?????? ??? ?????????? ?????????? ??? ?????? ?? ??????
????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??
????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? (????????? ??? 14??
????????? 1995, Schumacker, C-279/93, EU:C:1995:31, ??? 38? ??? 18?? ?????? 2007,
Lakebrink ??? Peters?Lakebrink, C-182/06, EU:C:2007:452, ??? 31, ??? ??? ??? 18??
????? 2015, Kieback, C-9/14, EU:C:2015:406, ??? 26).

35 ??? ??? 34 ??? ?????????? ??? 18?? ?????? 2007, Lakebrink ??? Peters?Lakebrink
(C?182/06, EU:C:2007:452), ?? ?????????? ?????????? ??? ?? ??? ?????? ?????????? ???
????????????? ??? ?????? 27 ??? 32 ??? ?????????? ?????????? ?????????? ??? ?????? ??
????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ???
????????? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ???
????? ?????? ?????????? (?????? ??? 18?? ?????? 2015, Kieback, C-9/14,
EU:C:2015:406, ??? 27).

36 ?? ?? ??? ?????? ?????????? ?????? ?? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ?? ??
????????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??? ??????
(??., ??? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??? ?????? ???
14?? ?????????? 1995, Schumacker, C-279/93, EU:C:1995:31, ?????? ?????????? ???
????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ???, ???
????????? ??? 11?? ?????????? 1995, Wielockx, C-80/94, EU:C:1995:271, ??? 27?? ??????
1996, Asscher, C-107/94, EU:C:1996:251, ??? ??? 28?? ?????????? 2013, Ettwein, C?425/11,
EU:C:2013:121).

37 ??? ?????? ???, ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ??? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???

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

38 ????????, ?????? ????????, ??? ?? ??????????? ? ?? ???? ??????????????
??????????????, ?? ?????? ?????? ??? ?? ??? ???????, ???? ??? ?? ?????????? ??????????
??? ?????? ?? ?????? ?????? ??? ??????????? ??? ?? ?????? ?????? ?????? ?????? ??? ??
????????? ?? ?????????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??? (??., ???'
?????????, ?????? ??? 18?? ?????? 2015, Kieback, C-9/14, EU:C:2015:406, ??? 28).

39 ??? ? ??????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????????? ??? ?? 60 % ??? ?????? ??? ?????????? ?????????????? ???, ?????
????????? ??? ?????????? ??? ?????? ???, ??? ?? ??? ?????? ??? ?????? ??? ??????, ?? ?????? ???
????????? ??? ?????? ?? ?????? ?? ?????????????? ?? ?????????? ?????? ??? ??????????????
??? ?? ?????????? ??? ?????????????? ?????? ??? ?? ?????????? ?? ?????????? ??? ??????
????? ?????? ??? ? ?????????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????
????????? ? ?????????? ??? ?????? ?????????? ??? ?? ?????? ?????? ?????? ??? ?? ??? ??????
????? ?? ??? ?????????? ?? ?????????????? ??? ?????????? ??? ?? ?????? ?????? ?????? ???
????????? ??? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ???.

40 ??? ?????? ?? ?????? ? ?????? ?? ?????????? ??? X, ?????? ??? ?? ?????????? ??? ?????? ???
????????? ?????????? ?????????? ?????????? ???, ??? ?? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ?????????? ???, ?? ??? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ???, ??? ?? ??? ?????? ?????? ??? ?????? ???.

41 ?????? ? ?????????? ??? ?????????????? ?????????? ??? X ??? ?????? ?? ??????????????
????? ?? ?? ?? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?? 60 % ???
????? ??? ?????????????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? 27 ??? 32 ??? ?????? ?????? ?????? ??? ?????? ???.

42 ???????, ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ? X ?????????? ??
????? ?? ?????????? ??? ?????? ??? ?? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ??
????? ?? ?? ?????????? ??? ??????. ??? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????? 47
?? 53 ??? ?????????? ???, ?? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?? ?????? ???
?? ?????????? ??? ?? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ??????
?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? 14??
????????? 1995, Schumacker (C-279/93, EU:C:1995:31). ???????, ?? ??????????
????????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

43 ?????????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ???
????? ? ?????????? ??? ?? ??? 49 ??? ??? ??? ?????? ??? ?????? ?? ?????? ?? ??????
????? ?? ?????????? ?????? ?????????? ??? ?????? ??? «????????? ??????????»
?? ?????????? ?? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ?? 60 % ??? ?????? ???
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

44 ?? ?? ??????? ???????, ?? ?????? ??????????? ??????, ???' ??????, ?? ???????????????
?? ? ??????????? ?? ??????? ?? ??????? ?? ?????? ?????? ?????? ?????? ?? ??????
????? ??? ????? ??????????? ?? 60 % ?? ??????? ?? ??????????? ?? ?????? ?? ?????? ?? ??????
?????????? ?? ?????? ????? ?? ?????? ?? ??????????????? ?????????? ?????????? ?????? ?? ??????
?????????? ?????? ?????? ?????? ?? ?????? ?? ??????????????? ?????????? ?????????? ?????? ??
????? ?????? ?????????? ?????? ?? ?????? ?? ??????. ?? ?????? ?????????? ?????? ?????? ??
????????????? ?? ? ?????? ?? «?????? ?????? ?????? ?????????? ??????????????» ?????????? ??
????? ?????? ??? ?????? ?????????? ?????????????? ?????????????? ?? ? ?????? ?????? ??
????? ?????? ??? ?????? ?????????? ?? ?????????? ?? ?????? ?????? ?????????????? ??
??????????.

45 ??? ?? ?????? ?????????? ??? ??????? ?????? ??? ?????????? ??????????????, ?????? ?
?????????? ?? ? ?????????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ??????
??? ?????? ??????? ??????????? ?? ?????????????? ??? ?????????? ??? ??????????????
?????????? ?? ?????????????? ??? ?????????????? ??? ?????????????? ??????????????, ??? ?????? ??? ??????
?????????? ????????????. ??? ??????????, ? ?????? ?? «?????? ?????? ?????? ??????????
?????????????», ??? ??????? ?? ?????? ??????????, ?????? ?? ?????? ?????? ?????? ??
????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?? ?????????? ?? ?????? ?????? ?????? ??
?????????? ??? ??? ?????? ?????????????? ??? ??????????????, ?????????????? ??? ?????? ??
????? ?????? ?????????? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??
??????????.

46 ?? ?????? ??? ?????? ??? ?????????? ???????????, ??????? ?? ??? ?????????? ??????
?????????? ?? ?????? ??? ?????? ?????????? ?????????????? ??????????????? ??
?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????????????
?????????? ?? ???????????????, ?????? ?? ?????????? ?? ?????????? ??? ?????? ??????????
??? ??????????? ?? ?????? ?????????? ??? ?????????? ?????????? ??? ?????? ?????? (??., ??????
????, ??????? ?? 12?? ?????????? 2002, de Groot, C-385/00, EU:C:2002:750, ????? 93 ??
???? ??????????? ??????????).

47 ??????????, ??? ?? ?????????? ??? ?????? ?????????? ???, ??????? ?????? ?????????????? ?
?????????? ?? ??? ?? ?????? ??? ??????, ? ?????????? ??? ?????? ?????? ?? ??????????
????? ??? ?? ?????? ??? ?????????? ??? ?????? ???????????, ?????? ?????? ??? ?????? ??????
??? ?????????? ?????????? ???????????????, ?????? ?? ?????????? ?? ?????? ??? ??????
?????????? ?? ?????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????????
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ???,
?????????? ?? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ???
??? ?????????? ???.. ???????, ?????????? ?????? ?????????? ???????????, ??? ??? ?????? ?????? ??????
??? ?????????? ?????? ?????? ?????????????? ??? ?????, ?????? ??? ?????? ?????? ??? ?????? ??? ??????
??? ?????????? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?????????? (??., ??????, ?????? ?? 12?? ?????????? 2013, Imfeld ???
Garret, C-303/12, EU:C:2013:822, ?????? 70 ??? 77).

48 ??? ?????????? ??? ?????? ??? ?????? ? ?????????????????? ?????? ?? ??????????
?????????? ?? ??? ?? ?????? ?????????????? ?????? ???, ?????? ??? ?????? ?????? ???
????????? ???, ? ?????????? ??? ?????? ?????? ?? ?????????? ??? ?????? ?? ?????? ??? ??????
????????? ?????????? ??? ?????????? ??? ?????? ??? «????????? ??????????»
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ?????????? ?? ??

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

49 ????????, ??? ?????? ??????? ?? ?????? ???? ?????? ???? ?????? ???? ???? ?????????? ???
?? ??????? ?? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????? ???? ?????????????? ?????? ?????? ?????? ?????? ?????????? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? . ??????, «????? ???
????????? ??????????» ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ? ?????? ?????????? ???.

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

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

51 ???????, ?????????????? ??? ???? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???,
????????? ??? ?????? ?????? ?????? . ?? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???
????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??? ?????? ?? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ???, ??? ?????? ??? (??., ???' ????????, ?????? ??? 18?? ?????? 2015, Kieback, C-9/14, EU:C:2015:406, ??? 35).

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

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

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

54 ??? ?? ??????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ???, ?? ???
????????????? ?? ??? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? X ??? ??
??' ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
2007 ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??, ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ??, ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

55 ????????, ?? ?????? ??????? ?????? ?????????????? ???, ????, ????, ????????,
????????? (???. ??????? ?? 29?? ?????????? 2013, Radu, C-396/11, EU:C:2013:39, ????
24).

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

56 ?????????? ??? ? ??????? ??????????? ??? ?? ??? ????? ?????????? ??? ??????? ???
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ??????? ?????????? ???, ?' ???
????????? ?? ?????????? ??? ?? ?????????? ??????? ??????. ?? ?????? ??? ?????? ??????????
???? ?????????? ?????????????? ??? ?????????? ???, ??? ?????? ?? ??? ?????? ???, ??? ??????????.

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

1) ?? ????? 49 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????? ??
????????? ?????????? ?????????? ??? ?????? ??? «????????? ??????????» ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? 60 % ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??????????.

2) ? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ???
????? ?????? ?????? ?????????? ?????????????? ??? ?????? ? ?????????????????? ???
????????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ???????????. ??????, «????? ?????? ?????? ?????????? ??????????» ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????? ?????????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ???
??? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????? ???.

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

(?????????)

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