

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

??? 6?? ??????? 2006 (*)

«???? ?????? ??? – ??? 28 – ??????? ?? ??????? ?????????? ??? ?????????????? ??? ?????????????? ??? – ?????? ?????? ??? ?????????????? ?? ?????????? ??????????, ?????????????? ?? ?????? ??? ?????????? ??? ?????????? ?? ??? ?????? ?????? – ?????????? – ?????? ??????»

???? ??????? C-251/05,

? ? ?????????? ?????? ??????? ?????????????? ?????????? ?????? ??? ?????? 234 ??, ??? ?????? ?? Court of Appeal (England & Wales) (Civil Division) (?????? ???????) ?? ?????? ??? 21?? ?????? 2004, ? ?????? ??????? ??? ?????????? ??? 14 ?????? 2005, ??? ?????? ??? ??????????

Talacre Beach Caravan Sales Ltd

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Commissioners of Customs & Excise,

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

????????? ??? ??? P. Jann, ?????? ???????, K. Schiemann, N. Colneric, M. Illeši? (??????) ??? E. Levits, ???????,

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

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

????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ??? 6?? ??????? 2006,

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

– ? Talacre Beach Caravan Sales Ltd, ?????????????? ??? ??? R. Cordara, QC, A. Hitchmough, barrister, ??? B. Goren, solicitor,

– ? ?????????? ??? ??????? ????????, ?????????????? ??? ??? C. White ??? T. Harris, ?????????? ??? ??? R. Anderson, QC,

– ? ?????????? ??? ?????????? ????????, ?????????????? ??? ??? R. Lyal,

????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ??? ?? ?????? ??? 4?? ?????? 2006,

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

??????

1 ? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????? 28 ??? ?????? ?????? 77/388/??? ??? ?????????? ??? 17?? ????? 1977, ??? ?????????????? ???

???????????? ???? ?????? ?????? ??? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? - ????
????????? ????: ?????????????? ?????: ?????????? ?????? ?????? (?? ????. ????. 09/001, ?. 49),
???? ?????????????? ?? ??? ?????? 92/77/??? ??? ??????????, ??? 19?? ??????????
1992, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ??
????????????? ??? ?????? 77/388/??? (????????? ??? ?????????? ???) (?? L 316, ?. 1, ???
????: ????. ??????).

2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????, ??????, ???
????????? Talacre Beach Caravan Sales Ltd (??? ????: Talacre) ???, ????????, ???
Commissioners of Customs and Excise (??? ????: Commissioners), ??????? ?????????? ???
??? ?????? ??? ?????? ?????????????? ?????? (??? ????: ???) ??? ?????? ?????????,
????????? ?? ??? ?????? ?????? ?????????? ?? ?????? ?????????? ??? ?????????????? ????

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

3 H Talacre ?????????????? ?????????????? ?????????? ??? ?????????? ??? ??????????
?????????. ?? ?????? ??? ?????????? ??? ??? ?????? ?????????? ??? ??????????????
????????? ??????????, ??? ?????????? ?????? ?????????? ??? ??? ?????? ??????
????????? ?????? ?????????? ??? ?????????? ??? ??????????.

4 ? ?????????? ??? ?????????? ??? ?????? ? Talacre ?????????? ??? ?????? ??????,
????????? ??????, ??????????, ??????????, ??????????, ?????????? ??????, ?????? ??? ??????
?????????, ?????? ??????, ??????, ??????, ??????, ?????? ?????? ??????, ??????????,
?????????, ?????? ??? ??????.

5 ??? ?????? ??? ?????? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? Talacre
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

6 ??????, ? Talacre ?????? ??? ? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ?????? ??? ?????? ??? ?????? ?????? ??????, ? ?????? ?????? ?? ?? ??????
?? ?????? ?? ??? ?????????? ?????? ??????, ?????? ??? ?????????????? ??? ?? ??????
?????????, ?????? ??? ?? ?????????? ??????. ?????? ?? ??? ?????????? ??? ??????
????????? ??????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ? Talacre ?????? ? ??????????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????.

7 ??????????, ?? ??? 30 ??? ?????? ??? ?????? ?????? ?????????????? ??? (Value Added
Tax Act, ??? ????: VAT Act) ?????? ??? «?? ?????? ?????? ?????????? ?????????? ? ??????????
????? ? ? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? 8». ???
????? 9 ??? ?? ??? ?????? ?????????? 8 ?????????? «????????? ??? ?????????? ?? ?????????? ??
???? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????????? ?????????? ?? ?????? ?? ?????????? 2
030 ??????????, ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????.

8 ??? ?????????????? ??? ? ?????????? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 28,
????????? 2, ??? ?????? ??????, ?? ?????? ??????:

«2. ?? ??? ?????????? ??? ?????? 12, ?????????? 3, ??? ? ?????????? ??? ?????? [28??]
????????? ?????? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??????.

?) ?????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????????? ??? ?????????? [?????] ???
????????? ?????? ??? ?? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ??? ?????? 12, ?????????? 3, ???

?????? ??? 1? ?????????? 1991, ?????? ??? ?????????? ??? ????? ?????? ?????? ?????? ???
?????? ??? ?????????? ??? [?????????] ??? ?????? ?????? ?????? ??? ?????? 17 ???
?????? ??? 11? ?????? 1967.

[...]»

9 ???????? ??? ? ?? ?????????? ? Talacre ???????? ?? ?? ?????????? ???
????????? ?????????? ?? ??? ?????? ???, ?? Commissioners ???????? ?? ?????? ???
????????? ??? ?? ??? ?????????? ??????, ??? ?? ??? ?????? ?????? ?????? ???
?????.

10 ?????????? ?????? ??? ? VAT Act ???????? ??? ?? ?? ??? ?????? ???
?? ?????? ??? ?????????? ??????????.

11 ??????????, ??? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? 8 ??? VAT
Act, ? ?????? 9 ??? ?? ??? ?????????? ??? ?????????? «????? ?????, ?????? ?????? ???
????????? ??? ?????? ?????? 3 ??? ?????? 5» ??? «??? ?????? ??? ?????????? ???
????? ?????». ??? ?? ?????? 96 ??? VAT Act, ?? ?????? 8 ?????? ?? ??????????
????? ?? ?? ?????? ???.

12 ? ?????? ??? Talacre ??? ?? ?????? ??? Commissioners ?????????? ??? ??
VAT and Duties Tribunal ??? ?? High Court of Justice (England & Wales), Chancery Division.
?? ?????? ??? ?????? ??? ?? ?????????? ??? ? ?????????? ??? ?????????? ???
????????? ??? ?????? ??????, ??? ?? ??? ?????? ??? ?? ?????????? ??? ?? ??? ?????????? ???
????????? ?? ?????? ?????? ??? ? Talacre ?????? ??? ?????? ??? ?????? ???
?????????.

13 ??? ??? ?????????? ???, ?? Court of Appeal (England & Wales) (Civil Division)
????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ??????????
????????? ???:

«????????? ??? ?????? ???, ?? ???, ???' ?????? ??? ?????? 28, ?????????? 2,
????????? ??, ??? [????? ??????] ??? ?????? ?? ??? ?????? ??????????, ?????? ??
????????? ?????????? ?????????? ?????? ?? ?????? ?????????? ?????????? ??? ??
?????????, ??? ?? ?????? ??? ?????? ???, ?????????? ??? ?? ??? ?????? ??? ?? ??????????
?????, ?? ?????????? ??? ?? ??o????? ??? ?????? ?????????? ?????????? ??? ?? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ?????????? ??? ??
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ?????????? ??? ??
????????? ?????????? ??? ?????? ??? ?????? ??????????;»

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

14 ?? ?? ?????? ???, ?? ?????? ?????????? ??? ?????? ???' ?????? ??, ?? ?????????? ???
????????????? ??? ?????? ?????? ??????, ??????????????, ??????, ?? ?????? ???
??? ?????? ?? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?? ??? ?? ?? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 28, ?????????? 2,
????????? ??, ??? ?????? ??????, ???, ??????, ?????? ??? ?????? ??? ?? ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ??? ?? ??? ?????? ??????????, ?????????? ??? ?? ??? ?????? ??????
????? ?? ?????????? ??? ?? ?????????? ??? ?? ??? ?????? ?????????? ??? ?? ??? ?????? ??????.

15 ??? ??? Talacre, ??? ?????? ??? ?????? ?? ?????? ?????????? ???????. ??????????
??? ?? ?????? ???' ?????? ?????? ?? ?????????? ?????????? ?????????? ???
????????? ?? ?????? ??????. ??????????, ??????, ??? ?????????? ??? 13?? ??????
1989, 173/88, Henriksen, ?????? 1989, ?, 2763, ??? 25?? ?????????? 1999, C-349/96, CPP,

????????? 1999, ?. I-973, ??? ??? 15?? ????? 2001, C-34/99, Primback, ??????? 2001, ?. I-3833.

16 ? ?????????? ??? ??????? ?????????? ??? ? ?????????? ??? ?????????? ??????????
????????? ?? ?????????? ????. ?????????? ???, ??? ?????????? ??? ?????? ??? ?????
?????, ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????
????? ?????? ????????, ??? ?????????? ??? ?????????? ??????????????, ?????????? ??? ?????
28 ??? ?????? ??????. ?????????? ??? ??? ??? ????? ?????????? ?????? ?????? ?????? ??????????
?? ??? ???? ??? 1? ?????????? 1991, ?? ?????? ?????????? ??? ?????????? ?? ?????? ??? ??????
????????? ??? ?????????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????
????? ? ?????? ???????.

17 ???????, ?????? ?????????? ?? ?????????????? ??? ???? 28, ?????????? 2, ??? ??????
 ???????, ?? ????? ?????????? ??? ?????? ??? ???? ?????????? ?????????? ?? ??????????
 ?????????? ?? ?????????????? ???, ?????? ?????????? ??? ???? ?????? 12, ?????????? 3,
 ??? ?????? ??????, ?? ?????? ?????? ??? ?????? ?????????? ?????????? ???.

18 ??????????, ??? ?? ?????????? ??? ?????? 28, ?????????? 2, ?????????? ?, ??? ??????
?????? ?????????? ??? ? ??????? ?????????? ?? ?????????? ?????????? ??? ??????????
????? ?????????? ??? ?????? ??????????????. ?? ?????????? ?????? ?????? ?????? ?????? ??
????? ??? 1? ?????????? 1991. ???????, ?????? ?? ?????? ?????????? ?? ??? ??????????
????????? ??? ?? ??????? ?? ?????????? ?? ??????? 17, ?????????? ??????????, ???
????????????? ??????? 67/228/??? ??? ??????????, ??? 11? ?????????? 1967,
???? ?????????? ??? ?????????? ??? ?????????? ??? ?????, ??? ?????????? ?? ??? ?????? ??????
????????? – ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??????
????????????? ??? (?? ????. ???.. 09/001, ?. 5), ?????????? ??????? ?? ?? ?????? ??????????
?? ?????????? ?????????? ??? ?????????????? ??? ?????? ??????? ?? ?????????? ??? ??? ??????
????????????? ??? ?????? ?????????? ?????????? ??? ?????? ??????? ?? ??????????
?????????????.

19 ??? ????????????????, ?? ????????????, ??? ?? ?? ???? ?????????? ?????????????? ??? ??
????? ??? ? VAT Act ??????????? ?? ???? ??? ?, ?? ?????????? ?????????? ??? ??????????????
?????, ??????????? ??? ???? ??? ???? ???? ???? ? Talacre. ???????????, ??????? ??? ???? ?
????????? ??????????? ??? ?? ??? ??? ???? 1? ?????????? 1991 ??? ??? ??? ??????????? ???
????? ??????????? ???????????.

20 ??? ??????????????? ?????? ???, ??????? ?? ??? VAT Act, ?????????? ?????? ???
????????????? ??? ? ? ?????????? ?????????????? ?????? ??? ? ? ?????? ?????????? ???
????????? ?? ? ?????????? ?????????? ??? ?????????????? ?????. ??? ??????????, ??? ?????? ??
????? ????, ??? ?????????? ?? ?????????????? ??? ?????????? 28, ?????????? 2, ?????????? ??,
??? ?????? ??????? ??? ?????? ??? ????? ?????????? ?? ??? ?????? ??? ?????????? ???
????? ?? ??? ??? 1? ?????????? 1991.

21 ????????, ????, ????????, ???, ???????, ?????, ???, ???, ???, ??, ????????, ????????, ???
????????????? ???, ???, ??, ???????, ???, ???, ????????, ???, ????????, ???, ????????, ???, ???, ???, ???
????????? ???, ???, . ???, ??, ???, ??, ????????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???
?????????, ???, ????????, ???, ???, ??, ???, ???, ????????, ???, ????????, ???, ????????, ???, ????????, ???
????????, ???, ???, ???, ????????, ???, ???, ???, ???, 28, ????????, 2, ???????, ??, ???, ???
??????.

22 ??????????? ? ?????????? ??? ??? ?????? ???????? ??? ?????? 28, ?????????? 2,
????????? ?, ??, ??? ?????? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????, ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????????? ? ?????? ?????????? ??? 1? ?????????? 1991. ????

?????????? ? ?????? ?????????????? ??? ?????? 15 ??? 16 ??? ?????????? ???, ?? ??? 28,
?????????? 2, ??????? ??, ??? ??? ????? ?????? ?????????? ?? ????? «stand-still», ?? ???
?? ?????????? ????? ?????????????? ?????????? ??? ?????????? ?? ?????????? ? ??????????
????????????? ?????????????? ??? ????? ?????????? ??? ?????? ?????? ??????????, ???
????????????? ?? ??? ??? ????? ??????. ??? ?????? ??? ?????? ?????, ?? ?????????? ???
??????? ?????????????? ?????????? ??? ??? ??? ??? 1? ?????????? 1991 ???
????????????? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ??? ?????? ? ???
????? ?????????? ?? ??????????, ??? ?? ?????????? ??????, ??? ??????????.

23 ???????, ?? ?????????? ??? ????? ?????????????? ?????? ??? ?????? ?? ??????????????
?????????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ?????????????? ??? ?? ???
???? ??????? ?? ??? ?????? ??? ?????????? ?? ??? ?????? ?????? ?????? ? ?????? ??????????
??? ?????????????? ?? ?????????? ?????? ??? ?????????? ??? ?????? ??? ? ?????? ??????????
??? ??? ??? ??? ?????? (??., ???? ??? ?????? ???, ??? ?????????? ??? 22?? ??????????
1998, C-308/96 ??? C?94/97, Madgett ??? Baldwin, ?????? 1998, ?. I-6229, ????? 34, ??? 8??
????? 2003, C-384/01, ??????? ??? ?????????, ?????? 2003, ?, I-4395, ????? 28, ??? 1??
????????? 2005, C-394/04 ??? C-395/04, ?????, ? ?????? ??? ??? ????? ?????????? ???
??????, ?????? 15 ??? 16, ?????? ??? ??? 8?? ?????????? 2005, C-280/04, Jyske Finans, ?
????? ??? ??? ?????????? ?????? ??? ??????, ??? 21). ??? ??? ??? ?????, ??
????????????? ??? ??? 28, ?????????? 2, ??????? ??, ??? ??? ????? ?????????? ?????????? ??
????????? ?????????? ??? ?????????????? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ??
??? ? ?????? ?????????? ??? ??? ?????? ?????? ?????? ?????? 1? ?????????? 1991.

24 ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ??? ? ?????????? ??? ?????????????? ??? ??
????????? ?????????? ??? ?????? ?? ?????????? ?? ??????. ? ?????? ?? ??? ??????????
????????? ?????????, ??? ?????? ?????????? ? Talacre ??? ?????????? ??? ?????? 15 ??
????????? ?????????, ??? ?????? ??? ?????????? ??? ?????? 28 ??? ?????? ??????
????????? ?? ?????????? ?????????? ??? ?????????? ?????? ??? ?? ?????????? ???
????????? ?????????? ??? ? ?????? ?????? ?????? ?????????? ?????????? ?? ??? ??? ??????????????
TVA, ??? ???? ?? ?????????? ? ?????? ?????????? ?????????? ?????????? ?????????? ??? ??
???? ??????????, ??? ?????? ??? ?????? ?? ?????? ?? ?????????? ?? ?????????? ??? ??? ??????
?? ??? 28, ?????????? 2, ??????? ??, ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ???.

25 ???????, ? ?????? ??????????, ?????????? ??? ?????? 27 ??? ??????????????
????????? CPP, ????? ??????????, ?? ?? ?????? 38 ??? 40 ??? ?????????? ???, ??? ??
????????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ???, ?? ?? ??????, ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ?????????? ?????? ?????? ???
????????????????? . ??????, ???? ??? ?????????? ??? ??? ?????? ??? ?????? 28,
????????? 2, ??????? ??, ??? ?????? ??????, ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ? ?????? ?????????? ?????????? ??? ?????? ?? ?? ?????? ???, ??? ??
????????? ??? ??? ?? ??? 1? ?????????? 1991 ??? ??? ?????? ???, ??? ?? ???
??? ?????? ?????? ???, ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ???
??? ?????? ?????????? . ?? ??????????, ?? ?????? ?????????? ??? ?????? ??? ?????????? ???
??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????????? ???
????? ??? ?????????? ?????? . ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ???

26 ???, ??? ?????? ?????????? ?????????? ? ?????????? ??? ? ?????? ??????????

?????????? ??????????? ???? ?? ??????????????? ??????????????? ?? ???????????
?????????????? ??????????, ?? ??????????? ??????????? ??? ?????? ??????????? ???
?????????? ??? ??? (??., ??? ??????? ???, ??? ??????? ??? 15?? ??????????? 2005, C-
63/04, Centralan Property, ? ????? ??? ??? ??????????? ??? ??? ???, ??????? 79 ???
80).

27 ??????? ??? ???????????, ??? ??????? ??????? ??????? ?? ?????? ? ??????? ???,
???? ??????????? ??? ?????? ??????? ???????, ???????????????, ??????, ??? ??????
????? ??? ?? ?????? ? ??????? ??? ??????? ?????? ??? ??????? ??????? ?? ???????
?????????? ??? ??????????? ?????? ??? ?????? ??? ??????? ??? ??????? 28, ??????????? 2,
????????? ?, ??? ?????? ???????, ???, ???????, ??????? ?????? ???, ??????? ?? ??? ??
???? ???????, ??? ??????? ??? ?????? ??????? ??? ??????? ??? ??????? ???, ???
?????????? ??? ?????? ??? ?????? ??? ??????? ??? ??????? ??? ??????? ???, ???
?????????? ??? ?????? ??? ?????? ??? ??????? ??? ??????? ??? ??????? ???.

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

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

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

???? ??????????? ??? ?????? ??????? ???????, ???????????????, ??????, ???
????? ?????? ??? ?? ?????? ? ??????? ??? ??????? ??????? ?????? ???????????
????????? ?? ??????? ??????? ??? ??????? ??????? ?????? ??? ?????? ??? ??????? ???
?????? 28, ??????????? 2, ??????? ??, ??? ?????? ??????? 77/388/??? ???
??????????, ??? 17?? ??? 1977, ??? ??????????? ??? ??????????? ??? ??????????? ???
????? ??? ??????? ?? ??? ?????? ?????? ??????? - ?????? ??????? ???
????????????? ????: ?????????? ?????????? ???, ??? ??????????? ??? ?? ???
?????? 92/77/??? ??? ???????????, ??? 19?? ??????????? 1992, ??? ?? ??????????? ???
????? ??????????? ??? ?????? ??????????? ??? ?????? ??? ??? ??????????? ???
?????? 77/388/??? (?????????? ??? ??????????? ???), ???, ???????, ???????
???? ???, ??????? ?? ??? ??? ???????, ??? ??????????? ??? ?????? ??? ?????? ???????
?? ??????? ???, ??? ??????????? ??? ?????? ??? ??????? ??? ?????? ??? ??????? ???
????????? ??????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ??????? ?
?????????.

(?????????)

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