

?????? C-10/10

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(????? 56 ?? ?? 58 ??? ??????? ??? ??, ????, ??? 40)

????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??????????
????????? ?????????? ??? ?????????? ?????????????? ?????????????? ??? ?????? ??? ??????????
????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? 56
?? ??? ?? ?? ??? 40 ??? ?????????? ??? ??? ?????????? ?????????????? ???.

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

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?? ?????????? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ? ?????????? ??? ??????
????????????? ?? ?????????? ???, ?? ?? ??????, ??? ?? ?????????? ??? ?????????? ???
????????? ?????? ????. ??????, ?????? ?????? ??? ?????? ? ?????? ??? ?????????? ??? ??????
??? ?? ?????????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ? ?????? ??? ??????????
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?????????. ??????, ? ?????? ??? ?????, ?????? ???, ?????, ??? ?? ??? 163,
????????? 2, ??, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????, ??? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ??????
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(???. ??????? 29, 35, 37, 44 ??? ??????.)

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

?? 16?? ?????? 2011 (*)

«????????? ??????? ?????? – ?????????? ?????????? ??? ?????????? – ?????????? ??????????
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???? ?????? C?10/10,

?? ??? ?? ?????????? ?????? ??? ?????????? ?????? ??? ?????? 258 ???, ??
????????? ??? 8 ?????????? 2010,

????????? ???????, ?????????????? ??? ??? R. Lyal ??? W. Mölls, ?? ??? ??????
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????????????? ??? ???????, ?????????????? ??? ?? C. Pesendorfer, ?? ??? ??????
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????????? ??? ??? J.-C. Bonichot, ?????? ???????, K. Schiemann, C. Toader, A. Prechal
(??????) ??? E. Jaraši?nas, ????????,

?????? ??????????: V. Trstenjak

?????????: A. Calot Escobar

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???? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ?? ??????????
??? 8?? ?????? 2011,

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1 ?? ? ? ??????? ??? ??????? ???, ? ?????? ?????? ?????? ??? ?? ??????????

?? ?????????????? ?? ? ??????????? ?? ? ?????????? ?????? ?? ?????????????? ?? ? ?????? ?? ?
????? 56 ?? ??? ?? ???? ?? ???? 40 ?? ?????????? ?? ???? ?????????? ?????????????? ?? , ??
?? ???? 1992 (?? 1994 L 1, ?. 3, ??? ???: ?????????? ?? ???? ?? ????), ?? ???? ?? ????
????????? ?? ???? ?? ???? ?? ???? ?????????? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ?
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2 ?? ?????? 40 ??? ?????????? ??? ??? ??? ??? ?????? ?? ????:

«??[? ??????] ??? ?????????? ??? ?????????? ??????????, ??? ?????????????? ??????????
????? ??? ?????????????? ???, ??? ?????????? ?????????? ??? ?????????? ?? ?????? ???
????? ?????????? ?? ?????? ?????? ??? ?????????? [?????] ? ??? ?????? ??? ??????
????????????? ??? ?????????? ??? ?????????? ? ??? ?????????? ??? ?????? ? ??? ?????? ???
?????????. ??? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ???
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4 ????. ?? ?????? 4 ??? ??????????? ?????? ????. ?????????????? ??????????????
(Einkommensteuergesetz) ??? 7?? ??????? 1988 (*BGBI.* 400/1988, ??? ????: EStG), ?? ????.
????????????? ?? ????. ??????????? ???. ????? ??????????. ????. ?? ????. ????, ?? ????.
?????????? ???. ????. ??????. ??????????????. ?? ?????? 4, ?????????? 4, ??? EStG
??????????, ????. ????. ????. ??????. ?????????? ??????. ????. ????. ??????.
????????? «?? ????. ??????» ??????. ??????????????.

5 ?? ?????? 4a, ?????? 1, ??? ?????? ??????, ??? ??????????? ??? ??? ??? ??? 2009 ???
?????????? ?????????????? (BGBl. I, 26/2009, ??? ????: ?????????????? EStG), ??? ???
??? ?????????? ??? ?? ?????? ?????????????? ?????????, ??????? ??? ?????? ?????? ???
????? ?????????? ?????? ?? ?????? ?????????? ??????????????. ??? ?????? ???, ?? ?????? 4a ???
????????????? EStG ?????????? ??? ?????? ?????????? ?????????? ?????????? ???
????????? ??? ?? 31 ?????? 2009 ?? ?????? 4, ?????????? 4, ?????? 5, ??? EStG.

6 ?? ????? 4a ?? ?????????????????? EStG ????

«????????? ?????????????????? ?????????? ??????:

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

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– ?????????????? ??? ??? ?????????? ????????, ? ?????? ?????? ??? ?????????????? ?
????????????? ?????????? ??? ?????????? ?????? ?????? ??? ?????????????? ??? 2002,

????? ??? ? ?????????????? ??????? ?????????????? ??? ?????????????? ??? ???
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- a) ????????????, ??????? ?????????????? ?????? ??? ?? ??????? ????????,
????? ??? ?? ????????, ?? ?????????? ??? ??? ????? ?????????? ?????????? ???.
- b) ??????? ?????????? ?????? ?????????????? ? ?????? ?????? ???, ?? ?????? ??????????????
?? ??? ??????? ??? ???????.
- c) ??? ?????????? ??????? ??????????.
- d) ?? ????????????, ??????? ?????????? ??? ?????? ?????? ?????? ????????????????, ??
????? ?????????? ?????? ?? ??? ?????? ?? ?????????? ??? ??? ?????????????? ???
????? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ??? ?????????????? ???
????????????? ? ??????????????.
- e) ?????? ??????? ?? ?????? ?????????? ?????? ?? ??? ??????? ? ?? ?????????? ??? ??
????????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ? ?????????? ??? ??
????????????? ??? ?????? ?????????? ?????????? ? ?????????? ?????????? ???
????? ??? ?? ??? ?????? ?????? ?? ?????????? ??? ?????????? ?????? ?????????? ???,
????? ?????? ?????? ?????????????? ???, ??? ?? ?????? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? 34 ???. ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ?????? 10 %. ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???
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???? ?????????? d ??? e, ?? ?????????? ?????? ?? ?????????? ?????? ?? ???
????????? ?????? ?????? Finanzamt Wien 1/23, ? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? . ??? ??
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????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???
????????? . ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????, ?????????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? 2, ??? ?????????? ?????? ???
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7 ?? ??????? ?? 12?? ??? 2005, ? ??????? ?????? ??? ?? ?????????? ?????? ???
????????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????? ???
????? ??? ?????? 4, ?????????? 4, ?????? 5, ??? EStG (??? ?????? 4a, ?????? 1, ???
????????????? EStG) ?????????? ?? ?????? ?????? ?????????? ?????????? ??? ?????? ???
?? ?????????? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ???
????? ??? ??? ?????? ??? ?????? ?????? ?????? (???).

8 ? ?????????????? ??????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??
5?? ?????????? 2005, ?? ??? ?????? ?????????? ??? ?????????? ?????? ??? ?????? ???
????? 4, ?????????? 4, ?????? 5, ?????? a ??? d, ??? EStG ?????????? ?? ?????? ???
????????? ???????. ???????, ?????????? ??? ? ?????? ??? ?????? 4, ??????????
4, ?????? 5, ?????? e, ??? EStG ??? ?????????? ??? ?????? ??? ?? ?????? ???
????????? ???, ?? ?????? ?????? ??????????.

9 ??? 4 ?????? 2007 ? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ?? ?? ?????? ?????????? ??? ?? ?????? 4, ?????????? 4, ?????? 5, ?????? a

??? d, ??? EStG ?????????? ??? ????? 49 ?? ?????? ??? ????? ?????? 36 ??? ?????????? ??? ???
??? ??? ?????? ?? ?? ??? ????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????????????? ???
????? ?????????? ??? ?????? ??? ????? ?????????? ??? ?????????? ??? ?????????? ???.

10 ?? ??? ??? 5 ??????? 2007 ??????? ???, ? ?????????? ??? ?????????? ?????? ??? ???
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11 ?? ?????????????? ??????? ?????????? ??? 6?? ????? 2008, ??? ?????????????? ???
????????? ??? ?????????? ??? 8 ????? 2008, ? ?????????? ?????????? ?? ?????? ??????????
??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????????? ???, ?????? ??? ??????????
????????? ??????????, ? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??????????
????????????? ??????????, ??? ??? ????? 40 ??? ?????????? ??? ??? ???, ??? ?????? ??? ??
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12 ?? ??????? ??? 9?? ??????? 2008, ? ?????????? ??? ?????????? ??????????
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13 ?????? ? ??????? ??? ?????????????? ??? ?????? ?????????? ???, ??????? ??? 19
?????? 2009 ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ???????, ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ??????????
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????? 56 ?? ??? ??? ?? ????? 40 ??? ?????????? ??? ??? ???, ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? 4, ?????????? 4, ?????? 5, ??? EStG, ? ?????????? ?????????? ???????
??? ?????????? ??? ?????? 5, ?????????? a ??? d, ??????, ??? ??? ?????? 5, ?????????? e,
?????????. ??? ??? ??? ???????, ?? ?????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??
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????????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????.
????? ??? ?? ?? ????? 4, ?????????? 4, ?????? 5, ?????????? e, ??? EStG ??? ?????? ??????
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????, ? ?????????????? ??? ?????????? ??
????????? ?????????????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
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14 ?? ??????? ??? 25?? ????? 2009, ? ?????????? ??? ?????????? ?????????? ???
????????? ?? ?????????? ??? ?????? ?????????? ?? ??? ?????????? ??? ?????? ?????????? ??? ??? ??????
????????? ??? ??? ?????????????? ?????? ?????? ?????????? ??? ??? ?????? ?????? ??????, ? ??????????
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15 ??? ??? ???????, ?? ?????? 4a, ?????? 1, ?????? a ??? d, ??? ??????????????
EStG, ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ?????????????? ?? ?????? ?????? ?????????? ??? ?????? ???,
????????? ??? ?????? ??? ?????????? ??? ?????????????? ?????????? ?????????? ??? ?????? ???
????? ??? ?????? ??? ???, ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???

????????????????? ??? ?? ?????? 56 ??? ?? ?????? 40 ??? ?????????? ??? ?? ??? ???.

16 ????? ? ??????? ?????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????? ??? ???? ????? 56
?? ??? ??? ?????? ?? ??????????????. ??? ?? ?????? ??? ?? ??? ??????, ??? ?? ??? ??
?? ?????????????? ??? ?????????? ? ?????????????? ??? ?????????? ??? ?? ??? ?? ?????????? ??? ?? ??? ?? ?????????? ???
????????? ??????????, ?????????? ?????? ??? ? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????
????? ?????????? ??????????, ??? ?????????? ?? ?? ?? ? ?????????? ?????????? ?????? ?????? ??? ??
????? ??????. ??? ?????? ?? ?????????? ?? ?? ?????? 56 ?? ?????????? ?????? mutatis
mutandis ??? ?? ????? 40 ??? ?????? ??? ?? ??? ??.

17 ? ?????????? ??? ??????? ??????? ??? ?? ????? 4a, ?????? 1, ??????? a ??? d, ???
????????????? EStG ???????, ??? ?????????? ?????, ??? ?????????? ??? ??????
????????? ??? ??????? ??? ??????? ?? ?????? ?????? ???, ??? ?????? ??? ? ??????
???? ??? ??????? ?????????? ??? ?????????? ?????????????? ??????????. ??????, ??????????
??? ?? ??????? ??? ?????????? ??? ?????????? ?????????????? ?????????? ??? ??????????
??? ?????? 4a, ?????? 1, ??????? a ??? d, ??? ?????????? EStG ??? ??????
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??? ?????? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ??????????.

18 ??????????, ??? ?????????? ??? ?????????????? ? ?????????????? ??? ??????????
????????????? ??? ??????????, ? ?????????? ??? ?????????? ?????? ??? ? ?????????? ???
????????????? ??? ?????????? ??? ?????? ?????????? ???????????. ??????????, ? ??????????
??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? 4a, ?????? 1,
???????? a ??? d, ??? ?????????? EStG ?????????? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ???
????????? ??? ??????????, ? ?????? ?????? ?? ?????? ?????????? ??? ?????? ??? ??????????
????????? ??? ??????????. ?? ?????????? ??? ?????? ?????????? ??? ?????? 4a, ?????? 1, ??????
a ??? d, ??? ?????????? EStG ????????, ?????? ??? ??????????
????????? ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????, ??
????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ?????????? ??? ?????? 4a,
????? 1, ?????? e), ??? ?????????? EStG, ?? ?????????? ?????? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??????????.

19 ? ?????????? ??? ?? ???? ??????? ?????????????? ?????? ??? ???? ?????????? ??? ??? ????
????????? ??? ?? ???? ?????????????? ??? ?????? 4a, ?????? 1, ??????? a ??? d, ???
????????????????? EStG ?????????????? ?????????????? ?????????????? ?????? ??? ?? ????
????????? ?????????? ??? ?????? ?????????? ??? ??? ?????? ?????? ??? ????
????????????? ??? ?? ?? ?? ??? ?????? ?????? ?? ?????????????? ??? ?????? ??? ?????? ????.
? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????, ??????, ?????? ??
????? ?????? ?????? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????.

20 ? ?????????????? ??? ?????????? ??? ??? ?????? ?????? ?????? ?????????????????? ???
????? 4a, ?????? 1, ??????? a ??? d, ??? ?????????????? EStG ??????????
????????????? ??? ?????????? ?????????????? ?????????? ?????????? ??? ?????????? ?????? ???
??? ?????????? ??? ?????????????? ??????. ? ?????????? ??? ?????????? ??? ?????? ???
????????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????, ??????
????????????? ??? ?????? ??? ?????????? ???????, ??? ??? ?????? ?????????? ??? ?????? ??
?????? 10 % ??? ??? ?????? ??? ?????? ??? ???????, ?????? ?????????? ??????????????
?????? ?? ?????? ??? ?????????? ?? ?????? ?????? ??? ?????????? ??? ?????????? ???
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21 ??? ?????? ?????? ??????????, ?????? ?????? ?? ?????????? ???, ??? ?????????? ???
?? ?????????? ??? ?????????? ??? ??????????, ?????? ?????? ?????? ??? ?????? ?? ???
4a, ?????? 1, ??????? a ??? d, ??? ?????????? EStG ??? ??? ?? ?? ??? ?????? 1,
?????? e.

22 ? ?????????? ??????????, ???' ??????, ??? ?? ?????? 4a, ?????? 1, ??????? a ??? d,
??? ?????????? EStG, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?? ??? ?????? ??????????, ?????? ?????? ??? ?????? ??? ?????? ???
????? ??????????, ?????? ??? ?????? ??? ?????????? ??? ??????????, ? ?????? ???
????????? ?? ??? ?????? ??? ?????? ??? ?????? 56 ?? ??? ??? ?? ??? ?????? 40 ??? ??????
??? ??? ???.

23 ?????????????? ???, ??? ?????? ??????????, ?????????? ? ?????? ?????????? ??????????
???? ?????????? ??? ?????? ??????, ?? ?????? ??? ??????????, ??? ??? ?????? ???, ??
????? ?? ?????? ??? ?????? (??., ?????? ???, ?????? ??? 28?? ?????????? 2010,
C??2/09, Établissements Rimbaud, ??? ??? ??? ?????????? ??? ?????? ??? ??????, ??? 23
??? ??? ?????????? ?????? ??????).

24 ?? ??? 56, ?????? 1, ?? ?????????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ???, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ? ?????? 88/361, ??? ?????? ?? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? (?? . ?????? ??? 28?? ??????????
2006, C??282/04 ??? C??283/04, ?????? ??? ?????? ???, ?????? 2006, ?. I?9141, ???
19). ?? ?????? ??? ?? ??? ?????? ?????????? ??? ?????? XI, ??? ??????????
«????????? ?????? ?????? ???», ??? ?????????? ??? ?????? 88/361.

25 ?? ??????????, ? ?????????? EStG ?????????? ?????? ??? ??? ??
????????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? 4a, ?????? 1,
????????? a ??? e. ??? ?????? ?????? ? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??????, ?????????? ??? ?????? ??? ?????? ??? ?????? ???
4a, ?????? 1, ??????? a ??? d ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
?????.

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

????????????? ??? ????????, ?????????????? ?????????? ?????????? ??? ?????????? ?
??? ??????? ?? ??? 4a, ?????? 1, ??????? a ??? d, ??? ?????????????? EStG. ?????? ?
????????? ??? ??? ????? ?????? ?? ?????????? ?????????? ?? ?????? ??? ???????, ? ??
????????? ?????????? ??? ??? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?
????????? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?
????????? ?????? ??? ?????? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? (??., ??' ????, ??????? ??? 27?? ?????????? 2009, C?318/07,
Persche, ?????? 2009, ?. I?359, ????? 38).

27 ?? ?????? 4a, ?????? 1, ??????? a ??? d, ??? ?????????????? EStG ??????,
???????, ?????????? ??? ?????????? ?????? ?????????? ? ?????? ?????? ?????????? ??? ??
????? 56, ?????????? 1, ??.

28 ??????, ??? ?? ????? 58, ?????????? 1, ??????? ??, ??, ?? ????? 56 E? ??? ??
?? ??????? ?? ?????? «?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
???? ?????????? ?? ?????? ?????????? ?????? ?????????????? ??? ??? ?????????? ???
???? ?????????? ??? [...] ??? ??? ?????? ?????? ?????????????? ?? ?????????? ??? ». ?
????????? ??? ?????????? ??? ?? ?????? 58, ?????????? 3, ??, ?? ?????? ?????? ??? ??
????????? ??? ?????????? 1 ??? ?????? ?????? ?????? ?????????? «??? ?????? ??
????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? 56». ?
????????? ??? ?????????? ??? ?????????? ??? ?????? 58, ?????????? 1, ??????? ??, ??
?????, ??????, ?? ?????????? ??? ??? ?????????? ??? ?????????? ??? 3 ??? ???
????? ?????? ?????????? ??????????.

29 ??? ?? ?????????? ??? ?????????? ?????????? ???, ??? ?? ?????????? ??? ??????
????????? ??? ?????? ??? ? ??????, ? ?????? ?????????? ?????? ??? ?????????? ??????????
??? ?? ?????????? ??? ?????????? ?? ?????? ?????? ??????, ?? ?????????? ?????? ?? ??
????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ???, ?????? ?
????????? ?????????? ?? ?????? ?????????? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? (??., ??' ????,
????????? ??? 14?? ?????????? 2006, C?386/04, Centro di Musicologia Walter Stauffer,
????? 2006, ?. I?8203, ????? 32, ??? Persche, ????? 41).

30 ? ?????????? ??? ??????? ??????????, ??????, ??? ?? ?????????? ??? ?????? 4a,
????? 1, ??????? a ??? d, ??? ?????????? EStG ?????????? ??? ??????
????????????? ?? ?????????? ?? ?????? ?????????? ?????????? ?????????? ???
????????? ?????????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????????? ???, ?????? ??
????? ?? ??? ?????? ?????? ?????????? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ???
????????? ???, ? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ???, ???
?????, ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? 4a, ?????? 1, ?????? a ??? d, ??? ?????????? EStG
????????? ???, ??????, ?????? ??? ?????????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ?????????? ???
????????? ??? ?????? ??? ?????????? ???.

31 ??? ?? ?????????? ??? ???????, ? ?????? ??? ?????????? ??? ?????? ??? ??????
??? ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? 4a, ?????? 1,
????????? a ??? d, ??? ?????????? EStG ??????????, ? ?????? ??? ?????????? ???

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

32 ??????????????, ???????, ???, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ???
?????? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ??????????
????????? ?? ?????????? ? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ??????????
????????? ??? ?? ?? ?? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?? ?? ?????? ???
??? ?? ??? ?????? ?????????, ?????? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ?????????? ??????????
?? ?? ?????? ??? ?????? (??., ?? ?? ??? ?????? ???, ?? ?????????? ?????? ?????????? Persche,
????? 48). ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ??? ??
????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??????, ?? ?????? ?? ?? ?????? ??? ??????????
??? ?????????? ?? ??? ?????? ??????, ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ???
????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??????.

33 ??????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??????????????
????? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????????? ???,
????????? ??? ?????? ?????? ??? ?????? ?? ?????????? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? (??., ?? ?? ??? ?????? ???,
????????? ?????? ?????? Persche, ??? 44).

34 ?? ??????????, ? ?????????? ??? ?????? ?????? ?????????? ??? ? ?????? ?????? ??????
????????? ??? ?????????? ?? ?????? 4a, ?????? 1, ??? ?????????????? EStG ?????? ?
????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????? ??? ???
????????? ??? ?????? ?????? ? ?????? ?????????? ?? ?? ?????? 56 ??? ?????????? ???, ?
????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ??????????
??? ?????????? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????????
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

35 ?? ?? ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????????? ????
?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ?? ?????? ??? ?????? ?? ?????? ??
????????? ??? ?????? ?????? ??? ?? ?????? ?????? ?? ?? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? (??., ??' ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???,
????? ??? 11?? ?????????? 2007, C?76/05, Schwarz ??? Gootjes-Schwarz, ?????? 2007,
. I?6849, ?????? 72 ??? 73).

36 ??????, ?????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?
????????? ??? ?????????? ?? ?????? 4a, ?????? 1, ?????? a ??? d, ??
????????? EStG ??????????, ??????, ??? ?? ?????????? ?????? ?????? ?????? ?????? ??????
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

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

37 ??? ??????, ????????, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????????????
????? ??????? ??????????????, ?? ?????????? ?????? ???????, ?? ?? ????? 23 ??? ??????????
??? 10?? ??????? 2005, C?39/04, Laboratoires Fournier (?????? 2005, ?. I?2057), ??? ?
????????? ??? ??????? ??? ?????????? ?????? ?? ?????????? ?????? ??? ?????????? ???,
????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ?????? ??? ?????????????? ?????????????? ?????????????????? ??? ?????? ???,
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???.

38 ??? ?????? ??? ? ?????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??????????
??? ??????? ??????????????, ?????? ??? ?? ?????? ?????? ??? ? ?????? ?????? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????????? ??????????
??? ?????????? ?????????????? ??? ?????????? ?????? ?????? ??? ? ?????????????? ???
????????????? ???, ?????? ?? ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ???, ??? ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???.

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

40 ??? ?????? ?? ?????????? ???, ??? ?????? ?????????? ?????????? ??? ? ??????
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ???
??? ?????? 58 ??, ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? (??., ??? ??
????? ???, ?????????????? ?????? Persche, ??? 46 ??? ??? ?????????? ???).
?????????.

41 ?? ?? ??????, ? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ??????????
?? ?? ?????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?
????????? ??? ??????.

42 ??? ?????? ?? ?????????? ??? ?????? 40 ??? ?????????? ??? ?? ??? ?????? ??? ?????? ?? ???
????? ?????????? ?? ??? ??? ?????? ?????????? ?????????? ??? ?????? 56 ?? (??).

?????????? ?? 11?? ??????? 2009, C?521/07, ??????? ??? ?? ?????, ??????? 2009, ?. I?4873, ??? 33, ??? ?????????????? ?????? Établissements Rimbaud, ??? 22), ??? ?? ?????? ?????? ?????? mutatis mutandis, ??? ?????????? ??? ????? ?? ??? ?? ?????? ???????, ??? ?? ?? ??? 40.

43 ??? ?? ?????? ??? ??????? ?????????? ?????????? ??? ?? ??? 4a, ?????? 1, ??????? a ??? d, ??? ?????????????? EStG, ??? ?????? ??? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ???????????, ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?? ?????? 56 ?? ??? 40 ??? ?????????? ??? ??? ??? ??.

44 ???????, ?????????????? ??? ? ?????????? ??? ??????????, ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ?????? ?????? ?????? 56 ?? ??? ??? ?? ?????? 40 ??? ?????????? ??? ??? ??? ??.

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

45 ??? ?? ??? 69, ??????? 2, ??? ?????????? ??????????, ? ??????? ??????? ??????? ?????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? . ?????????? ??? ? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????.

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

1) ? ?????????? ??? ???????, ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 56 ?? ??? ??? ?? ?????? 40 ??? ?????????? ??? ?????????? ?????? ?????? 1992.

2) ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ????.

(?????????)

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