

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

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

?? 19?? ?????? 2019 (\*)

«????????????? ?????????? – ????? ????????? – ?????? ?????????? – ?????????? ?????????? – ?????????? ??????????????????  
– ?????? ?????? ?????????????????? ??? ?????????? ?????????????? – ?????? ??? “??????????  
?????” – ?????????? ?? ?????????????? – ?????????? ??? ?????????? ?????????????? ???  
????????? ?????????? ?????????????? ?? ?????? ?????????? ?????? ??? ?????????? – ??????????  
?? ?????????? ?????????????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ???  
????? ??? ??? ?????????? ??? ?? ?????? ??? ??????????»

???? ?????? C2608/17,

? ? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???  
?????? ?? Högsta förvaltningsdomstolen (?????? ?????????? ???????????, ???????) ??  
?????? ?? 5?? ???????? 2017, ? ????? ??????? ??? ?????????? ??? 24 ??????????  
2017, ??? ??????? ??? ????

**Skatteverket**

????

**Holmen AB,**

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

????????? ??? ??? J.-C. Bonichot (????????), ?????? ???????, C. Toader, A. Rosas, L.  
Bay Larsen ??? M. Safjan, ???????,

????? ??????????: J. Kokott

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

????? ??? ??? ?????? ?????????? ??? ?????????? ??? ?' ?????????? ??? ?????????? ???  
24?? ??????? 2018,

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

- ? Skatteverket, ?????????????? ??? ??? M. Andersson Berg,
- ? Holmen AB, ?????????????? ??? ??? H. Andersson,
- ? ???????? ???????, ?????????????? ??? ??? A. Falk, A. Alriksson, C. Meyer-Seitz, H.  
Shev, H. Eklinder, L. Zettergren ??? J. Lundberg,
- ? ?????????? ???????, ?????????????? ??? ??? T. Henze ??? R. Kanitz, ??  
??????? ?? ??? ??? R. Kanitz,

- ? ?????????? ????????, ?????????????? ??? ??? M. K. Bulterman ??? ??? J. M. Hoogveld,
  - ? ?????????? ????????, ?????????????? ??? ??? S. Hartikainen,
  - ? ?????????? ????????, ?????????????? ??? ??? K. Simonsson ????? ??? ??? N. Gossement, E. Ljung Rasmussen ??? G. Tolstoy,  
???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????  
??? 10?? ?????????? 2019,
- ?????? ??? ??????
- ??????
- 1 ? ?????? ?????????????? ?????? ??? ?????? ??? ?????? ??? ?????? 49 ??? ??  
????????? ?? ?? ?????? 54 ???.
- 2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? Skatteverket  
(????????????? ????, ??????) ??? ??? Holmen AB ??????? ?? ?? ?????????? ??? ??????????  
????? ?? ?????? ??? ??? ?????? ??? ?????? ?????? ?????????????? ?????????????? ??  
????? ?????? ????.
- ?? ??????
- ?? ??????
- 3 ?? ??????? ?? ?????????? ??? ??? ?????????? ?????????????? ?????????? ?????????? ??? ??  
????????? ?? ?????????? 35 ?? 35a ??? Inkomstskattelag (1999:1229) [????? (1999:1229)  
???? ?????????? ??????????].
- 4 ????? ?? ?????????? 35, ??? ?????????? ??? ??? ?????? ?????? ?? ??? ?????  
????????? ??? ?????? ??? ?????? ?????? ??? ??????.
- 5 ?? ?????????? ??? ?????, ??? ?????? ??? ?????? 35a, ?? ??????????, ??? ? ????  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? 55 ??? ?????????? ??? 13?? ?????????? 2005,  
Marks & Spencer (C?446/03, ??? ?: ????? Marks & Spencer, EU:C:2005:763), ??????  
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????  
????? ??? ?????????? ?????? ??? (???), ??? ??? ??????????, ????, ??? ?  
????????? ??? ?????? ??? ?????? ??? ??????, ??? ??? ?????????????? ??? ??? ?  
????????? ??? ?????, ??? ?????????????? ??? ??????, ?????????????? ??? ??? ?  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? ?  
????????? ??? ?????? ??? ?????? ??? ??????.
- ?? ??????
- 6 ??? ?? ??????? ?? ?????? ? ?????? ? ?????? ?????? ?????? ?????????? ??? ?? ?????  
????????? ?? ??? ?????? ?????????? ?????? ??? ?????????? ?? ??????????????, ??? ????  
????????? ?? ??? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ??? ?  
????????????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ?? ??? ?????? ??? ?????? ??? ?
- 7 ??????, ??? ?? 2011, ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ????  
????????? ?? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ???

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

8 ?????, ?? ????????, ?????????? ?????????? ?????? ?????????????? ?????? ?????????????? ???  
? ?????????? ??? ???? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ??????????????,  
????? ?????????? ?, ??? ?????? ??? ?????? ?????? ??????.

9 ?????, ??? ???? ?? ??? ????????????, ??? ?????? ?????? ?? ??????? ?? ???? ?? ??? ??????  
????? ??? ???? ??????? ??? ??? ???????.

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

10 ? Holmen ?????? ? ?????? ?????? ?????? ?????? ?????? ?????????? ???????. ??? ??????????  
????, ??? ????????????, ?????????? ?????????????? ?????????????????? ?????? ?????? ???  
????????? ??? ??? ?????????????? ?????????? ?? ?????? ?????????? ??? ?????? ???  
????????????? ?????????????? ??????. ?????? ??? ??? ?????????????? ??? ?????? ??????????  
????? ??? ?????? ?????? 140 ????????????, ??? ???? 2003, ? Holmen ?????????? ??? ???  
??? ?????????????? ??? ??? ??????.

11 ? Holmen ?????? ??? ??? Skatterättsnämnden (????????? ?????????????? ???????????,  
??????) ??? ?????? ?????????????? ?????????????? ?????????????? ?? ????????????, ???  
??? ?????????? ??? ??????????????, ?? ??? ??????????, ?????? ??? ?????????? Marks &  
Spencer, ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??????????????  
????? ?????????? ??? ??? ?? ??? ??????, ??? ?????? ?? ?????????? ?????????? ??? ??  
????????? ?? ?????????? ??? ??????, ??? ?????? ?????????? ?????????? ??? ??  
????? ?????????????? ?????? ??? ?? ??? ??? ?????????? ?????? ??? ?????? ??????????, ???  
??? ?????????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??  
????? ?????? ??? ?????? ??????.

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

13 ? ?????? ??? ?????? ? ?????? ?????? ?????????? ?????????? ?????? ?????????? ??????????  
????????? ??? ??? ?????? ?????? ??? ?????? ?????????? ??? ?? ??????.

14 ? ?????? ?????? ?????????? ?????? ??? ? ?????? ?????? ?????????? ???  
????? ?? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??????????????,  
????? ?????? ???, ?????? ?? ???? ?????? ??? ?????? ??? ?????? ??? ?????? Marks &  
Spencer, ? ?? ??? ?????? ?????????? ?????? ?? ?????????????? ??? ??? ?????? ?????????? ???  
????????? ?? ??? ??? ?????????? ???, ?? ??? ??????, ??? ?? ?? ??? ?????? ???  
????????? ?? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? 55 ??? ?? ???  
?????????, ??? ?????? ?? ?????? ?????????? «?????????».

15 ??? ? ?????????? ??? ???? ? Holmen ?????????? ??? ?????? ?????? ?????? ???  
Högsta förvaltningsdomstolen (????????? ?????????? ??????????, ???????).

16 ?? ?? ??? ?????? ?????????? ??? ???? ? ?????? ?????? ??? ?????????? ??? ?????????? ???  
??????, ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ? ??????????

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

17 ??? ??? ??????? ??????, ?? Högsta förvaltningsdomstolen (?????? ??????????  
?????????) ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??  
????????? ?? ?????????? ?????????????? ??????:

«1) ?? ??????? –?? ??? ?????? ???????, ?????? ???, ??? [?? ?????? Marks & Spencer]–  
????????? ??????? ?????????????? ?? ?????? ?????? ?? ???????, ?????? ??? ?????? 49  
???, ??? ??????? ?????? ?????????? ?????????? ?? ?????? ?????? ?? ?????? ??????  
????????? ??? ? ?????????? ?????? ??? ?????? ??? ?????? ??????;»

2) ?????? ?? ?????????? ??????? ??? ?? ?????? ?????? ??? ??????? ?? ??????, ??? ??  
????????? ?? ?????? ??? ??????? ?????? ???????, ??? ??? ?????? ?? ?????????? ?? ?? ?????? ??  
????????????? ?? ?????? ?????????? ?????? ???????, ???, ?????????, ??????????  
???? ?????????? ?? ?????? ??? ?????? ?? ?????? ??????;»

3) ??????, ??? ??? ??????? ??? ?? ?????? ?????? ?????? ???????, ?? ?????? ?????? ??  
????? ???, ??? ??? ??????? ?????? ??????? ??? ?????? ??? ?????????? ??????????  
????????? ?? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????? ??  
????? ??? ???? ??????;»

4) ?? ?????? ?? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 3,  
????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??????  
????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ???  
?????????;»

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

18 ???' ????, ?????????????? ???, ??? ?????? 43 ??? 51 ??? ?????? Marks &  
Spencer, ?? ?????????? ?? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ???  
????????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ?? ?????? ??? ??????  
????????? ??????????, ??? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??  
????????? ??????????, ?????????????? ??? ??? ?????? ?? ?????? ?????? ?????????? ??  
????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

19 ??????, ??? ??? 55 ??? ?? ??? ?????? ???????, ?? ?????????? ?????????? ????,  
????? ??? ?? ?????????? ???' ??? ?????? ??? ?????????? ??????????, ??? ?????? ???  
????????? ?? ?? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ?? ?????? ???  
????????? ??? ?????????? ?? ?????????? ?????????? ??????????, ??? ?????? ???, ??? ??????  
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ?????? ??? ??????;»

- ?????????????????? ??? ?????????? ?????????? ?????????? ??? ??????????????  
????????????????? ??? ?????? ?? ?????????? ?????????? ?????? ??? ?????? ?????????????????? ???  
?? ??? ? ?????????????? ??? ?? ?????? ?????? ?????? ?????????? ?????????????? ?????? ??? ??  
????? ?? ?????????????? ?????????? ???, ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ??  
????? ??? ? ?????? ? ??? ?????????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???  
? ?????????? ??? ?? ?????????? ?????????? ???????, ???

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

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

20 ?? ?? ??? ?????? ?????????? ???, ?? ?????? ?????????? ??????, ???' ??????, ?? ? ?????? ???  
????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ??????????, ??? ???? ??? ?????? ???  
????? 55 ??? ????????? Marks & Spencer, ?????? ?? ?????????? ?? ??????????????.

21 ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????????, ? ?????? ?????? ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ???  
????????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ???  
????????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ???  
????????? ??? ?????????? ??? ???????.

22 ?????? ?? ?????? ??? ?????? ??? ? ?????????? ???, ? ?????? ??????, ?? ??????????  
??????????, ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ???,  
????? ?????? ?? ?????????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????????? ???  
????????? ??? ?????? 18 ??? ?????? ??????????.

23 ???????, ??? ?????? ?? ?????????? ??? ?????? ?????? 45 ??? 52 ??? ????????? Marks &  
Spencer, ? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ???  
????? ??? ?????????? ?????? ??? ???????, ??? ?????????? ?????? ?????????? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ???  
??? ?????? ???, ??? ?? ???? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ???? ???  
?? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???,  
????????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?  
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

24 ?????, ??????, ?????? ?????? ? ?????? ? ?????????? ??? ?? ?????????? ?????????? ??????,  
????? ? ?????? ??? ?????? ???, ?? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???  
????? ??? ? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

25 ??? ?????? ???, ?? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ??????????.

26 ? ?????? ???? ??? ?????????? ??? ?????? ??? ?????? ? ?????????? ? ?? ?????????? ???

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

27    ??? ?????????? ????, ??? ?????? ?? ?????????? ? ?????????? ??? ?????? ?????? ??  
????????? ?? ?????? ?????? ?????? ??? ?????????? ??????, ?????????? ??? ?????? ?? ?????? ??  
????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????  
? ??? ?????? ?????????? ??????????????.

28    ??? ?????? ?????????? ?????????? ?? ?????????? ?????????? ?????????????? ?????????????? ???  
????????? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ???  
????????? ?????????? ?????? ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ???  
????????? ?????????? ??? ??????.

29    ??? ?????????? ????, ??? ?????? ?????????? ? ?????????? ??? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????????? ?? ?? ?????????? ?????????? ??? ??????????  
?????????, ??? ??? ?? ?????????? ??? ?? ?????? ?????????? ?????? ?????????? ??? ??????????  
??? ?????? 55 ??? ?????? Marks & Spencer, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ??????????????, ?? ??? ?????? ??????????, ??? ?????? ?????? ???  
????????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ??????????, ??? ??????  
????????????? ??? ?????? ??? ?????????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??????????.

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

31    ??? ??? ?????? ????, ? ?????? ?? ?????????? ??? ?????????? ? ?????????? ??? ??????????  
??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ? ??????  
????????? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? 45 ??? 52 ??? ?????? Marks &  
Spencer.

32    ??? ?????????? ????, ?? ??? ?????????? ??? ?????? ??? ?????? ?????? ?? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???  
????????? ?? ?????????? ??? ?????? 55 ??? ?????? Marks & Spencer.

33    ?? ?? ??????, ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????? ? ?????????? ??? ?  
????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???, ??? ??? ??? ??????  
??? ?????? 55 ??? ?????? Marks & Spencer, ??? ?????????? ??? ?????? ??? ?????????? ???  
??? ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????????  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????  
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????.

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

34    ?? ?? ?????? ??????, ?? ?????? ?????????? ??? ?????? ???' ?????? ??? ?? ?????? ?

????????????? ??? ?????? ?? ???????????, ??? ???? ?????? ??? ?????????? ??? ?????????? ?????????? 55  
??? ?????? Marks & Spencer, ??? ?????? ??? ???? ?????? ??? ?????????????? ???  
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????????, ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ??????.

35 ?? ?????????? ??????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ???? ?????????? ??? ?????? ???  
????? ??? ???? ? Holmen, ??? ?????, ??? ???? ??? ???????????, ?? ?????? ??? ?????? ???  
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ??????  
????? ??? ??? ??????? ??? ?????????, ?????????????? ??? ?????? ??? ?????? ??? ??????  
????????? ?? ?????????? ??? ?????? 55, ?????? ?????????, ??? ?????????? Marks &  
Spencer, ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????.

36 ??????, ??? ?? ?????????? ??? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ??  
??? ?????? 55, ?????? ?????????, ??? ?????? Marks & Spencer ?????????? ??? ??????  
????? ? ?????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????????? ?????????? ??? ?????? ???  
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????????? ??? ?????? ??? ?????? ??? ??????.

37 ??? ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? Holmen, ??? ??? ??  
????????? ??? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
55 ??? ?????? Marks & Spencer, ?????? ??? ???? ??? ?????? ??? ?????? ??? ??  
????????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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38 ??????, ??? ?????????? ? ?????? ?????????? ??? ?????? 57 ??? 63 ??? ??????????  
??, ??? ?????? ?? ?????????? ?? ?????? ??? ?????? ?? ?????????? ?? ?????? ??? ?????? ???  
?? ?????????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???,  
?. ? ?????? ?????????? ?? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? ??  
????????? ??? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ???  
????? ??? ?? ?????? (????. ?????? ??? 21?? ?????????? 2013, A, C?123/11,  
EU:C:2013:84, ?????? 52 ??., ?????? ??? ?? ?????? ??????, Memira Holding, C?607/17,  
????? 26).

39 ??? ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? Holmen, ??? ??? ??  
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????? ???' ????, ?????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????  
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40 ??????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ???, ??? ?? ?????????? ??  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???, ??? ??  
????? ??? ?????? 55 ??? ?????? Marks & Spencer, ?? ?????? ??? ?? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
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41 ?? ?? ??????? ?? ?? ??????? ??????? ???, ?? ?????? ?????? ?? ??????????? ?? ??????????? ??  
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??? ?????? ? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????, ??  
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42 ???????, ??? ??? ?????????? ??? ??????? ??? ?????????? ??? ??????? ?? ??????? ??  
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43 ??? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ?????? ?????????? ???  
????????? ??? 55 ??? ?????? Marks & Spencer, ?? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ???, ?? ?? ??????, ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???.

44 ??? ?? ?????? ???, ??? ??? ??????, ??? ??? ?????? ??? ?? ?????? ?????????? ???  
??? ??????, ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?? ?????? ???  
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45 ?? ?? ??????, ??? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ?? ?????? ? ??????? ??,  
????? ??????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????  
????? ???????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????  
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46 ??????? ?? ? ?????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??????  
??? ??????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?? ?????????? ??? ?????? ?????????? ??????. ?? ?????? ??? ?????? ?????? ?????? ??????  
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??? ??? ?????? ???, ?? ?????????? (????? ????) ??????????:

1) ? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?? ?????? 55 ??? ?????? ??? 13? ?????? 2005, Marks & Spencer (C?  
446/03, EU:C:2005:763), ??? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??  
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???  
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2) ??? ?? ?????????? ? ?????????? ?????????????? ??? ?????? ?????????????????? ???  
????????? ????????????, ???? ??? ?????? ??? ?????? 55 ??? ?????????? ??? 13??  
????????? 2005, Marks & Spencer (C:446/03, EU:C:2005:763), ?? ?????? ??? ??  
????? ??? ????? ?????????????? ??? ?????????? ??? ?????????? ?? ?????????? ???  
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????????????? ????????, ???? ??? ?????? ?????? ?????????????? ??? ?????????? ??  
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3) ??? ?????????? ??? ?????? ??? ?????? ? ?????????? ??? ?????????????? ??? ?????? 2  
??? ?????????? ?????????? ??? ?????? ?????? ????????, ???? ?????????????? ?? ?????? ???  
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(?????????)

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