

?????????? ??? ?????? ?????????? GEELHOED

??? 23?? ?????????? 2006 1(1)

?????? C-374/04

**Test Claimants in Class IV of the ACT Group Litigation (Pirelli, Essilor ??? Sony)**

**Test Claimants in Class IV of the ACT Group Litigation (BMW)**

????

**Commissioners of Inland Revenue**

(?????? ??????? ?????????????? ?????????? ??? High Court of Justice (England & Wales) (Chancery Division)

«????????? ??? ?????? 43 ??? 56 ?? – ?????? ?????????? ??? ?????? ?????? ?????????? – ??????????????  
???? ??? ("????????????? ??? ?????? ??????") ??? ??? ?????? ??? ?????????? ? ?????????? ???  
????????? ?????? – ?????? ??????, ?? ??? ?????? ?????????????? ?????? ? ?????????????? ??? ???  
????? ??? ?????????? ??? ?????? ??????»

I – ????????

1. ?? ?????? ?????? ??? ?????? ??????????, ? ?????? ?????? ?????? ??????????  
????????????? ?????????? ??? High Court of of Justice of England and Wales (Chancery division), ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????????? ???  
????????? ??? ?????? ?????? ??? ?????? ?? ?????????? ?????? ?????????? ??? ?????????????? ??????????  
??? ?????????? ?????????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?????, ??? ?? ??????????  
????????????? ?? ?????????? ???????, ????? ?? ?????????? ?????????????? ??? ?????? ??? ??????????  
????? ???, ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? (??? ????: ???). ?? ???  
????, ??? ?????? ?????????????? (?????? ???????) ?????????????? ?? ?????? 43 ??? 56 ?? ??  
????? ??? ?? ?????????? ?????? ??? ?????? ?????????? ?????? ?????????? ?????????? ???  
?????????; (2)

2. ?? ?????? ?????? ??? ?????? ?????????? ?????????? ?? ??? ?????? ??? ?????? ?????? ???  
????????????? ?? ?????????? ???, ??? Metallgesellschaft- ?????????? ??? ?? ?????????? ???  
????????????? ??? ?????? ?????????? (Advance Corporation Tax, ??? ????: ACT) ??? ?????? ???  
????????? ?????????? 1973 ??? 1999. ?? ?????? ?????? ??? ?? ?????? ?????????? ???  
?????? ?????? ??? ?????? ?????? ??? ??????????, ??? ?? ?????????? ?????????? ???  
?? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ?????????? ???  
(3).

3. ?? ?????? ?? ? ?????? ?????????? ?? ?????? ???, ??? ?? ?????????? ?? ?????? ???  
????????, ?? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ???  
?????????. ? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? – ? ????

????????? ????? ? ?????????? ?????? Marks & Spencer (4) – ??? ??????? ??? ??????  
????????? ??? ?? ?????????? ?? ?????????? ?? ??? ????? ?????????? ??? ?????????? ???  
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??????????, ?  
????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??????. ?????????? ??? ???  
????? ??? ?? ??????????, ?????? ?????? ?????????? ?????????? ?????? ??? ??????????  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ??????????, ??? ??????????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ??? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?? ?????????? ??  
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
?????????. ??? ??????????, ??? ?? ?????? ??? ?????????? ?????? ??? ?????????? ??? ??????????  
????????? ??? ?? ??? ??????, ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?????? ??? ??  
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ??????  
?????????

|| – ?? ??????? ??? ?????????????? ??????????? ??? ??????????

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

4. ????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????????? ??????????????  
??? ?????? ??? ??????? ??????????, ??? ????? ?????????? ?? ?????????? ?????????? ?? ??????????  
????????? ??? ??????????? ??? ?????????????? ?????????? ?????? (???????????) ??? ??, ??  
????? ?????????? ?? ?????? ??? ?????????? ?????????? ??? ??????????. ??? ?? ??????????  
??? ??????????? ?????????? ???????, ???????, ?? ?????????? ?????? ?? ??????????  
???????. ??????, ?? ??????? ?????????? ?? ?? ?????? ??? ?????? ?????????? ?????? ?? ??????????  
?????. ? ?????? ??? ?????? ??? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?? ??  
?? ?????? ????. ????????, ?? ??????? ??????? ?????? ?? ?? ?????? ?????? ?????? ?????????????? ?? ??  
????????? ??? ?????????? ?? ?????? (???????) ??? ?????????????? ??? ??????????  
????? ???), ???/? ?? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? (5).

5. ?????????????? ?????????? ?????? ??? ??? ???? ????? ?????????? ?????????????? ?? ?????????? ?????? ??  
????????????? ?????? ?????????? (????? ????????????) ??? ?????????? ?? ?????? ?????????? ?? ?????? ??  
????????????? ?????????????? (????? ?????????? ?????? ??? ?????? ?????? ?????????? (?????  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????????). ??????????  
????? ?????????? ??????? ????, ?. ., ?? ?????? ?????? ?????????????? ?????? ??? ?????? ???  
???????, ?? ??? ?????? ????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ????  
?????????. ?????? ?????? ?????? ?????????? ?????? ????, ?. ., ?? ?? ?????? ?????, ? ??????  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????????? ??? ??? ????  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???

7. ????? ??????????? ?? ??? ?? ???? ?????? ??? ?????? ???, ?? ?????? ???? ?????? ??  
????????? ?????????? ?? ?????? ?????? ??????????, ?? ?????? ?????? ?? ??????????  
«?????? ??????», «?????? ??????????????????», «?????? ??????» ??? «??????  
?????????». ?? ?????? ??? ?????????? ?? ?????? ?????????? ?????????? ??? ??????????  
??? ?????? ??? ?????????? ?????? ??????????: ?? ?????? ?????? ?????? ?????????? ?? ???  
?????????, ?? ?? ?????????? ?????? ?????? ?????????? ?? ??? ??? ?????? ??? ?????? ???  
??? ?????????? ???????????. ??????????, ?? ?????????? ??????????????????, ?????????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???  
(6). ?? ?????? ??? ?????????? ?? ?????? ?????????????????? (?? ?????? ?????? ??

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

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

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

9. ??? ?? 1965 (????? ?? ?????? ?????????? ?? ?????? ??) ?? 1973 ??  
????????? ?????????? ?? «?????» ?????? ?????? ??????????, ?? ??????, ???  
????????? ??????, ??? ?????? ??? ?????????? ?? ?????? ??????????. ?? 1973 ?? ??????  
????????? ?????????? ?? ?????? ??? ?????????? ?? ??????, ?? ?????? ??? ?????????? ??  
????????? ?? ?????? ??? ?????????????? ?? ?????? (7). ??? ?? ?????????? ?? ?????????? ??  
??? ?????? Metallgesellschaft, ?? ?????? ??? ?????????? ??' ?????? ?? ??????????.

1. ACT: ?????????? ?????????? ???

10. ?? ?????????? ?????????? ?? ?????????? ?? ?????? ?????? ?? ?????????????? ??  
? ??????, ?????? ?? ? ?????? ?????? ?? ?????????? ?? ?????????? ??, ??????????????  
?? ?????????? ACT [advance corporation tax, ?????????????? ?? ?????? ??????],  
????????????? ?? ??? ?????? ?? ?????? ?? ?????????????? ?? ?????? (8). ??  
????????? ?? ?????? ?? ?????????????? ?? ?????? ?? ACT ?????????? franked payment (9).

11. ? ?????? ?????? ?? ??????????, ??? ?????? ????, ??? ?????????? ACT ?? ??  
????????? ? «?????» (mainstream) ??? ?????? ?? ?????? ?? ?????? ??? ??????  
?????. ? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ACT, ?????? ??  
????????? ACT (surplus ACT), ?? ?????????? ?? ?????? ?? ?????? ??, ?????????? ??  
????????? ?? ??? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? (10).  
?????????, ?????? ?? «?????» ??? ?????? ACT ??? ?????????? ??, ??? ??????  
?? ??? ?????????? ?? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
?? ACT ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????????? ?? ??????, ?? ?????? ?? ?????????? ?? ?????? ??.

2. ?????? ?????: ?????? ??????

12. ? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??  
????? ?? ?????? ?? ?????? ?? ?????? ??, ?????? ?? ?????????? ?? ?????? ??  
?? ?????????? ?? (11). ???????, ? ?????? ?????? ?? ?????? ?? ?????? ?? ?? ??  
?? ACT ??? ?????? ?? ?????? ?? (12). ?? ?????? ?? ?????? ?? ?????? ??  
????????? franked investment income (13). ? ?????????? ?? ?????? ??  
????? ACT ??? ?????? ?? ?????? ?? ?? franked payment ?????????? ?? franked investment  
income. ??? ?????? ?? ACT ?????????? ?? ?????? ??, ??? ?? ?????????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? (14). ?? ??????

????? ????? ?????????????? ??? ?????????? ??? ?????????????? ??? ?????????? Metallgesellschaft  
(15).

13. ?????????????? ?????????? ?????????? ??? ????? ?????????????? ?????? ?????????? ??? ?????  
?????????, ??? ?????? ?????????? ?????????? ?????????? ??? ?? ?????????? ?????????? ?????? ???  
(16). ??????, ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ???  
????? ??? ?????????? ?????? ?????? ??? ??????????????, ??? ??????, ??? ?? ??????????  
????? (17). ??????, ??????? ?? ?? ?????????? ??? ?????????? ??????????, ? ?? ??????????????  
??? ?????? ?????????? ?????? ??? ?????????? ?????? ?????? (18) (????????? ???? ??? ??  
????? ????), ? ?????? ???? ??? ?????? ?????? ?????? ?????? ??????????.

3. ??????? ?????: ??????? ?????? ??????

4. ?????????????? ??? ?????????? ??? ?????????????? ?????????? ?????????? ??????????

15. ??????? ?? ??? ????? ?????? ?? ?????????? ?????????? ?? ???????, ?? ??????  
????? ?? ???????, ?? ?????????? ???????, ?? ?????????? ?? ???????, ?? ???????, ?? ??????  
????????? ???????????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????,  
??????????.

17. ????????, ? ????, ?.?, ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ??????  
????? ????. ?? ? ?????? ??? ?????????? ?????? ?????????? ??? ?? 10 % ??? ??????????  
????? ????. ?????? ?????? ??????????. ?????? ????, ????. ?????? ?????? ?????????? ?????????? ???  
?????????. ??? ?????????? ????????

18. ????????, ????????, ????, ??? ???? ?????? ?????????? ?????????? ??? ???? ???? (24),  
????????? ??? ?????????????? ????? «????????????? ??? ??????????????» [limitation of benefit  
clause], ??????? ?? ??? ?????? ?????? (?? ?????? ?? ??????) ??? ?????????? ?? ?  
????????? ?????? ?????? ?????????? ??? ?????? ?????????? ?? ?????? ??? ?????? ?  
???? ?? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ??????????????  
????????? ?????????? ??? ?? ?????? ??????????. ?? ?????? 10(3)(d)(i) ??? ??? ????  
????????? ?????????? ??? ??? ??????. ?.?. ?? ?????? ?? ?????????? ??? ??? ???? ?????? ??? ???

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

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

5. ?? ?????????? ??? 1999

19. ?? ??????? ??? ACT ?????????? ??? ??? ?????? ?????? ??? 6 ?????????? 1999,  
?????? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ?? ?????????? ACT ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? (25).

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

20. T? ?????? ?????????? ??? ?????????? ?????????? ???, ??? ?????? ??? ??? ??? ??????  
??????, ??? ? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?? ??? ??? ???  
?????? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
?????? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??? ??? ??  
????????? ??? ?????? ??? ?????? (26). ?? ?????? 5 ?????? ???, ?????? ? ??????  
????????? ?????????? ??? 25 % ?????????? ??? ?????? ??? ?????? ??? ??????, ?? ??? ??? ??  
?? ?????????? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???,  
?? ?????? 7 ?????? ?????? ??? ?????? ???:

«1. O ??? “????????? ????” ??? ?????????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? (precomte) ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?? ?????? ??? ?????? ??? ?????? ???.

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

III – ?????? ??? ?????????? ??????

21. ?? ??????? ??? ACT ?????????????? ??? ?????? ??? ?????? ???  
????????? /??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???  
????? ??? High Court of Justice of England and Wales ?????? ??? ??????  
Metallgesellschaft ???, ?? ??? ?????? ??? ?????? ??? ?????? ??? 43 ?? ??????  
????????? ??? ?????? ??? ?????? (?? ?????? ??? ?????? ??? ?????? ???), ? ???  
????? ??? ?????? ??? ?????? ???' ??? ???? ???? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ???' ??? ???? ???? ?????? («group income election», ???)  
????? ??? ?????? ??? ?????? ???), ??? ?????? ??? ?????? ??? ?????? ??? ??? ??  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

22. ??? ?????? ??? ACT ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
(Group Litigation Order), ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
? ??? ?????? ??? ?????? ??? ?????? IV ??? ?????? ??? ACT  
????????? ???, ??? ?????? ??? 28 ??????. ??? ??? ?????? ??? High Court of Justice ??

????????? ??????? «????????????????? ??????» («test cases») ??? ??  
????????????? ?????????? ??????????, ??????? ?? ??? ?????? ?????? ??? ?? ?????  
?????? ??????? ?????????? ??????????. ?? ?? ??? ?????? ?????????????? ??????????  
?????: (1) ??????? ??? ??????? ?????? ?????? 1974 ??? ????? 1989 ?  
????????? ??? ?????? ?????? Pirelli UK PLC ??? ?????????????? ???  
????? ?????? Pirelli & C SpA. ???' ??? ??? ?? ???????, ? Pirelli SpA ??????  
????????? ?? 10 % ??? ?????? ?????? Pirelli UK plc. (2) ?????????? ??? ??????  
????? ?????????? 1979 ??? ?????????? 1998 ? ?????????? ??? ?????? ??????  
Essilor Limited ??? ?????????? ??? ?????? Essilor International SA. ??? ?? ??????  
????, ?????? ?????? Essilor Limited ??? ? Essilor International. (3) ?????????? ???  
????????? 1993 ??? 1994 ? ?????????? ??? ?????? ?????? ?????? BMW (GB)  
Limited ??? ?????????? ??? BMW Holding BV. ??? ?? ?????? ??????  
????????? ??? BMW (GB) Limited ??? ? BMW Holding BV, ??? ?????? ??????  
????????? ??? ? ?????? BMW AG. ? BMW Holding BV ??? ??  
?????????, ??? ?? ?????? ?????, ?? ?????????? ??? ?????- ??? (4) ??????????  
??? ?????? 1995 ??? 1998 ? ?????????? ??? ?????? ?????? Sony United  
Kingdom Limited ??? ?????????? ??? Sony Europe Holdings BV, ??? ?? ?  
????????? ?????? ??? ?????? Sony Europe Holdings BV ??? ??  
????????? ??? ?????? ??????.

23. ??? ??' ?????????? ??? 9?? ?????? 2004 ??? ?? ?? ?????????? ???  
????????? ??? ??? Inland Revenue [????????? ??? ?????? ?????? ??????], ?? High  
Court Justice of England and Wales (Chancery Division) ??????? ?? ?????????? ??  
????????? ??? ?? ?????? ??? ???????, ?????? ?? ?? ?????? 234 ??, ?? ??  
?????????:

«1. ?????????? ?? ?????? 43 ?? ? ?? ????? 56 ?? (?? ?????????? ?? ?? ?????? 57 ?? 58 ??)  
(? ?? ?????????? ??????):

i) ?? ?????? ?????? ? (????? ?? ?????? ??????)

ii) ?? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????: ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?,

iii) ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????? ??????;

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

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

????????? ?????????? ?????????????????? ?? ??? ?????? ?????? ? (????? ?????? ? ??????????), ????? ?  
????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????? ??? ??????  
????? ? ??? ? ??? ?????????? ?????????? ??? ? ?????????? ?????????? ?????? ?????? ??????  
?) ?? ??? ?????? ?????? ? (????? ?? ??????? ??????????) ?? ??? ?????? ?????????? ?????????? ??????  
????????? ?????? ??? ? ?????? ?????????? ?????????? ?? ?????? ?????????? ?????????? ?????? ??? ????  
? (????? ?????? ?? ??? ?????), ? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ????  
????? ?????? ? (????? ?????? ? ?????????), ?????? ?? ?????? ?????? ? ?????????? ??????????  
????????? ??? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ?????? ??????????  
1) ?? ?????????? ?????????????????? ??? ?????? ?????? ? ?? ?????? ?????????? ?????????? ??? ??????  
????????????? ??? ?????? ?????? .  
2) ?? ?????????? ?????????????????? ??? ?????? ?????? ? ?? ?????? ?????????? ?????????? ??? ??????  
????????????? ?? ?????? ?????? ? (????? ?????? ? ??????), ?????? ?? ?????? ?????????? ??? ??????  
??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??? ???? ? ??????  
????????? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ? ?????? ?????????? ??????????  
3) ?? ?????????? ?????????????????? ??? ?????? ?????? ?, ?????????? ??? ?? ?????? ??????  
??? ?????? ?????;  
?) ?????????????????? ? ?????????? ??? ?????? ?????? 1 ?? ?? ? ?????????????? ??? ?????? ??????  
? ?????? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?, ??? ?? ???? ??;  
????????? ?????????????? ?? ?????? ???;  
2. ?? ? ?????????? ??? ?????? 1 ?? ?? ? ?????? ??????????, ?? ?? ? ?? ??????, ???  
????? ?????? ?? ?????????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?? ???? ???? ??  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?? ???? ??  
?????????; ??????????  
?) ?????????? ?? ?????? ?????? ??? ?????? ??? ??????????:  
i. ?????? ?????? ?????? ? ?? ?????????? ?????????? ??? ?????? ???;  
ii. ?????? ?????? ?????? ? ?? ?????????? ?????????? ??? ?????? ???;  
iii. ?????? ? ?????? ?????? ?????? ? ?? ?????????? ?????????? ???, ??? ??????????:  
1. ?????? ?????????? ?????? ?????????? ??? ?????? ?? ?????????? ? ?? ?????????? ? ?? ??????  
????????? ?? ? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ??? ??????  
????????? ?????? ???,  
2. ?????????? ?????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ???;  
?) ?????????? ??? ?????????? ?????? ?? ??????:  
i) ? ?????? ?????? ?????? ??? ?????? ?????? ? ? ?? ?????? ?????? ??? ? ?  
ii) ? ?????? ?????? ??? ?????? ?;  
?) ?????? ?? ?????? ??? ?????? ??? ? ?

i) ????????? ??????????? ?????????????? ?????????????? ?????, ??? ???? ? ?????????? ????  
?? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ?????????? ?? ?????? 43 ??  
?/??? 56 ?/???

ii) ?????????? ??????????????, ??? ???? ?? ?????? ?? ?????????? ?? ?????????? ?? ???  
????????????? ?????????????? ??? ?????????????? ??? ?????? ??? 5?? ?????? 1996, C-  
46/93 ??? C-49/94, Brasserie du Pêcheur ??? Factortame ?/???

iii) ?????????? ??????? ??? ?????? ?????? ???? ?????? ??? ?????? ??? ?????????? ???, ??? ???? ??????  
????:

1. ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????????? ?? ???  
????????? ?? ??? 43 ?? ?/?? 56 ?

2. ?????? ?? ?????????? ?? ?????????????? ??? ?????????????? ??? ?????????????? ??? 5??  
????? 1996, C-46/93 ??? C-49/94, Brasserie du Pêcheur ??? Factortame ?

3. ?????? ?? ?????????? ??? ?????? ??????????;

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

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

??) ?????????????? ?? ?????????? ??? ?????? 2 ?? ??, ?????? ?? ?? ?????? ??? 5??  
????? 1996, C-46/93 ??? C-49/94, Brasserie du Pêcheur ??? Factortame, ? ??????  
????????? ??? ?????? ?????? ?? ?????????? ?? ?????? ? ?????????? ?? ?????????? ??????????  
??? ?????????????? ?????? ?????????? ??? ??? ?????????? ??? ?????????? ?????? ??????  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????  
?????;

?) ?????? ????????????, ?????? ??????????, ?????? ?? ?????????? ??? ?????? ?? ??????  
??? ?????? ??? ?????? ??????????, ?????? ?? ?? ?????? ?????????? ?????? ?? ??????  
????? ?? ?????? ?????????? ?????????? ?? ?????????? ?? ? ?????? ?????? ?????? ??????????  
????????, ??? ??? ?????? ??? [????????????? ?????? Brasserie du Pêcheur ???  
Factortame], ?????????, ?? ? ?????? ??? ?????? ?????? ?????????? ?????????? ?????? ???  
????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????;»

24. ?????? ?? ?? ????? 103, ?????????? 4, ??? ?????????? ??????????, ??????  
????????????? ?????????? ?? ?????????????? ??? ?????????????? ?????? ??????????, ?  
????????? ??? ?????????? ?????????? ??? ?? Inland Revenue, ? ?????????? ??? ? ?????????,  
????? ??? ?? ?????????? ??? ?????????, ??? ?????????, ??? ??? ?????? ??? ?? ?????????.  
???? 22 ?????????? 2005, ?????? ? ??' ?????????? ?????????, ??? ??? ?????? ?????? ??????????  
?? ?????????? ??? ?????? ?????????????? ?????????, ? ?????????? ??? ?????? ??? ??????????  
????????? ??? ?? Inland Revenue, ? ???????, ? ?????????? ?????? ??? ?? ?????????? ???  
????????, ??? ?????? ??? ??? ??? ?????.

?????? 1(a)

25. ?? ?? ??????? 1 (?), ?? ?????? ??????????? ?????? ???' ?????? ??, ???? ?? ??????  
????? ?? ???? ?????? ??????? ?????? ?????? ?????? ?????? ?? ???? ?????? ??  
?????????? ?? ??????? ?????? ?????? ?????? ?????? ?????? ??????, ??? ?????? ?????? ??  
????????? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
??? ??? ?? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???, ??  
?????? ?????? ?????? ?????? ?????? 43 ?? ? 56 ??, ?? ?????????? ??  
?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

1. ??????? ?? ?????? 43 ?? ??? /? ??? ?????? 56 ??

26. ??????? ?? ?????? ?????? ??????????? ???????????, ?? ?? ?????? ?????? ??, ??? ??  
????? 43 ??? ?? ???? 56 ??, ?? ?????? ?????? ??? ?????? ?????? ?? ?????? ???????  
????? ??? ?? ???? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????. ??? ??????  
????????? ??????? ??? ?? ?????? ??????, ??? ?? ?????? 43 ?? ??? ?????? ?????? ??  
?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
56 ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ??????. ???????, ?? ?????? ?????? ?????? ?????? ?????? 56 ?? ?????????? ??  
??? ?????? 43 ?: ???????, ?? ?????? 56 ?? ?????? ?? ??? ?????? ??? ?????? ??????  
????????? ??? ?? 1? ?????????? 1994, ? ?? ?????? ??? ?????? ??  
????????? (????? 57 ??) ?????? ?????? ??? ?????? ?????? (????? ?? ?????? ??? ?????? ??  
????????? ?????? ??? ?????? ??? ?????? 88/361 ??? ??????) (27).

27. ??? ?? ?????? ??, ? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??  
????? ?? ?????? ?????? ?????? ?? 43 ??? ?? ?????? 56 ??, ?????? ?? ??  
????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ?????? ?????? ??????. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ?????? ?????? ?????? ?????? ??? ?????? ?? «????? ?????? ?????? ?????? ??  
????? ?????? ??? ?????? » ??? «?? ?????? ??? ?????? ?????? ???» ??? ?? ??????  
??? ??? ?????? ?????? ?????? (28). ???????, ??? ?????? ??? ?? ?????? ?????? ???  
????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?  
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 43 ??.

28. ???????, ??????, ??? ?????? ?????????? ?? ?????????? ?? ?????? ???, ???  
????????? ??? ?????????? ?? ?????????????? ??????, ?????? ??? ?? ?????? ???  
????????? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??  
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ??????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????? ??????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? ??????. ??????, ??? ?????? ??? ?????? ?????? ??? ?????? ??????  
Alber ??? ?????? in Baars, ??? «[?]?? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ?????? ??? ?????? » (30). ???????, ??? ?????? ?????? ?????? ??? ??????  
????? ?? ?????? 43 ??.

29. ??? ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???

???? ?????????? ?????????????????? ??? ?????? ?????? ?????? ???????????, ?????? ?? ?????????? «????????????????  
????????» ? ?? ??????? ?? ?????????????? ??? ?????????????????? ???, ?????? ?? ?????????????? ?? ?  
????????? ??? ?????????? ?????????? ?????? ?????? ?? ? ? ?????? 56 ?. ???????????, ????????,  
??? ? ??????? ?????????? ??? ?????????? ?????????? ?????? ?????? ??? «?????????????  
?????????». ?????? ? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??????, ?? ??????????  
???? ?????? ??? ? ?????????? ???????????, ??? ??? ?????????? ?????? ?????? ??? ?????? ???  
????????????? ??????????, ?????????? ?????????????? ?????????? ?? ??? ? ???????????  
???????????, ? ??? ?????????? ??? ?????? ??? (31).

30. ????????, ??? ???? ?????? ??? ?? ??????????????, ??? ?????????? ??? ??????  
????????????????? ?????????????? ?????????????? ?????? ?? ?????? ?????? ?????? ??? ??????????????  
?? ?????????????? ?????????????? ??? ? ??? ?????? ??? ?????????? ?????????????? ??? ???  
????????????? , ??? ???? ??????? ?? ?????????? ? ?????????????? ??? ?????????????? ??? ??????????  
????????? ??? ?? ?? ?????? 43 ??? ?? ?? ?? ?????? 56 ???. ??????, ? ?????????? ??????????  
??? ?????? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????????.  
???? ????????, ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? 43 ??, ?  
?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? 56 ??.

2.    ? ??????????? ?? ?? ????? 43 ??

31. ????? ?????????? ???????, ?? ??? ???? ????? ??????? ??????? ?? ??? ????? ??, ??  
?????? ?? ?????????????? ?????? ?????? ??????? ???????, ?? ????? 43 ?? ?????????? ??  
?????? ??????? ?? ?????? ?????? ?????? ?? ?????????? ?????? ?????? ???????  
?????????. ????? ?? ? ??????? ?? ?????? ?????? ?????? ?????? ?? ????? ??????. ??? ??  
????? ??????? ?? ???? ?????? ??????????? ???????, ??????????? ?? ??????????? ?? ??????? ??  
?????? ?? ??????? ?? ?????? ?????? ??????????? ???????, ??????????? ?? ??????????? ?? ??????? ??  
?????????.

????????? ?? ?????? 43 ?? ?????? ??????? ?????? ?????? ?????? ??????????: ??????????

32. ? ??????? ???. ?????? ?????????? ??? ?????? 43 ?? ?? ?????????? ??????? ?? ??????????  
 ??? ???. ??????? ???. ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
 ?????.. ????. ????. ?????? ??????, ? ?????????? ????. ?????? ?????? ?????? ?????? ?????? ?????? ??????  
 ??? ?????????? ????. ?????? ????. ?????? 94 ??, ?????? ????. ?????? ?????? ?????? ?????? ????.  
 ?????????? (32), ? ?? ?????? ?????? ?????? ????. ?????? ?????? ?????? ?????? ?????? (33).  
 ?????????? (33).

33. ?????? ?????? ??????, ?????????? ?????? ??? ?????????????? ??? «? ?????? ?????????? ???  
??? ??????? ?????? ??? ?????????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ???? ??????  
????????? ?? ?????????? ??????» (34). ????????, ?? ?????? ??? ?????????? ??????????????  
??? ? ?????? ??? ?????? 43 ??, ?? ?????? ?????????? ?????????????? ??? ?????? ???  
???????????, ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? . ??? ???? 43,  
????????? 2, ??, ? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ???  
????????????? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?? ???  
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? . ??? ???? 48 ??, ? ??????  
????????????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ??????  
????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???  
????????? (35).

34. ?? ??????????? ?????????? ?????? ??? ?????????????? ????? ?????? ??? ?????? ??? ?????? ??? ??

? ?????????? ??? ???? ?????????? ? ?????? ??? ???? ?????? ??? ???? ?????????? ???? ?????????? ????  
????????? ??? ???? 43 ??, ??? ???? ?? ? ?? ???? ?????????? ??? ???? ?????? ???, ???  
????? ??????? ?? ? ???? ?????? ??, ??? ? ???? ?????????? ??? ???? ?????????? ??? ????  
????? ?????? ??????????. ???????, ? ?????????? ?????? ?? ???? ?????????? ??? ???? ?????? ???  
?? ?????????? ???? ? ?????????? ??? ???? ??????, ??? ???? ???? ???? ???? ???? ????  
??? ??????? ??? ???? (36).

35. ??????, ??? ?????? ??? ?????? 43 ??, ?? ?????????? ?????????? ??? ???? ??  
?????? ?? ??? ?????????? ?????????? ??????. ??? ?????????????? ?????????? ??? ??  
????? 43 ?? ?????????? ??? ?????? ??????, ??? ?????? (????? ?????? ??? ??????)  
????????? ?????????? ??? ?????? ??????????) ??? ?????? «?????????????» (????? ?????? ???  
????? ??? ?????? ??? ?????, ??? ?????? ?????? ?????????? ?????????? ??????????)  
(37). ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ????  
«????????? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????? ?????? ??? ????  
????? ?? ?????????? ?????? ??????» (38).

36. ?????? ?????????? ??????????, ??? ???? ???, ??? ?????? ??? ?????? ?????? ??????????, ???  
?????? ??? ?????? ?????? ??? ???? ???, ??? ?????? «?????????» ???  
«????????? ??????». ????, ?? ?????????? ??? ???? ?????? ?????? ?????? ???  
????? ??? ??? «?????????» ??? ?????? ??? ?????? ??? ?????? ?????? ??????.

37. ??? ??? ?????? ????, ? ??? ?????? ?????????? ?????????? ??? ???? ??????????  
????????? ??? ???? ?????????? ??? ?????? ?????????? ?????????? ??? ???? ???, ???  
????? ?????? ?????????? ??? ?????????? ??? ??????, ?? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ??? ??????, ? ?????? ?????????? ??? ?? ?????????? ??? ???? ??  
????????? ?????? ??? ?????????? ?????????? ?????????? ??? ???? ??  
????????? ?????????? ??? ?????????? ?????????? ?????????? ??? ???? ?????????? ???,  
?????????, ??? (1) ?? ?????? ?????????? ?????? ?????? ??? ???? ?????? ???  
????????????? ?????????? ??????????, (2) ??? ?????????? ??? ?????? ???  
????????? ?????????? ??? (3) ??? ?????? ?????????? ??? ?????? ???  
?????????, ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????. ?? ?????? ???  
????????? ??? ?????????? ??????.

38. ??? ?????? ??? ???? ?????? ??? ?????? ??????, ??? ??? ?????? ??????, ??  
«?????????» ??? ?????????? ?????? ?????????? ???, ??? ?????? ??? ???? «?????????»  
– ??? ?????? ?????????? ??? ?????? ??? ?????? – ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ???.  
????? ??? ?????? ?????? «?????????», ??? ?????? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? «??  
????????? ??????» ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ??? ?? ?????? ??? ?????? ??? ?????? – ????, ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ???.

39. ??? ?? «?? ?????? ??????», ??? ??? ?????? ??? ??? ?????? ???, ???  
?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???  
?????? ?? ?????? ??? ??????, ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ?? ??? ??? ??, ??? ??????, ??? ?????? ??? ?????? ???, ?? ?? ??????

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

40. ????????, ? ?????? ?????? ??? ?????????????? ?????????? ??? ??????????????????  
«??????» ??????????????: ?????? ??? ?????????????? ?????? ?????? ??? ?????? ??? ??????????  
??????? ? ?????????? ??? ??????? ?????????????? ?????????? ??? ?? ?????? ?????????? ???  
????? ?????????? ??? ?????? 43 ???. ????????, ?? ???, ??? ?????? ???????, ???????, ? ??????????  
????????? ?????????????? ?? ?????????? ??? ?????? ?????????????? ??? ??? ???  
????????? ??? ?????????? ?????????? ???' ?????? ??? ??? ?? «??????» ??????????  
????? ??? ?????? ?????? ?????????? ?? ??????????????, ??? ?????, ?? ?????? ??? ?????? ?  
????? ?????? ?????? ?????????? (39).

41. ?????????? ?????????????????? ?? ?????????? ?????? ?? ?????????? ??????????????????  
?????? ?? ???? ?????? ?? ?????????? ?????????? ?????????? (????? ?????????????? ?? ??? ?? ?  
?????????????).

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

i) ?????????????? ?????????????? ??????

42. ?????????? ??????????? ??????, ?????? ?????????? ??? ?????????????? ?????????? ??????????  
????????? ??????????? ?????????? ?????? ??? ?????? ?????? ?????????? ?????????? ?? ?????? ???  
?????????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?????????? ?????????????? ?????????? ???  
????????? ?????? (????? ?????? ?????????) ??? ?????????? ??????. ????????, ??  
????????????? ?? ?????????????? ?????????????? ?????????? ?????? ?????? ?????????? ??????????  
????????? ?????? ?? ?????? ?? ?????? ??? ?????????????????? ?? ??? ?????? ?????? ?????? ??????  
(40).

ii) ?????? ??????????

44. ???????, ?? ?????????? ????????????, ?????????? ?????? ?? ?????????? ?? ?????????? ?????  
?????? ?? ?????? ??????. ?? ?????? ????? ????????????, ?? ??????????, ???  
????????????? ??????????: ?? ?????? ????? ?????? ?? ?????????? ?????????? ???, ??? ??  
????????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ? ?????? ?????????? ??  
????????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ??????.

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

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

46. ? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ???  
?????????, ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
?????????????????, ??? ?????? ??? ?????? ?????????? ???????. ?? ?????????? ?????? ???  
????? ?????? ?? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ???  
????? ?????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??????????  
????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??????????  
????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
Schempp ??? ?????? ??? ?????? ?? ??? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???, ??  
? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
?????????, ?? ?????????? ?????????? ??? «?? ?????????? ??? ?????? ??? ?????? ??? ? ??????  
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????? ??? ?????? ?????? ???' ???  
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ???????. ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ???, ? ?? ?????? ?????? ???, ?????? ?? ??? ?????? ??? ?????? ???, ??  
????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??????» (41). ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? 43 ???. ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
??? ?????????? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? 43 ???. ?? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (42).

47. ????????, ?? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ??????????  
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 94 ?? ???, ?????? ???, ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 96 ?? ? 97 ?? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (43).

iii) ?????? ??? ?????????? ?????????? (????????? ??? ?????? ?????? ??? ??????)

48. ? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ?? ?????? ???, ???  
????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???

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

49. ? ????? ?????? ??? ?????? ?????????????? ??????? ?? ?????????? ????. ???????  
????????? ??? ?????????? ??? ?????? ?????????? ?????????? ????, ??? ??  
????????? ??? ?????????????? ?? ?????????? ?????????? ????, ?????????? ??  
????????? ??? ?????? ?????????? ?? ?? ????? ??????????. ??????????, ??? ?????? ????  
????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???? ?????? ( ? ???  
????? ??? ??????????) ????. ?????????????? ??? ?????? ??? ?????? ??? ??????????  
?????????. ??? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ????, ??? ??? ??  
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???  
????????? ?????? «?????? ??????????» (????????? ??? ?????????? ????)  
?? «?????? ??????» (????????? ??? ?????????? ????) (44).

51. ?????????? ?????? ??? ?????? ?????????? ?????????????? ??? ?????????????? ?????????????? ?????? ???,  
????????? ?????? ?????????????? ??? ?????????????? ?????????????? ?????????????? ??? ?????? ??????, ???  
????????????????? ??? ?????? ?????? ?????????? ?????????? ?????????????? ?????????????? ?? ?????? ??????  
????? ??????????. ?????? ??? ?????????? ???????, ? ?????? ?????????? ???????  
????????????????? ?????? ?????? ??? «????????????? ??? ?????? ??????????»: ??????,  
????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ???  
????????? ???????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ????????????,  
????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??  
????????? ?????? ?????????? (45). ??? ?????? ???????, ?. ., ?? ?????????? ?????????? ??? ???  
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???- ??? ?? ?????????????? ???  
?? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? (46). ??????, ?? ?? ??????, ??????????  
??? ? ?????? ??? ?????? ?????????????? ??? ?????? ?????? (?????????) ?????????????? ???  
????????? ??????????????, ?????????? ??? ?????????? ?????????????? ??????????????) ??? ??????????????  
????? ?????? (????????? ??? ?????????? ??? ?????? ?????? ?????????? ???, ?????????? ???  
????????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ??????) ??? ?????? ?????? ?????????? ???  
????????? ??? ?????????? ?????????? ??? ?????? ??? ??????, ?????????? ?? ?? ?????????? ???  
????????? ?????????? ??????.

52. ?????? ??? ??????????? ???????, ??????? ??? ?? ?????????? ??? ???????????  
????????????? ??? ?? ??????? ??? ??????? ?????????? ?????? ?????????????? ?? ?????? ???  
(??????? ?? ?? ??????? ??????). ????? ?????? ?????????????? ?? ???????????, ?? ??????????  
??????, ??? ?????? ?????? ?????????? ???, ??? ?????? ?????? ?????????? ?????????? ?????  
????????? ??? ?? ?? ??????? ??????? ??????????. ??? ???????????, ?? ??? ?????? Gilly, ??  
?????????, ??? ??????????? ??? ? ??????? ??? ?????? ?????????? ?????????????? ?? ???????  
?? ?????????? ??? ??????? ??????? ???????, ?????? ??? ?????? ??????????????

53. ?????? ???????, ?? ?????????? ?????? ??? ? ???????? ?????? ?????? ?????????????????? ??? ??  
????? ???????? ??? ??????? ?????? ?????? ??? ?? ?????????????? ? ?????????? ?????????????? ??  
????????????? ??? ??????????????. ?? ??? ?????? Marks & Spender, ?? ??????????  
????????? ??? ?????? ??? ??? ?????????? ??????, ?????????????? ??? «[...] ??? ??????????  
??????, ? ??????? ??? ?????????????? ?????? ?? ?????? ?????????? ?????? ??  
????????????? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ?????????? ???  
????????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???  
????????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???  
????????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ???  
????????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ???  
????????????? ?? ??? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ???  
????????????? ?????????? ?????? ??? ?????????? ?? ?????? 43 ?? ??? ?????????????? [...]. ??  
???? ?????????????? ??????????, ?????? ?? ?????????? ?? ?????????? ?????????? ??? ??????????  
???? ?????????????? ?????????????? ?????? ?????????????? ?????? ?????????? ???  
????????????? ??? ?????? ?????? ?????????? ?????? ?????????? ?????? ?? ?????????????? ??  
????????????? ??? ?????? [...]». (49)

54. ?????????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???,  
?????? ??????? ?????????? ????????????, ?? ??????? ?????????? ?? ???  
?????????????? ?? ?????????????? ??????. ?? ??? ?????: ??????? ?????????? ??  
?????? 43 ?? ?????? ? ?????????? ?????????? ?? ??????? ?? ?????? ?????? ?????????? ??????  
????????????? ?? ?????????? ?????????? ?? ??? ?????????? ?????? ?? ?????? ?????? ??????????  
???, ??, ?? ?????? ?????? ?????????? ?? ?????????? ???????, ?? ??????? ??, ??  
????????? ?? ?????????? ???????, ?????????? ?? ?????????? ??????????????  
????????????? ?? ?????? ?? ?? ?? ?????????? ?? ?????????? ?????????????? ??????????????. ??  
????????? ?? ?????? ?????? ?????????? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?????? ??  
????????????? ?? ?????? ?????????? ?????????? ??????, ???????, ?????????????? ?? ??  
????????????? ?? ?????? ??? ?????????? ??????? ?????????? ???????, ?????? ?? ?? ??  
????????????? ?? ?????? ?????????? ??????? ??????? ???????, ?????? ?? ?? ??  
?????????????, ??? ?????? ??? ??????? ??????: ?????? ?????????? ??????? ?? ?????? ???  
?? ?? ?????? 43 ??;

???????????? ???? ?????????? ???? ?????? 43 ??  
55. ?? ?????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??  
????????????? ??? ?????????? ??????? ?????????????? ??????, ??? ?????????????? ??????  
????????? ?????????? ?????????? ???? ?????? ?????????? ??? ?????????? ?????????? ??????  
??? ?????????? ?????????? (?? ?????? ??????????) ??? ?????????? ??? ?????? ??????????  
??? ?????? 43 ?. ????????, ?? «??????» ??????????, ?????? ?? ?????????? ???  
????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???? ?????? ???? ??????  
????????? ??????????, ?????????? ??? ?????????? ??? ?????????? ??? ?????? 43 ??, ??? ??  
?????????????. ?????? ?? ? ?????? ??? ?????????? ??? ?????????????? ??????, ? ??????  
????????????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? 43 ??, ??????

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

56. ??? ?????? ?????????? ???????, ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????  
«? ?????? ?????????? ?????? ?? ?????????? ?????????? ? ? ?????? ??? ??????  
????? ??? ?????????? ??????» (50).

57. ??? ??? ?????? ???, ? ?????????? ??? ?? ??? ?????? ??? ?????? ?????? ?????????? ???  
????????? ?????? – ?????? ? ?????? ?????? ?????? ?????? ?????????? ??????????  
????????? (??? ?????? ??????????) ??? ?????? ?????????? ?????????? (???  
????? ?????? ??????????) – ?????????? ??? ? ?????? ??? ?????? ?????? ?????????? ???  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???  
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 43 ??  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

i) ?? ?????????? ??? ?????? ??? ?????? 43 ?? ?? ?????? ?????????? ??????????

58. ? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???  
????? ?????????? ?????? ???' ??????, ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? –?? ?????? ??  
?????– ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? ?????? ?????? . ? ??? ?????? ?????? ?????? ?????? ??? ??????  
????? ??????. ??? ??????, ?.?, ?? ?????? ??? ?????? ?????? ?????? ?????? ??  
????? ??????:

– ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ?????? (51).

– ??????, ?????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??  
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ?????? (52).

– ???????, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ACT ?? ??????  
????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ACT (53).

59. ??????, ?? ??? ?????? Marks & Spener, ?? ?????????? ?????? ???, ??????, ??????  
?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???

????????? ????????, ??? ??????????? ?? ??? ?????????? ?????????? ?????????????? ?????????? (54).  
?? ??? ?????, ?? ?? ?????? ?????????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ????  
?????? ????? ? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????????? ?????????? ???  
????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ?????????? ?????? ???, ???  
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???, ??? ?????????? ?????? ??? ?????????? ???  
?? ?????????? ?????????? ??????.

60. ??? ?????? ?? ?????????? ?????????? ?????? ???????, ? ?????????? ???  
????????????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????????????? ?????????? ??? ??  
?????? ??????????????, ??? ??????? ??? ?????? ?????????? ?????????????? ?????????????? ???, ?????? ??  
????????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????????? ???, ??????????????????  
(55), ?????? ?? ??? ?????? ??? ?????? ??? ?????????? ?????????? (?., ?????? ?????????? ???)  
(56). ????????, ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ??  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????????? ?????????? (57).

61. ?????, ?? ?????? ??????????????, ?????? ?????? ?????? ?? ??????? ??? ?????? ???  
????????????? ??? ?????????? ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? (????????? «?????», ???  
???????????, ?. ., ?? ?? ?????????????? ??????), ??? ?????? ?? ?????????? ???  
????????? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????????? ???  
????????? ??? ?????? ?????????? (58).

62. ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ??????????  
?? ????????, ?? ?????? ?? ??????? ??? ?????? ?????? ?????? ??? ??? ?????? ???  
????????? ??? ?????? Bosal (59). ?? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ???  
????????? ??? ????? 43 ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? ?? ? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???  
?? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ??? ??????. ??????, ??? ?????????? ??? ? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (60), ?? ??????????  
????????? ??? ? ?????????? ??? «?? ?????? ?? ?????[????]» ??? (?????????) ??????  
????????? ??? ?? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???  
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ???, ?? ?? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? 43 ?? . ??????, ?? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? (????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????????? ???). ?????????? ???, ?? ?????????? ??? ?????? ???  
????? «????? ???» ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? – ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? «?????????» ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? Baars (61), ?? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? «?????????» ??? ?????? ??? ?????? ??? ?????? 43 ?? . ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? Metallgesellschaft (62), ?????????? ???, ??? ? ??? ???  
????????? ??? ?????? ??? ?????? ??? ?????? Futura (63) ?????? ??? ?????? ???

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

63. ????? ???, ?? ??? ?????? ???, ??? ?????? ? ?????? ?????? ??? ?????? ???  
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???  
?????????, ??????????, ??? ?????????? ??? ?????? ?????? ??? ?????????? ???  
?????????????. ??? ??? ?????? ???, ?????? ?????? ?????? ?????? ?? ??? ?? ???  
????????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ???  
????????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???  
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???  
?????????, ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ???  
????????????? ?? ?? ??? ?????? ?????? – ?? ?????? ?????????? ??? ?????????? ???  
????????? ?????? ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???  
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???  
????????? ??? ?? ?????? ?????, ?????? ?????? ??? ? ?????? ?????? ?????? ???  
????????????? ??? ?? ?????? ??? ??? ?????????? ?????? ?????? ??? ?????? ???  
????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? (?????????????  
??? ??? ???) ??? ?? ?????? ??? ?? ?????? ?????? ??????. ?????????? ???, ?????????? ???  
????????? ?????????? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ??? ??????. ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?? ?????? ?????????? ??? ?????? –????? ? ???, ??? ?????? ???  
??????, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

64. ?????????? ??????? ??? ?????? ??? ?????????? Bosal ????, ????????, ??? ?? ???  
????????? ??????? ??? (?????) ?????? ?? ?????? ?? ?????? ??? ?????? ???  
????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ??? ?????? ??? ?????? ?? ?????? «????? ??????», ? ?????? ???  
????????? ??? ?????? ?? ??? ?? ??? ?? ??? ?? ??? ?????? –????? ??? ?????? ???  
????????? ??????– ?? ?????? ?? ??? ?????? ?????????? ??? ?????? ???, ??? ?????? ???  
????????? ?????? ??????. ??????, ??? ?????? ?? ?????? ?????? ??? ?????? ???  
Hoge Raad ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????????? ???, ??? ?????????? ???, ?? ?????????? ?????? ??? ?????? ???  
????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? (64).

65. ?? ?????? ?????? ?? ?????????? ???, ?? ??? ?????? Marks & Spender, ?? ??????????  
????????? ?????? –????? ??? ?????? ?? ?????? ?????? ?????????? ?????? – ??? ?? ??? ??  
?? ?????? ?????????? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ??????????  
????????? ??? ?????????? ?????? ?? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??????????  
??? ?????????? ?????? ???, ?? ?????? ?????? ?????? ???, ?? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ???, ?? ?????? ?????? ?????? ???, ?? ?????? ?????? ???  
????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???  
??? ?????? ??? ?????? ?????? ??? (65). ?? ?????? ?????? ??? ?????? ?????? ??? ?? ???  
??, ?? ?????? ?????? ?????? ???, ? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
«????? ??? [...] ???» ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? (66). ?????? ??? ?? ?????? ratio  
decidendi ??? ?? ??? ?????? ?????????? ???, ?????? ??? ?? ?????? ??? ?????? ?????? ???  
????????? ???, ?? ?????? ?????? ??? ?????? ?????? ???, ?????? ??? ?????? ?????? ???

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

ii) ?? ?????????????? ??? ?????? ?? ?????? ?????????????? ??? ?? ?????? 43 ??

66. ?? ?????? ??????????, ?????? ??? ?????????? ?????????????? ?????? ??? ??  
????????????? ??? ?????????? ?? ?????????? ?????????? ??? ?????? ???, ?????? ??????????  
????????????? ??? ?????? ??? ?????? 43 ?. ???' ??????, ?????? ?????????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?? ?????? ??????????  
????????? (????????? ??? ?????? ??????????), ?????? ?? ?????? ?????????? ???  
????????? ?????????? ??? -???????, ??????, ?? ??? ?????? ??? ?????????????? ??? ???  
????????? ?????????? ??? ?????????? ?????? (66).

67. ??? ?????????? ??? ?????????? ?????????????? ??????????, ? ?????????? ??? ???, ?.?,  
??? ?????? ???:

- ?? ?????????? ?????????????? ??? ?????????? ?? ?????????? ??????????  
-????????????? ??? ?????????????? ??? ?????????? ?????? (67)- ?????? ??  
????????? ??? ?????? ??? ??? ?????????????? (????????? ??????????????) ??????????  
?????????, ?? ?? ?????????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?? ??????????  
????????? (68). ???????, ?.?, ?? ?????????????? ?????????? ?????????? ??????????????, ??? ??  
?????????, ??? ??? ?????? ?????? ??? ?????? ?????? ??????????, ?? ?????????????? ??? ?? ??????????  
???? ?? ??? ?????? ?????? ??? ?????????? ?????? (69).

- ???????, ?????? ?? ?????? ?????????? ??? ?????? ?????????? ?????????????? ???  
????????????? ??? ?????????? ??????????, ??? ?????? ?? ?????????? ?? ?????????????? ???  
?? ?????????? ?????????? ??? ??? ?????? ?????????? ??? ??? ?????? ?????????? (70).

- ?????? ?? ?????? ?????????? ??? ?????? ?? ?????????? ?, ., ?????????????? ??? ?????? ???  
?? ?????? ??? ?????? (????????? ??? ??????????????) ?????? ?? ?????? ??  
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???  
??? ?????????? ??? ?????? ?????? ??????????, ??? ??? ??? ?????? ?????? ?????????? ?????  
???? ?????? ??? ?????? ?????? ??????????, ?????? ?? ?????? ??? ?????? ??? ?????? ??????????  
????? ?????????? (71).

- ??????, ?? ?????????? ??? ?????? ??? ? ?????? ??? ?????????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????????? ??? ??? ?????? ?????? ???  
????????, ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, -???, ?.?, ??? ?????? ???  
????????? ??? ?????? ?????????? (72).

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

????????????? ??? ?????????? ?????????????? ??? ????? ?????????? ?????????? ???  
????????????????? ??? ?????? ??? (?????? ?????????? ??? ?????? ??? ?????????? ???  
??? ?????? ?????????? ??? ?????????? ???), ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ???  
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? (73).

68. ??? ?????? ?? ?????????? ?????????????? ?????????? ??????????, ? ??? ?????? ???  
???, ?.?:

— ?? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ?????? ?????? ??????????  
??? ?, ??? ?????? ??? ?????????? ?? ?? ?????? ?????????? ??? ?????? ??? ??????  
????????????? -?????? ?????????? ??? «????????? ???» (74) ?? ?? ?????????????? ???  
????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????????? (?.?.. ??????????????)  
????????? (75). ???????, ?????????????? ?????? ??? ?? ?????????? ??? ?????????? ???  
??? ??? ? ?????? ??? (76). ??? ??????????????, ??? ?????? ?????????? ?????????? ??  
????????? ?? ??? ?????? Bouanich, ??? ?? ?????????? ?????? ?????????? ??? ?????? ???  
????????? ?????? (77). ??????????, ?? ?????? ?????????? ??????, ??????????, ??  
????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ??????????  
????????????? ??? ?????? ?????? ?????? ?????????? ??????, ????, ?????? ?? ?? ??????  
????????? ??????, ?????????? ??? ?????? ?????????? ?????????? ?? ?????? ?????? ???  
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? (78).

— ??????, ?? ?????????? ??? ?????? ??????, ?????????? ?????????? ??? ??? ?????? ???,  
????? ?????????? ??? ?????? ?????????? ?? «?????????» ?? ?????? ?????????? ??? ??  
????? ?????? ??? ??? ?????????? ?????????? ??? ??????????????, ?????? ?????????? ?? 90  
% ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? (79). ? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ???  
????? ? ?????????????? ??? ?????????? ?????? ?????? ?????? ?????????? ??????????????,  
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???, ? ?? ??????????  
????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??  
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???? ?? ?????? ???,  
??? ?????? ?????? ?????? ?????? ?????? (80).

69. ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?? ??? ??????????  
????????? ?????????? ??? ?????? ???, ?????? ?? ?????? ?????????? ?????????? ???  
????????? ??? ??? ?????????? ?????? ?????? ?????? (?.?.. ??? ?????? ??? ?????????? ???  
?????????), ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??????????, ?????? ?  
????? ?????????? ?????? ?????? ?????? ??? ??? ?????? ?????? ?????????? ?????????? ???  
??? ??? ?? ??? ?????? ?????? ?????? (?.?., ??? ?? ?????? ?????? ?????????? ?????????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ?? ??????).  
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?? ??????  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??? ?????? ???  
????????? ?????? ?????? ?????? ?????? ??????, ?????? ?? ?????? ?????????? ?????? ?????? ??????  
????????? ?????? ?????? ?????? ?????? ?????? ?????? (81).

70. ?????, ?????, ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????????  
????? ?????????? ????. ??????, ??? ?????????? ??? ?????? ?????? ?????????? ??? ??????????  
??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???  
????? ?????????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ?????????? ??? ??? ???  
?? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??? ??? ??????

71. ?????????? ??? ???? ????? ?????????????????? ?? ??? ?????????????????? ??? ?????????????????? ??? ?????????????????? ???  
???? ?????????? ??? ?????????? ??? ?????????????? ????? ?????????????? ??????, ??? ????? ??? ????? ???, ??  
????????? ?????????????? ??? ????? ??? ?????????????? ????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
??? ??? ??????. ??????, ??? ?????????????? ????????, ?? ?????? ?????? ?????? ?????? ?????????? ??  
????????????? ?????? ??? ?????? ??? ?????? ?? ?????????????? ????????????, ??? ?????? ??? ???  
????????????? ??? ??????????????. ????????, ??? ?????????????? ?????????? ?????????????? ??? ??????????  
????????????? ??? ?????????????? ?????? ?????????????? ?????? ?????? ??? ?????? ?????????????? ??? ??????????  
?? ????????????, ??? ???, ??? ?????????? ??? ??? ?????? ???????????????. ??????????, ?? ?? ??  
????????? ??? ?? ?????????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????????? ???  
????????????? ??? ?? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??????????????  
?????????????. ?? ??? ?????? ???, ?? ?????????? ?? ?????????????? ?????????????? ??? ?? ??? ??? ??  
??? ?????????????? ? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ?????????????? ??? ??  
????????? ??????????. ?? ??? ??? ?? ?????????? ???, ?? ?????? ??? ??????????????, ? ?????????? ???  
????????????? ??? ?????? ?????????????? ??? ?????? ?????????????? ??? ?????????? ??? ?????????? ??? ??????  
??????????. ??? ?? ?????????? ?? ?????????????? ??? ??? ???, ?.?, ??? ?? ?????? ?????????????? ??? ??????????  
?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ???  
????????? (83).

72. ?????? ???, ??? ?????? ??????, ?? ??????????? ??? ?????????? ?? ?????????? ??  
????????? ??? ?????????? ?????????? ?? ?????? ?????????? ?? ??? ???? ??????  
????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??? ?????????? ??  
?? ?????? ??????????. ?? ? ?????????? ?? ?????? ?????????? ?????? ?????????? ?? ?????????? ??  
????????? ??? ?????? ?? ?????? ?? ?????? -????? ?? ?????? ?????? ?? ?????????? ??  
????????? ?? ??? ?????? ?? ?????? ?? ?????? 43 ??- ?????????? ?? ?????????? ?????? ??  
????????????? ?? ?????????? ?? ??? ???? ?????? ?? ?????????? ?? ?????????? ?????? ??  
?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ??.

73. ?? ??????????, ?? ??????????, ???, ????? ?? ? ? ?????????????? ??????? ????? ??????  
?????? ?????????? ??????? ?????? ?????????? ??? ?????? 43 ?? (??????????, ???????,  
?????? ?????????? ? «??????» ??????????), ??????? ?????????????? ?? ???????????????, ?.?,  
??? ?? ?????? ?????????? ??? ??????? ??? ?????? ?????????????? ?????????? (84) ??  
??? ?? ?????? ?????????? ??? ?????????? ?????????? (85).

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

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

75. ??? ?? ?????? ?????? ?????????? ??? ?????? ???, ??????????, ?????????, ??? ???????????. ??  
?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ??? ?????? ?????????? ?? ??????? ??  
????????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ?? ??? ?????? ??????  
????? ?? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ???????????. ??  
?????????, ??????, ?? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ??  
??? ACT ??? ?????????? ?? ?????? ?????????? ??? (??????, ?? ??? «??????» ?????????? ??  
??? ?????????? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??????????). ??????????, ??  
Test Claimants ?????????? ?? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????????  
????????? ?????????? ?????? ?? ?????????? ??? ?????? ?????????? ?????? ??? ?????????? ?????????? ??  
?????? ?? ?????? ?????? ?????????? ?????????? ??????????. ???????, ?? ?????? ?????? ?????? ??  
????? ?? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ?? ??? ??? ??  
????????? ?? ??? ??????????, ?? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ?? ??? ??? ??  
????????? ?? ??? ?????? ??? ?????????? ?????????? ?????? ?? ?? ?????????? ?? ??? ?????????? ??  
????? ?? ??????. (??????, ?? ??? «??????» ?????????? ??? ??? ?????????? ?????????? ??  
????????? ?? ?????? ??? ?????????? ??????????).

76. ?? ??? ??????, ?? Test Claimants ?????????? ?? ?????? ??? ?????? ?????????? ??????????  
????????? ?????????? ?????????? -??- ??? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ??????????  
(????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ???)- ?????? ?? ?????? ? ?????????? ??  
??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??????????  
????????? ?? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? -??- ?? ??? ??  
????????? ?????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ??????????  
????????? ?????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ??????????  
????? ?? ?? ?????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ??????????  
????? ?????? ??? ??????.

77. ?? Test Claimants ?????????? ?? ?????? ?????????? ?????????? ?????????? ?? ?????? ?????????? ??????????  
?? ?????? ?????? ?? ?????? ??? ?????????? ?????????? ?????????? ?? ?????? ?????? ??????????  
????????? ?? ?????? ?????????? ?? ?????????? ???, ??? ?? ?????? ??? ?????????? ?????????? ??????????  
????????? ???, ??? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??????????  
????????? ?????? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??????????  
????????? ??????, ??? ?????? ?????? ?????????? ?????????? ?? ?????? ?? (????????? ??? ??  
????????? ??????) ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????????.. ??????  
??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ??????  
????????? ?????? ???' ?, ?? ?? ??????, ?????? «?????????» ??? ?????????? ??? ??????????  
?? ?????? ?????? ?????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ??????????  
????????? ?? ?????? ?????? ??????. ?????????? ???, ?? ??????, ?? ?????????? ?? ?????????? ???  
??? ?????????? ?????? ?????? ?????????? ??? ?????????? ?????????? ?????????? ?????? ?? ??  
????????? ?????? ??? ?????? ??????.

78. ?????? ?????? ???, ?????? ?? ?? ?????????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ?????????? ?????? (86), ? ?????? ?????? ?????????? ??????????  
?? ?????? ??? ?????? ? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??  
????? ?????????? ??? ?? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??  
????? ?????????? ??? ?????? ?????? ??????.

79. ??????, ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ? ??????????,,  
????????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ?????????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ??????.

????????????? ???. ???. ???. ??????. ???. ??????. 43 ??.

80. ?????? ???, ????????, ??? ?????????? ????? ??????. ?? ?? ??? ????? ????????????, ??????  
???????, ????????, ?????????? ?????????????? ?????????? ?????? ?? ?????? ?????? ??????? ?? ???????  
????????? ?? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????????? ?? ??????????  
????????? ?????? ?????? ?????????? ?????????????? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ?????  
????????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
????????? ?? ?????????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
????? (??????) ?????????? ?? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
????????? ??????, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????  
??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? (?) ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ? ACT ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?) ??? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?? ?????????? ?? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? (??????) ?????????? ?? ?????? ?????? ??????.

82. ?????????? ??????????, ?? ?????? ?????????, ???? ??????, ?????????????? ????? ??  
????????? ?????????? ?????: ??????, ??? ???? ????????? ACT ??? ?????? ?????????? ?????  
?? ?????? ?? ??????. ?? ?????????? ?? ?????????????? ?? ?????????????? ?? ?????????????? ??  
????????? ?? ??? ?? ?????????????? ?? ????? ?????????? ?????, ?????? ? ?????? ??  
?? ?????????? ?????????? ?? ?????? ?? ?????????? ?????, ??? ??????????, ?? ??????  
?????????, ?? ??? ?????????????? ?? ?????????? ??????????.

83. ????????, ??? ???? ?????? ??? ?????????? ????? ?????????????? ??? ?????????? ?????????? ??  
????????????? ??? ???? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?? ??  
????????????? ??? ???? ??????. ????????, ? ?????????? ?????????? ?????????? ??????????  
????????? ACT. ??? ? ? ?????????????? ??? ?????? ?????????? ??????????, ? ?????????? ??? ??????????  
????????? ??? ???? ?????????? ??? ?????? ??????. ?? ?????????? ?????????? ??????  
????????? ??? ???? ?????????? ??? ?????? ?????? ??? ???? ???? ?????????? ???  
????????? ?????????? ??? ?????? ???????????. ??? ? ? ?????????????? ??? ?????? ??????  
?????????, ????, ?????? ?????? ??? ? ? ?????? ?????????? ?, ??? ?????? ??????????  
????????? ??? ?????? ?????????? ??? ?????? ??????. ????????, ??? ?????? ?????? ??????  
????????? ?????? ?????????? ??? ?????? ??????. ????????, ??? ?????? ?????? ??????

84. ??????????????, ? ?????????? ?????????????? ??? ?????????? ?????????? ??? ??? ?? ?????  
????????? ?????????? ??? ????????? ACT ??? ?????????? ??? ?????? ?? ??????????????  
????????? ?????????? ???, ???????, ??? ?????? ?????? ?? ??? ?????????????? ???  
????????? ?? ????? 43 ??.

85. ???????, ?????? ??????? ?? ?? ????? ?????? ??? ???????????? ????? ?????????? ?? ???????????????  
?? ????? ?? ?? ?????? ?????????????????? ?? ?????????????? ?????????? ?????????? (????????????? ??  
?????????) ??? ?? ?????? ?????? ?????????? ?? ?????????? (?????? ?????????????? ??????????).  
??????, ??? ??????????????????, ??????? ?? ?????? ?????? ?????????????????? ??? ??????????????

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

86. ??????????, ?? ?????? ?????????????? ??? ?????????? ?????????? ?????????? ???, ??., ???  
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??????  
????????? ??????, ?????? ?? ????????. ??? ?????????? ??????, ?? ?????? 43 ?? ??????????  
?? ?? ??? ??????, ??? ?????? ??? ?????????? ??? ?? ?????? ?????????? ???, ?? ???  
????????? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????????? ???????????.  
??????, ??? ??????? ?? ???????, ?????????? ??? ?????? ?????????? ??? ???????, ????????  
?? ??? ?????? ??? ?????????? ??? ?????? ?????? Manninen (87), ?? ????????, ??????? ??  
??????????, ?? ?????????? ??? ?????????? ??? ?? ?????? (? ??? ??????) ??????????. ???  
??????????, ?? ?????? 43 ?? ?????????? ?? ?????? ???, ??? ?? ?????? ??? ???  
??????????, ?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ??????????  
????????? ??? ?????????? ??????????. ??? ?????? ?????? ???????, ?? ?? ?????? ????????  
????????? ??? ?????????? ?????????? ?????? ?????????? ?????????? ??? ???????, ?? ????????  
????????? ??? ???????, ??????? ?? ??? ?????? Manninen, ??? ?????????? ??? ??????????  
??? ?????????? ??????????. ??? ?????? ?????????????? ??? ?? ?????? ?????????? ?????????? ??? ??  
????? ?????????? ?????????? ?????????????? ??????????.

87. ??????, ??? ?????? ?? ?????????????? ??? ?????? ?????????? ?????????? ??? ?? ?????? ????  
????????? ???, ?????????? ??? ?? ???????? ??? ?????????? ??? ?????? ??? ?????????? ????  
?? ??? ?????? ???, ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???,  
????, ?? ?????????? ?? ?????????? ?? ?????????? ??? (????????) ?????????? ???  
???????????. ??????, ?? ?????????? ?????????? ??? ?????????? ?????? ??? ?????? ????????  
????? ??? ?????? ?????????? ?????????? ??? ?????????? ?? ?????????? ?????????? ??????????  
??? ?????????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???  
??????????? ??? ??? ?????????? ??? (??? ????) ??? ?????????? ???.

88. ?? ??????????, ??????, ???, ??? ?????? ??????, ?? ??????? ???????, ???  
????????? ?? ?????? ?????????? ??? ?????? ?? ?? ?????????????? ??? ?????????? ??????????,  
??????????? ?? ?????????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????  
??????????? ?????????? ??? ?????? ??? ?????????? ???, ??? ?? ?????????? ??? ????????  
????????? .. ??????, ??????, ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???,  
????????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????????  
??????????, ?????? ?? ?????????? ??? ?? ?????????? ?????????? ?? ?????? ??? ???  
?????????? - ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? - ?? ??? ??????  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ???  
??????????? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????????? ??? ?????? ??? ??????????  
????????? ??? ??????. ??? ?????? ?? ?????????? ??? ?????? Bouanich, ?????????? ??? ??????  
??????????? ?? ??????????, ??? ??? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??? ??????  
????, ?? ?????????? ??? ? ?????????? (88).

89. ?? ?????????? ???, ?? ?? ?????? ?????????? ??? ?????? ?? ?????????? ??? ? ?????? ???  
??????????? ?? ?????? ?????????? ??? ??????, ?????? ?? ?????? ?????????? ???, ?? ??????  
?? ?????????? ??? ?????? ?????????? ??? ?????????? ? ?????? ACT ??? ?????? ??????????  
?? ?????? ???????, ??? ?????? ??? ?? ?????????? ??? ?? ?????? ?????????? ??? ?????? ???  
??????????? ??? ?????? ??? ?? ?????? 43 ?? . ??? ?????????? ??? ??????, ??? ?????????? ???  
?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?? ?????????? ??????????  
?? ??????????????, ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????  
????????????? ??? ?????? ??? ?????? ? ?????????? ?????????? ??? ?????? ??? ??????????  
?? ?????????????? ??? ?????? ??? ?????? ? ?????????? ?????????? ??? ?????? ??? ??????????

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

90. ????? ???????????????, ? ?????????????? ????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 56 ??.

? - ??????? 1?

92. ?????????? 1??, ?? ?????? ?????????? ?????? ???' ?????? ?? ?? ????? 43 ?? ? 56 ??  
????????????? ?? ??? ?????? ??????, ???? ?? ?????? ?????????, ?? ?????????? ??????? ??  
??? ?????? ?? ?????? ?????? ?????????????? ?? ?????????? ?????? ?????? (????? ?????? ??  
????? ?????) ??????? ?????? ?????? ?????? ?? ??? ?? ?????????, ???? ?? ??? ??????  
????? ?????? ?? ?????? ?????? ?????????????? ?? ??? ????? ?????? ?????? (????? ?????? ?  
????????), ???? ??? ?????????? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ??????  
????????? ?????????? ??? ??????????.

94. ?? ??????????? ??????? ?? ?????? ??? ????? ?????? ?????? ?????? ??????? ?? ?? ?????? ?????? ??? ??????  
????? ??????? D (89). ? ??????? ?? ?????? ?????? ?????? ?????? ????????, ??? D., ??? ?????? ?  
????????? ?????????? ?? 10% ??? ?????? ??? ?????? ?????? ?????? ?? 10% ?? ???  
????? ?????????? ??? ?????? ????????, ??? ?????? ??? ?????? ?????? ?????? D. ??? ?????? ??? ??  
????? ?????????? ??? ?????? ????????, ??? ?????? ??? ?????? ?????? ?????? ??? ??  
??????, ??? ?????? ??? ?????? ??????-????? ??????. ? D ???????????, ?????? ??????, ??? ?  
?????????? ??????????? ?? ??????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ?? ??? ?????? ??????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 56 ??  
??? ???, ??? ??? ??? ???, ?? ??? ??? ??? ?? ??? ??? ?? ??? ?????????? ?????????? ???????.  
????????????? ?? ??????????? ??, ?? ??????????? ?? ?????? ??? ??? ?????? ?????? ?????? ?  
????????? ?? ?????????? ?????????? ?? ?????? ?????????? ?? ??? ??? ?? ??? ?????????? ?????? ??  
?? ??? ??????????? ?? ????????. ??? ???????, ????????, ????????, ?????? ??????????  
????????? ?? ??? ??????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?? ??? ?????????? ???

?????? ??????? ??? ??? ????? ?????? ?????? ?????? ?????????? ??? ?????????????? ?????????????? ??????????????  
?????? ??? ??? ????? ?????? ?????? (90). ????????, ??????? «?????? ??????? ??? ???????  
????????? ??? ??? [??????] ??? ?????? ??????????» ?? «????????? ?????????? ??? ??  
????????? ??????????» ??? ?????????? ?????? ?????? ?????????? ?????? ?? ?????? ?????????? ???  
??? ??????? ??? ?????????? ?????? ??? ?? ??? ?????????? ?????? ?????? ????. ??????, ???  
????????? ?????? ??????, ????, ??? ?????????? ??????, ? ?? ?????? ??? ?????? ???  
????????? ??? ?????????? ?????? ??? ?? ?????????? ?????? ?????? ?????????? ??????,  
??? ?????? ?? ?????????? ?? ?????????? ?????? ??? ?????????? ?? ?????????? ??? ??  
???? ?????? ?????? ??? ?????, ??? «?????? ?????? ?????????? ?????? ??? ??? ??????????  
??? ?????? ??? ??????».

95. ? ?????????? ???, ?? ??? ?????? ??????? ????????, ?????? ?????? ??? ??? ???  
????????? ??? ??????? ?????????? ??? ??? ?????? ??????????. ??? ?????????? ???  
????????? ?? ?????? ??????????, ? ?????????? ??? ?????????????? ??? ?????? ???  
????????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???  
???? ?????? ??? ?????? ??? ?????????? ??????????, ??? ?????? ?? ?????????? ??? ?????? ???  
????????? ?????? ??? ??????, ? ?????? ??? ?????????? ?????? ??????. ??? ??  
????????? ?? ??? ?????? D, ?????? ??? ? ??? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ???  
????????? ?????? (91). ? ??????? ??? ?????? ?????? ?????????? ??? ??????????  
?????????, ??? ?????????? ??? ?????? ?????? ?????????? ?????????????? ??? ??? ???  
????????? ??? ?? ??? ?????? ?????? ?? ?????? 293 ?. ? ?????????? ??? ??????????, ??  
????????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? 43 ?? ? ??? ?????? 56 ?. ????????, ??? ?????? ?????? ??? ??????????  
??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? (????? ? ???????), ?????? ?????? ?????? ??? ?????? ?????? ?????????? ???  
????? ?????? ?????? (????? ? ???????), ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? ?????? ?????? ???, ??? ?????? ?????? ?????? ??? ?????? ?????? ???.

96. ??? ??? ???, ??? ? ?????? ??? ? ?????? 1?? ?? ?????? ?? ??? ??? ??  
????? 43 ?? ??? ??? 56 ?? ??? ?????? ??? ???? ?? ?????? ???, ??? ?? ?????? ???  
?? ?????? ???, ???? ?? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (????? ??  
????? ??????), ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? (????? ? ???????), ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ??? ??? ?????? ?????? ?????? ??? ?????? ???.

? – ?????????? 1?? ??? 1??

97. ?? ?? ?????? 1??, ?? ?????? ?????????? ?????? ?? ?????????? ??? ?????? 43 ? ??  
????? 56 ?? ?? ??? ?????? ?? ?????? ???????, ?????? ?????? ??? ?????? ??? ??  
??????, ?????? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ?????? ??? ???????, ?????? ?? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????? ??? (i) ?????????? ??? ?????? ?????? ?????? ???, ?? ?????? ???  
????????? ?????? ???, (ii) ?? ?????? ??? ?????? ???, ?? ?????? ???.

? ?????????????? ?? ?????? ????, ??? ? ??????, ??? ?????? ? ??? ???? ?? ??? ???? ????  
????????? ????, ? (iii) ?? ??????? ???????, ??????????? ??? ???? ???? ????  
?????. ?? ?? ??????? 1??, ?? ?????? ?????????? ?????? ?? ? ??????? ??? ??????? 1?? ??  
???? ?????????? ?? ??????? ?????? ??? ?????, ??? ????? ?????? ??? ??  
????????? ????, ??? ?? ?????? ?????????? ?? ?????? ????.

98. ???' ??????, ?? ?????? ??? ?????? ?? ?? ??? ?????? ?????? ?????? ?????? ??????????  
?? ?? ????? 43 ?? ??? ??????? ?????? «?????????? ??? ???????????», ??? ??????  
????????? ?? ??? ?????? ??? ?????? ??????? ?????? ??? ?? ??? ?????? ??? ??  
????????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???  
????????? ?????????? ?????? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????.. ??? ?? ?????? ??????, .?. , ?? ?????????? ??? ?????? ?????? ?????? ???  
??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??  
??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

99. ? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ??? ??  
????????? ??? ?????? ?? ?????? 1??.

100. ??? ?????? ????, ??? ?????? ?????? ?? ?????????? ? ?????????? ??? ??????????  
????????? ??? ?????????? ?? ??? ?????? ??? ?????? ??? ??????????, ??? ???? ? ??? ????  
????????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??????????????  
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ? ?????? ???  
????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ???  
????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ???, ?? ?? ??????, ?????????? ??? ?????? ???, ?????? ?? ?? ?? ? ??????  
????????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? (?? ?????? ???), ?? ???  
????? ?? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ????. ????  
? ?????????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??????;

101. ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ???????. ? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ??????????, ?????? ?? ?? ??? ?????? ?????????? (??  
????????? ??? ?????? ?? ??? ?????? ??? ??????) ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

102. ????????, ? ??????? ?? ?????????? 1?? ??? 1?? ?????? ?? ?????? ??? ?? ???????????  
??? ?????? 43 ?? ? ??? ?????? 56 ?? ?? ? ?? ????? ??????? ?? ??????? ?????????, ??? ??????? ??  
????????? ????, ??????? ??????? ??????? ??????? ?????? ?? ?????????????? ????, ??? ?????? ????  
????????? ???, ??? ??????? ??????? ??????? ?????????????? ????, ??? ?????? ????, ??? ??????  
????????? ?????? ??????? ?? ?????? ?? ??????? ?????????? (i) ?? ?????????????? ????, ??? ??????  
????????? ???, ?? ?????????? ?? ?????? ?????????? ????, (ii) ?? ??????? ?? ?????? ????, ??? ??????  
?? ?????????? ?? ?????? ?????????? ????, ??? ?????? ????, ??? ?????? ????, ??? ?????? ?  
????? ?? ??? ????? ?????? ?????????? ????, ? (iii) ?? ??????? ?????? ????,  
????????? ????, ??? ?????? ????, ??? ?????? ????, ??? ??????.

? – ??????? 2

103. ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?????????????? ??? ?? ??? ?????? ??????  
????????? ???? ?? ??????? ?? ?????????? ?????? ?? ?????????? ?????????????? ??? ?? ?????? 43  
?? ?? ??? ?????? 56 ?? ?? ?????????? ?????? ?? ?????? ?? ?????????????? ??? ?? ?????? ??????.  
????, ????, ??????? ?? ?????? ?? ???????????, ?????? ?? ??????? ?? ?????????? ??? ?? ?????????? 1?? ???  
1?? ?????? ?????? ?? ?????? ??????? ???, ?? ?? ??????, ??? ?????? ?????????? ?? ??????  
????????? ?? ?????????????? ??????. ??????????, ??????, ??? ?????? ?????????? ?????????? ????  
??? ?????? ??????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????  
????????????? ?????????? ??? ?????? ?????? Test Claimants in the FII Litigation (92), ???  
??? ?????? ??????? ?????? ??? ?????? ??? ?????? ???.

V – ??????

104. ??? ??? ?????? ??????, ?? ?????????? ??????, ??? ?? ??? ?????? ???, ?? ?????? ???  
????????? ??? ?????? ?? High Court of England and Wales (Chancery division) ??? ???  
?????????:

– ??, ?????? ?????????? ??? ? ??????? ?????? ??? ?????? ??? ?????? ???????, ?? ??????? ??????????  
?????? ?????? ?????? ?????? ??? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ???  
????????? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ???  
?? ?????? 43 ? 56 ?? ?? ?????????? ?? ??????? ?????? ?????? ?? ??????? ?????????? ??? ?? ????  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????? ???????,  
????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ???????.  
?????, ?? ?????? ???????, ?? ??????, ????, ??? ?????? ?????? ??? ?????????? ??? ?????? ???????  
???? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?????????? ?????? ??????? ????  
????????, ?????? ?? ?????????? ??? ?? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ??????????  
–??? ?????????? ?????????? ?????????? – ?? ?? ?????????? ??? ?????? ??? ?????? ??????????  
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??????????.

– ?? ?????? 43 ? ?? ?????? 56 ?? ?? ?????????? ?? ??? ?????? ??????, ??? ?? ??? ??????  
????????? ?? ?????????? ?????? ???, ? ?????? ?????? ?????? ?????? ?????????? ??? ?? ????  
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?? ????  
????? (????? ?? ??? ??????), ?????? ?? ?????? ?????? ?????? ?????????? ?? ?????????? ??????  
????????????? ?? ?????? ?????? ?????? (????? ?? ??????), ?????????? ?????????? ?????????? ??  
????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ??????.

– ??? ?????????? ??? ?????? 43 ?? ? ??? ?????? 56 ?? ?? ? ?? ??? ?????? ?? ??????  
????????, ??? ?????? ??? ?????????? ???, ?????????? ?????? ?????? ?????????? ??? ?? ????  
????????????? ??? ?????? ?????? ?????? ??????, ?? ??? ?????? ?????? ?????? ?????????? ??? ?? ????  
????????? ?? ??? ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ??? ??????  
(i) ?? ?????????? ??? ?????? ?????? ?????? ??????, ?? ?????????? ??? ?????? ?????????? ??????,

1 – ?????? ?? ?????????????; ? ???????.

2 – ? ?????????? ?????????? – ? ?????????? ?????????? ?????? ??? ?????????? ??????????  
????????? ??? ?????????? ??? ?????? (incoming dividends), ??? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????? ??? 7?? ?????????? 2004, C?319/02, Manninen,  
?????? 2004, ?. I?7477 – ??????? ?????????? ??? ??????? ?????????? C?446/04, Test  
Claimants in the FII Group Litigation (?? 2005, C 6, ?. 26).

3 - ?. ??????? ??? 8?? ??????? 2001, C?397/98 ??? C?410/98, Metallgesellschaft, ???????  
2001, ?. I?1727, ????? 97.

4 - ??????? ?? 13?? ?????????? 2005, C?446/03, Marks & Spencer, ?????? 2005, ?. I-10837.

5 – ??., ??????, ?? ????? 5, ??????????? 1, ??? ?????? 90/435/??? ??? ???????????, ??? 23??  
???????? 1990, ??????? ?? ?? ????? ?????????? ?????????? ?? ?????? ?????? ??? ??  
????????? ??? ??? ?????????? ?????????? ?????????? ?????? ?????? (EE 1990 L 225, ? . 6)  
(????????????? ??? ??? ?????????? ????? ?? ?????? ??? ? ?????????? ??????????  
????????? ?? ?????? ?????? ?????????? ?????????? ?? 25 % ??? ?????? ??? ??  
?????????).

6 – ? ??????? ?????? ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ??? ?????????? ??????????  
????????????? ??? ?????????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??  
????????????? ??? ?????? ???????.

7 – ?. «Reform of Corporation Tax», ??????? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ??????? ??? ?? ??????? ??? ?????? ?????? ??????????, ?????????? 1  
??? 5 (Cmnd. 4955).

8 – ????? 14(1) ??? ????? ????? ????? ?????????????? ??? ????? ?????????? ??? 1988 (Income and Corporation Taxes Act 1988, ??? ????: TA), ?? ????? ???.

9 - ????? 238(1) TA.

10 – ????? 239 TA.

11 - ????? 208 TA

12 – ????? 231(1) TA.

13 – ????? 238(1) TA.

14 - ????? 247 TA.

15 - ??, ??????????? 3.

16 – ????? 20 TA

17 – ????? ?? ?????? 233(1) TA, ? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????????  
????????? ??? ?? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????? ???????, ?? ??? ?????????? ??????????, ? ?????? ??? ?? ? ??????????

????????????? ??????????? ??????????? ????? ?? ???? 231(1) TA, ? ???????? ??????? ???  
?????????? ??????? ????, ?????? ??? ??????? ???, ?????? ??? ??????????? ?????  
????? ????, ??? ??????? ??? ??????????? ??? ??????? ??????? ?? ??? ??????  
????????? (? ????, ??????????? ??????????? ???????????).

18 – ??? 231(1) TA.

19 – ??? 231(1) TA

20 – ??? 231(1)(3) TA.

21 – ?? ??????? ??????? ??????? ??? ????? ??????? ?????????? ??? ??????????? ???????  
?????, ?????? ?? ????? ??????? ?? ??? ?????? ??? ?????? ??????? ?? ??????? ??????? ??  
????? ??????? ????. ??????, ??? ?????? ??????? ???, ?? ??????? ???????, ???  
????????? ??????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ??  
????????? ??? ?????? ?????????? ?? ??? «????????? ??????????» (????? 233(1) TA). ???  
????????, ?? ?? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ???, ??? ??????  
????????? ??? ?????? ?????????? ??? ?????? ???????.

22 – ??? 10(3)(c) ??? ??? ?????? ??????? ?????????? ??? ?????? ??? ?????.

23 – ??? 10(3)(b) ??? ??? ?????? ??????? ?????????? ??? ?????? ??? ?????.

24 – ??? 10(3)(d) ??? ??? ?????? ??????? ?????????? ??? ?????? ??? ?????.

25 – ??? ??? ??????? ??? ??????? ?????? ACT ??? ?????? ?? ??????? ???,  
?????????? ?? ?????????? «????????? ?????? ACT [«shadow ACT» system] ???  
????????? ??? ?????????? ?? ?????????????? ??? ?? ??? ?????? ??????? ACT.

26 – ?. ?????????? 5.

27 – ?????? 88/361/??? ??? ?????????? ??? 24? ?????? 1988, ??? ?? ??? ?? ?????? ?? ???????  
??? ?????? 67 ??? ??????, ?? 1998 L 178, ?. 5.

28 – ?????? ??? 13? ?????? 2000, C?251/98, Baars, ?????? 2000, ?. I-2787, ????? 22.  
?????? ? ?????? ??? ??????? ?????? ?????????? ??????? ???????, ??????? ???????  
??????, ??? ??? ???????, ? ??? ?????? ?????? ??????? ??? ?????? ?????????????? ??? ??  
???? ?????? ?????? ???????. ??., ??????, ?? ?????? 58, ?????????? 2, ??, ?? ?????? ??????  
?? ? ?????? ??? ?????????? ?????????? ?????? «?? ?????? ?????? ???????  
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???????.

29 – ?????????? ?? ?????????????????? ?????????? 2 ??? 4. ??? ??? ??? ?? ??????? ???  
????????? ??? ?????????? ??? ?? ??? ?????? ??? ?????????? ??? ??????? ???  
????????????? ?????? Pirelli.

30 – ?????????? ???, ??? ?????????? 28, ?????? 26. ??., ??????, ??? ?????????? ???  
???? ?????????????? ?????? C?515/99 ??? C?527/99 ??? C?540/99, Reisch, ??????  
2002, ?. I?2157, ?????? 59.

31 – ?????? ??? 6? ?????? 2000, C?35/98, Verkooijen, ?????? 2000, ?. I?4071. ?. ??????  
?? ?????????? ??? ?????? ?????? 2, ?????? Manninen, ??? ??? ?????????? ?????? ??  
????? ???.

32 – ?? ??? 95, ?????????? 2, ?? ?????? ?????? ??? ?? ?????? 95 ?? ??? ??? ??????

???? ??????????? ????????. ?? ??? 95 ?? ?????? ??? ?? ?????? ??? ?? ?????????????? ???  
?????????? ?????????? ?? ?? ?????????? ??? ?????????????? ??? ?????? 251 ??, ???  
?????? ?? ?????? ?????????? ?????? ??????????.

33 – ? ?????????? ?????????? ??? ???????? ??? ?? ?????????? ?? ?????????? ?? ??? ???  
??????????, ?????????? ?????????? ?????????? ???????????, ??? ?????????? ??????????  
????? ?????? ??? ?????? ?????????? ?????? ??? ?????????????? ??????????.. ?  
????????? ????, ????, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??????????, ???? ? ?????????? ??? ?????????????? ??? ?????? ?????????? ?????? ???  
«????? ?????? ??? ??????????» ??? ?????? 93 ??.

34 – ??., ?. ., ??? ?????????????? ???????, ??? ?????????? 4, ?????? Marks & Spencer,  
????? 29, ??? ?? ?????????? ??????????.

35 – ?. ??? ?????????????? ??? ?????????? 4 ?????? Marks & Spencer, ??? 30, ???  
?? ?????? ??? 21?? ?????????? 1999, C?307/97, Saint Gobain, ??? 1999, ?. I-6161,  
????? 34.

36 – ??., ?. ., ??? ?????????????? ??? ?????????? 4 ?????? Marks & Spencer, ??? 35,  
?? ?????????? ??? 28 ?????? Baars, ??? ?????????? ???  
????????? 35 ?????? Saint-Gobain, ??? ??? ?????????? ??? 16?? ?????? 1998, C?264/96,  
ICI, ??? 1998, ?. I?4695, ??? ?? 15?? ?????? 1997, C?250/95, Futura, ??? 1997, ?.  
I?2471.

37 – ??., ?. ., ??? ?????? ?? 29?? ?????? 1999, C?311/97, Royal Bank of Scotland,  
????? 1999, ?. I?2651, ??? ?? ??????????.

38 – ?. ??? ?????????? ??? ?????? 37 ?????? Royal Bank of Scotland, ???  
26, ??? ?? ??????????.

39 – ?. ?????????? ??? ?????? ??? ?????? ?? ??? ?????????? ??? ?????????? ??? ??  
????????? ??? ?????????? ???, ??? IV, A, 2, ??.

40 – ?. ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
???? ?????????? ??? ?????????? ???, «????? ??? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? ???», ? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
«[?] ?????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??  
??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? [...] ??  
?????????, ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
?????????» (COM (2001) 582 ??????, ?. 13).

41 – ?????? ??? 12?? ?????? 2005, C?403/03, Schempp, ?????? 2005, ?. I-6421, ??? 45.  
?? . ?? ?? 33 ?? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?? ?????? ???  
15?? ?????? 2004, C-365/02, Lindfors, ?????? 2004, ?. I?7183, ??? 34.

42 – ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???  
????? ??? ?????????? ???' ?????? ??? ?? ?????????? ?????????? ?????????? ???  
????? ? ?????????? (???) 1408/71 ??? ?????????? ??? 14?? ?????? 1971, ??? ??????  
?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ???  
????????? ??? ?????? ??? ?????????? ???, ?? ???.. ??? 05/001, ?. 73, ?????? ?? ?????? ???

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

43 – ????????, ? ?????? ?????????? ?????? ?????? ?????? ?? ??? ?????? ?????? ?????????? ??? ??  
????????? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ????. ??????????????  
????????? ?????? ?????????? – ?.?. ??? ?????????? «????????? ?????????? ??????????»  
????????? » – ?????? ?????? ?? ?????????? ?????? ??? ? ?????????? ??? ?? ??? ??  
????????? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ?????? ??  
????? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ?????? ??  
?? ?????? ??????????????.

44 – ?. OECD Model Double Taxation Convention on Income and on Capital, with Commentaries to the Articles, ????, ??????, 1977, ????, ????, ??????????.

45 – ?. OECD Model Double Taxation Convention, ?????????? 44

46 – ?? ?? ?????? ??? ??????????, ?? ?????????? ?????????? ?????????? ??? ???????????????  
????? ?????? ?????????? ??? ?? ??? ?????? ??? ?????? ?????????? ??? ???????????????,  
?? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? «?????????»  
(???, ?? ?????? ??? ?? ?????????? ?????????? ??????????????). ????????, ?? ??? ?????? ???,  
?? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ??????????  
????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ??????????  
????????? ???, ??? ?????????? ?????????? ?????????? ?????????? ???, ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???.

47 – ?????? ??? 12? ??? 1998, C?336/96, Gilly, ?????? 1998, ?. I?2793, ?????? 30 ??  
31. ??., ??????, ??? 24: «?? ?????? ???, ?? ?????? ??? ?????? ??? ?????????? ??? ??????????  
????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??????????  
????????? ??? ?????? ?????? ???, ???? ?????? ?????? ??? ?????? ?????? ?????? ??????????  
????????? ?????????? ??? ?????? ?????, ??? ?? ?????????? ??? ?????? [???] ??????????  
????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? »..

48 – ??., ?.?, ??? ?????? ??? 12? ??? 2003, C?234/01, Gerritse, ?????? 2003, ?. I?5933, ??? 45, ?? ??? ?????? ?? ?????????? ?????????? ??? «? ?????? ?????? ??? ?????? ??  
????????? ?????? ?? ??? ???, ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?? ??????  
????????? ?????????? ???, ???, ?? ?????? ??? ?????? ??? ?????????? ??? ??????????  
????????? ?????????? ??? ?????? ??? (???) [...], ?? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ??? ?????????? ???, ??? ?????? ?????? ?????????? ??? ??????????  
????????? ?????????? ». ?. ?????? ?????? ??? 5? ??? 2005, C?376/03, D.,  
????? 2005, ?. I-5821, ??? 28. ?????? ??? 12? ??? 2002, C?385/00, De Groot,  
????? 2000, ?. I?11819, ??? 93. ??? ?????????? ??? ?????? 35 ??????  
Saint-Gobain- ??? ?????????? ??? 36 ?????? Futura, ?????? 20 ?? 21.  
?? ?? ?????? ??? 14? ?????????? 1995, C?279/93, Schumacker, ?????? 1995, ?. I?225,  
????? 34, ?? ??? ?????? ?? ?????????? ?????? «[??] ?????? ??? ??? ?????? ??? ?????? ??  
????????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ?????? ??? ?????? »..

49– ?????????? ??????, ??? ?????????? 4, ?????? Marks & Spencer, ?????? 37

?? 38.

50– ?????????????? ??????, ??? ?????????? 37, ?????? Royal Bank of Scotland, ???  
26, ??? ?????????? ??? ??????????

51 – ???. ??? ?????????????? ??? ?????????? 2 ?????? Manninen, (? ?????? ??? ???? ???  
????? ??? ?? ?????? ?????????? ?????????? ?????? ?? ?????????? ??? ?? ??? ?? ??????????  
?????????)· ??? ?????????? ??? ?????? 31 ?????? Verkooijen (?? ??????  
????????? ??? ?????? ?? ?????? ??? ?? ?????? ?????? ?????????? ??? ?????? ??? ??????  
??? ?? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ?????? ??????????  
????? ??? 15?? ?????? 2004, C?315/02, Lenz, ?????? 2004, ?. I?7063 (? ?????? ???  
????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ?????? ?? ?????? ???  
??? ?? ?????? ?????? ?????????? ??????). ??., ??????, ??? ?????? ??? 4?? ?????? 2004,  
C?334/02, ?????? ??? ?????? (????????? ??????), ?????? 2004, ?. I?2229 (??????  
????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ??? ???  
????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? - ?????? ?????? ??????  
????????? ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????????? ???  
????????? ??????) ??? ??? ?????? ??? ?????? ?????? ?????? Tizzano ?? 10??  
????????? 2005 ??? ?????? C?292/04, Meilicke (??? ??? ?????? ?????????? ???  
?????).

52 – ?????? ??? 14?? ?????????? 2000, C?141/99, AMIB, ?????? 2000, ?. I?11619, ??????  
?? 12?? ?????????? 2002, C?431/01, Mertens, ?????? 2002, ?. I?7073 (?????? ??????  
????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????????? ??????????).  
????????????, ??? ?????????? 36, ?????? ICI (? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????????? ?? ?? ? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????).).

53– ?????????????? ??? ?????????? 3 ?????? Metallgesellschaft.

54– ?????????????? ??? ?????????? 4 ?????? Marks & Spencer, ??? 46. ??  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ??? ?????? ???  
????????? ?? ??? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ?????? ??? ??????  
????????? ??????????, ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ??????  
????????? ???????????.

55 – ?.?, ?????????? ?????? ???, ?????????? ?????? ?????????? ?????????? ??? ??????????  
????? ? ?????? ?????? ??????????.

56 – ?.?, ?.?, ??? ?????????????? ??? ?????????? 48 ?????? De Groot, ?????? 99 ??  
100, ??? ??? ?????????? ??? 14?? ??????B???? 1999, C?391/97, Gschwind, ?????? 1999, ?.  
I?5451, ?????? 22, ??? ??? 27?? ?????? 1996, C?107/94, Asscher, ?????? 1996, ?. I?3089,  
????? 44. ?????? ?? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ??? ??  
????? ??????????, ?? ?????? ??? ?????? ?????????? ??????????, ?? ??????????  
????? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?. ?????? ???  
????? ??? ??? ??? ?????? ??? ?????? Schumacker.

57 – ?????? ??? 14?? ?????????? 1995, C?484/93, Svensson, ?????? 1995, I?3955, ??  
????????????? ??? ?????? ?????????? 31 ?????? Verkooijen.

58 – ?????? ??? 11?? ?????? 2004, C?9/02, De Lasteyrie de Saillant, ?????? 2004, ?.  
I?2409.

59 – ??????? ??? 18?? ?????????? 2003, C?168/01, Bosal, ??????? 2003, ?. I?9409.

60 – ??????? ??? ?????? 4, ?????????? 2, ??? ?????? ??? ??? ?????? ??? ???  
????????? ??????.

61 – ?. ?????????? 28.

62 – ?. ?????????? 3 ??????.

63 – ?. ?????????? 36 ??????.

64 – ?? ?????????? ??? ??? ?????? ??????? ?? ?????????? ??? ?????????? ? ??????  
Metallgesellschaft (????????? ??? ?????????? 3) ?? ??? ?????????? ??? ??????? Bosal  
(????????? ??? ?????????? 59) ??????. ?? ??? ?????? Metallgesellschaft, ??  
????????? ???' ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ???  
????? ? ?????? ?????? ?????? ?????? ?????????????? ??? ?????????? ? ?????????? ???  
????????? ?? ?????? ?????? ??? ?????? ?????????? ?????? ?????? [group income election  
scheme], ??? ?????? ??? ?????? ?? ?????????????? ??? ?????????? ?????????? ??????????  
??? ?????????? ?? ?????????? ??? ACT ??? ?? ?????????? ??? ?????????? ???  
????????? ??????. ??? ?????????? ???, ?????? ??? ?? ?????????? ??? ?????? ???  
????????? ?????????? ??? ?????? ?????? ??? ?????????? ???, ??????, ?? ??????  
????????? ??????????, ??? ?????? ?????? ??? ?????????? ???, ?? ?????? ?? ???  
????????? ??? ?????? ??? ?????????? ???, ?????????? ??? ?????? ?????????? ???, ???  
????????? ??????. ??' ??? ??? ??????, ? ?????????? ?????? ?????? ?? ?????? ???  
????????? ??? ?????????? ??? ?????????? Bosal, ??? ?????? ??? ?????? ?? ??? ?????, ??  
????? ?????????? ??? ?????? ?????? ??? ?????????? ?????, ?????? ?? ??? ?????? ??????????  
????????? ??? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ??????.

65 – ?. ?????????? 4 ??????, ?????? 55 ??? 56.

66 – ??.

67 – ?????????? ??? ?????????? 35 ?????? Saint Gobain.

68 – ??????? ??? 28?? ?????????? 1983, C-270/83, ??????? ??? ?????? ?????????? ??????????  
(`Avoir Fiscal`), ?????? 1986, ?. 273, ??? 13?? ?????? 1993, C-330/91, Commerzbank,  
????? 1993, ?. I-4017 (????????? ?? ?????????? ?????????? ?????? ??? ?????????? ??  
???? ?????? ??? ??? ?????????? ?????????? ?????????? ?????????? ??????), ???  
????????????? ??? ?????????? 36 ?????? Futura, (????????? ?? ?????????? ?? ?????????? ??  
????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??????).

69 – ?????????? ??? ?????????? 68 ?????? Avoir Fiscal.

70 – ?????????? ??? ?????????? 37 ?????? Royal Bank of Scotland.

71 – ?????? ??? 12?? ?????????? 2002, C-324/00, Lankhorst-Hohorst, ?????? 2002, ?. I?11779, ??? ?????? ?????? ?????????? ?????????? ?????? ?????? C-524/04,  
Test Claimants in the Thin Cap Group Litigation (?? 2005 C 57, ?. 20).

72 – ?????????? ??? ?????????? 36 ?????? Futura, ?????? 21.

73 – ?????? ??? 28?? ?????? 1998, C?118/96, Safir, ?????? 1998, ?. I?1897, ???

???????????????? ???? ?????????? 36 ?????? Futura.

74– ?????????????? ???? ?????????? 48 ?????? Gerritse, ?????? 27.

75– ?????????????? ???? ?????????? 48 ?????? Gerritse ??? Schumacker. ?? ??????  
?? ?????????? ???? ?????????? 52 ?????? Asscher (??? ?????????? ?? ??????  
????????? ?????????? ?????? ??? ????? ?????????? ??????????) ??? ??? ?????? ??? 11??  
????????? 1995, C-80/94, Wielockx, ?????? 1995, ?. I?2493 (?? ?????? ?????????? ??????  
?? ?????????? ?????? ?????????? ?????????? ?? ?????????? ??? ?????????? ?????????? ??????  
?? ?????????? ?????? ?????????? ?????? ??? ?????????? ?????, ??? ?????? ?????? ??? ??? ???  
????????? ??????, ??? ?????? ?? ?? ?????????? ?????????? ??? ?????? ?????? ?????? ???  
????????? ??????).

76– ?????????????? ???? ?????????? 48 ?????? Gerritse, ?????? 54.

77 – ?????? ??? 19?? ?????????? 2006, C?265/04, Bouanich, ?????? 2006, ?. I-923,  
?????? 51-55.

78 – ??., ?.?, ??? ?????????????? ??? ?????????? 48 ?????? D, ?????? 38 (????? ??????  
?? ????? ??????????).

79– ?????????????? ??? ?????????? 48 ?????? Schumacker ??? D, ?????? 30,  
?????? ??? 1?? ?????? 2004, C?169/03, Wallentin, ?????? 2004, ?. I?6443,  
????????????? ??? ?????????? 75 ?????? Wielockx, ?????? 22, ??? ??????????????  
???? ?????????? 56 ?????? Gschwind.

80 – ??., ?.?, ??? ?????????????? ??? ?????????? 56 ?????? Gschwind, ?????? 29, ??  
????????????? ??? ?????????? 48 ?????? De Groot, ?????? 101. ? ?????????? ??????????  
?? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???  
?? ??? ??? ??????????, ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????????? ???  
????????? ?????????? ??? ??????????????: ?????????????? ??? ?????????????? 48  
?????? D, ?????? 31-34. ?. ?????? ??? ?????????? ??? ?????? ?????????? Léger ??? 1??  
?????? 2005, ??? ?????? C?152/03, Ritter-Coulais, ?????? 2006, ?. I?1711, ? ??????  
????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????????? ???  
?? «?????» ?????????????? ?????????? ??????????, ??? ?? ?????????? ??? ?? ??????????  
?????????, ??? ?? ?????????? ??? ??????, ??? ?????? ??? ?????????? ??? ??????  
?????????.

81 – ???. ??? ?????????? ??? ?????????? ??? ?????????????? 67 ??? 68.

82 – ???. ?????????? 77, ?????? 51.

83 – ?????????? ??? ??? ?????? ??? ?? ?????????? ??? ?????????? ????? ??????????  
????????? ?? ??? ?????? ??? ?????? Fokus Bank (?????? ?? 23?? ??????????  
2004, E?1/04, Fokus Bank ??? ?????? ??? ??????). ??? ?????? ??? ??????, ????  
?????, ?? ?????? ??? ?????????? ?? ??? ?????? ?????????? ?????????? (????? 40  
????????? ???, ?? ?????? ?????????? ??? ?????? 56 ??) ??? ?????????? ??????????  
????????? ??? ?????? ? ?????? ?????????? ??? ?????? ??????, ??????, ??? ?????????? ???,  
????? ?? ??????, (1) ??? ?????? ?????????? ??? ?????? ?????????? ??????. ??????, ??????????  
????? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????????? ?????? ??????  
????????? ?? ?????????? ? ?????? ?????????? ?????? ?????????? (2)  
????????? ??? 15 % ??? ?????? ?????????? ??????. ??????, ?????? ?? ??? ??????????  
????? ?????? ??? ?????? ?????????? ??????, ?????? ?? ?? ?????????? ???, ???

?????????? ?? ?? ?????????? ?????????? ?? ?? ?????? ??????????????. ?????????????? ?? ?  
?????? ?? ??? ?????????? ?? ?? ?????? ?????????? ?????????????? ??????????, ?? ??????????  
???? ???????, ?? ??????? ???????????, ?? ?????????????? ????? ??????? ??????????  
(?????????? ?? ?? ?????? ??????????) ?? ?? ?????????????? ????? ?????? (?????????? ??  
????? ??????????), ?????????? ????? ?????????? ??? ?????????? ????? ?????????? Lenz  
??? Manninen (????? 30), ?????????????? ??? ?????????? ??? ?? ?????? ?????????? ???  
????? ?? ?? ???????, ???????, ??? ?????????? ??? ?? ?????? ?? ?????????? ???  
?????????? ????? ?????????? ??? ?????????? ?? ?????? ?????????? (????? 37). ??? ???  
????? ?? ?????? ???????, ??? ??????? ?? ??? ?????? ???.

84 – ??????? ?? 28?? ?????????? 1992, C?204/90, Bachmann, ??????? 1992, ?. I?2049.

85 – ??., ?.?, ?? ?????????????? ??? ?????????? 71 ?????? Lankhorst-Hohorst ??? ??  
????????????? ??? ?????????? 36 ?????? ICI.

86 – ??, ?.?, ?? ?????? ??? ?????????? ?? ?? ?????????? (?????) ??? ?????????? ???  
????????? ??? ??????????, ? ?????? ?????????? ?????????? ??? ??? ?????? ???  
????????? ? ?????? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?????????? ???  
??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???  
?????????.

87 – ?. ?????????? 2.

88 – ?. ??? ?????????????? ??? ?????????? 77 ?????? Bouanich, ?????? 54 ??? 55.

89 – ?. ?????????? 48.

90 – ?????????????? ??? ?????????? 48 ?????? D, ????? 60.

91 – ??., ???' ???????, ?? ?????? ??? ?????? ?????????? Ruiz-Jarabo Colomer ???  
????????????? ??? ?????????? 47 ?????? Gilly, ??? «?? ?????????? ??? ??????????  
????????? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ?? ?????????????? ??  
???? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??  
????????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???, ??? ??? ??  
????????????? ?? ?????????? ??? ??? ?????? ?????? ??? ?? ?????? ?????????? ??? ?????? ??? ??  
????????????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ?????????? ??? ?????? ??? ??  
????????? ??? ??? ?????» (????? 66).

92 – ?. ?????????? 2.