

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

??? 12?? ?????? 2012 (*)

«????????? ??????? ?? ?????????????? ?????????????? – ?????????? (???) 1408/71 – ???
14, ?????? 1, ??????? ??, ??? 14?, ?????? 1, ??????? ?? – ??? 45 ??? ?? 48 ??? –
????????? ??????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???????
????????? ? ?????????????? – ?????????????? ?????? – ?????????? ?????????? –
????????? ?????????? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???????
????????? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ?????? – ?????????? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ???

???? ?????????????? ?????? C-611/10 ??? C-612/10,

?? ?????????? ?????? ?????????? ?????????? ?????? ??? ?????? 267 ???, ???
?????? ?? Bundesfinanzhof (?????????) ?? ?????? ??? 21?? ?????????? 2010, ? ??????
????????? ??? ?????????? ??? 23 ?????????? 2010, ??? ?????? ??? ??????????

Waldemar Hudzinski

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Agentur für Arbeit Wesel – Familienkasse (C-611/10),

???

Jaroslaw Wawrzyniak

????

Agentur für Arbeit Mönchengladbach – Familienkasse (C-612/10),

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

????????? ??? ??? ?. ??????, ???????, A. Tizzano, J. N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, J. Malenovský, M. Safjan ??? A. Prechal (?????????), ?????????? ????????, ?. ??????, A. Borg Barthet, M. Illeši?, J.-J. Kasel ??? D. Šváby, ????????,

????????? ??????????: J. Mazák

?????????: K. Malacek, ??????? ????????????,

?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????????? ?????????? ??? ??
6?? ?????????? 2011,

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

– ?? W. Hudzinski ??? J. Wawrzyniak, ?????????????? ??? ??? N. Lamprecht,
Rechtsanwalt,

- ?????????? ????????, ?????????????? ??? ??? T. Henze ??? ??? K. Petersen,
- ?????????? ????????, ?????????????? ??? ??? M. Fehér ????? ??? ??? ??? K.
Szíjjártó ??? K. Veres,
- ?????????? ????????, ?????????????? ??? ??? V. Kreuschitz ??? ??? S. Grünheid,
????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????
??? 16?? ?????????? 2012,
?????? ??? ??????

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1 ?? ?????????? ?????????????? ?????????? ??? ?????????? ??? ?????? 14, ??????
1, ????????, ??? 14?, ?????????? 1, ????????, ??? ?????????? (??) 1408/71 ???
???????????, ??? 14?? ??????? 1971, ??? ?????????? ??? ?????????? ???????????
???????????, ??? ?????????? ?????? ???????, ??? ?????? ??? ?????????? ??? ??? ???
????????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????????? ???
????????????? ?????? ?????? ?????????? ?????? ?????????????? ??? ?????????????? ?? ???
????????? (??) 118/97 ??? ?????????? ??? 2?? ?????????? 1996 (?? 1997, L 28, ?. 1), ???
????????????? ?? ??? ?????????? (??) 647/2005 ??? ?????????? ?????????????? ??? ???
???????????, ??? 13?? ??????? 2005 (?? L 117, ?. 1, ??? ????: ?????????? 1408/71), ???
??? ??? ??????? ??? ??????? ??? ??? ?????? ??? ?????? ??? ?????????? ??????????? ???
???????????, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ???????????.

2 ?? ?????????? ?????? ?????????? ??? ?????? ?????????? ?????? ??? W.
Hudzinski ??? ??? Agentur für Arbeit Wesel – Familienkasse (????????? ?????????????? –
????????? ?????????????? ??? ?????? ??? ?????? Wesel) ????? ??? ??? J. Wawrzyniak ??? ???
Agentur für Arbeit Mönchengladbach – Familienkasse (????????? ?????????????? – ??????????
????????????? ??? ?????? ??? ?????? Mönchengladbach), ?? ?????????? ??? ??????, ???
????????, ??? ?????? ??? ?????????? ????.

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

3 ? ?????? ??? ? ?????? ?????????? ??? ??? ?????????? 1408/71 ????:
«????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????.

[...]

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

4 ? ?????? ??? ? ?????? ?????????? ??? ??? ?????????? ??? ?????? ????:
«?????? ? ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???

??? ?????????? ?? ??????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??????
??????, ??? ????? ?? ?????????? ?? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ??
????????? ??? ????? ?? ?????? ??? ??????

? ? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ???'
????????? ??? ?????? ??????, ?????? ?? ?????? ??? ?? ?????? ?????????? ??? ??
????? ??? ?? ??????

??? ?? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ????
????????? ??? ?????? ?????? ??????, ?????? ?? ?????? ??? ?? ?????? ?????????? ??? ??
????????? ??? ?????? ??????, ? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?
????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ???».

5 ?? ??? 13 ??? ?????? 1408/71, ?? ?????? ?????? ??? ?????? «?????? ??????»,
?????:

«1. ?? ??? ?????? ??? ?????? 14? ??? 14??, ?? ?????? ??? ?? ?????? ?????? ??? ??????
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????. ? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????.

2. ?? ??? ?????? 14 ??? 17:

?) ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ??? ?????? ??????, ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??????
????? ? ?? ? ?????? ??? ? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ? ???
????????? ??? ??? ?????? ?????? ?????? ?????? ??????

[...]».

6 ?? ??? 14 ??? ?? ??? ?????? 1408/71, ?? ?????? ?????? ??? ?????? «?????? ??????»,
?????:

«? ?????? ??? ?????? 13, ?????? 2, ?????? ?, ?????? ?? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?????? :

1) ?) ?? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

[...]».

7 ?? ??? 14? ??? ?????? 1408/71, ?? ?????? «?????? ?????? ??? ?????? ??? ??
????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? :

«? ?????? ??? ?????? 13, ?????? 2, ?????? ?, ?????? ?? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? :

1) ?) ?? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

[...]».

8 ??? ?????? III, ??????? 7, ??? ?????????? 1408/71, ?? ????? 73 ??? ??????????

?????, ??? ?????? ??? ????? «????????? ?? ?????????, ?? ??? ?????? ?????????????? ??? ??????

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

«? ?????????? ? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ???????????, ??? ??

????? ??? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????, ???

????????????? ??? ?????? ??? ?????????????? ??? ?? ?????????? ??? ?????? ?????? ??????, ??? ??

????????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????, ?? ??? ?????????? ??? ?????? ??? ??????????

??? ?????????? V?.»

9 ?????? ?????????????????? ??? ?? ??? ?????? ?????? 7, ?? ?????? 76 ??? ??????????

1408/71, ?? ?????? ??? ?????? «????????? ?????????????? ?? ?????????? ?????????? ???

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

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

????», ?????????? ?? ????:

«1. ??? ?????????????? ?????????????? ??? ??????, ??? ?????? ??? ?????? ??????, ??? ??? ?? ???

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

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

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

????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????, ?????????? ???' ?????? ???

??? ?????? 73 ??? 74, ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ???

????? ????.

2. ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????? ?? ??? ?????? ??? ?????????? , ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ???

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

????? ????.»

10 ?? ??? 10 ??? ?????????? (???) 574/72 ??? ?????????? ??? 21?? ?????? 1972,

????? ??? ?????? ?????????? ??? ?????????? (???) 1408/71, ??? ?????????????? ???

????????????? ?? ??? ?????????? 118/97, ??? ?????????????? ?? ??? ??????????

647/2005 (???) : ?????????? 574/72), ?? ?????? ?????? ??? ?????? «????????????? ?????????? ??

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

?? ??????», ??????????:

«1 ?) ?? ?????? ?????????????? ??? ?????? ? ?????????? ??? ?????????? ???

????????? ?????? ???, ?????? ?? ??? ?????? ? ?????? ??? ?????? ??? ?????????? ???

? ?????????? ??? ?????? ??? ?????? ?????????? , ?????????? ??? ? ?? ?????? ???

????????????? , ?????????? ???, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

????? ???? ??? ?????????? , ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????? ???? ??? ?????? ??? ?????? ???' ?????? ??? ?????? 73, 74, 77 ? 78 ???

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

) ??????, ?? ??? ?????? ?????????????? ?????????????? ??? ?????? ??? ?????? ???

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

i) ??? ?????????? ??? ?????? ??? ?????? ??? ?????? , ??? ?????? ??? ?????? ???

?????????? ?????? ??????? ?????? ?????? ??????? ?? 73 ? 74 ??? ???????????, ??? ??
????? ??? ??? ??????? ?????????????? ??????? ? ?? ??? ?? ?????? ??? ?????? ?????? ??????
??????????, ?? ??????? ?????????????? ??????? ??? ???????????, ??? ??????? ?????? ???
?????? ?????????? ?????? ??? ?????? ?????? ??????? ?????? ??? ??????????? ??? ?? ?????? ?????,
????????????? ??? ?????? ??? ?????? ??? ?????????????? ??????? ??? ??????????? ??? ??
?????????? ??? ?????? ?????? ??? ?????? ??? ??????????? ??? ?????? ??? ??????????? ??? ??
?? ??????? ??? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??
????? ??? ??????????? ??????? ?? ?????? ?????? ??????

[...]».

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

11 ?? ????? 62, ?????????? 1, ??? ?????? ??? ?????????? ???????????
(Einkommensteuergesetz, ??? ????: EStG), ?? ????? «??????????», ?????????? ???
????????? 1:

«?????????? ??? ?????? ??? ?? 63, ?????????? ??????? ?????? ?????? ??????? ??
????????? ??? ?? ?????? ?????:

- 1) ?? ?????? ??????? ? ??? ?? ?????? ??????? ??? ?????? ???????, ?
- 2) ?? ?????????? ??? ?? ??????? ? ??? ?? ?????? ??????? ??? ?????? ??????? ??? ?????? ???????,
 - a) ???????? ?????? ??? ?????? ?????? ?????????????? ??????? ?? ?? ?????? 1, ?????????? 2, ?
b) ???????? ??? ?????????? ?????? ?????? ?????? ?????????????? ??????? ?? ?? ?????? 1,
????????? 3.»

12 ?? ????? 65 ??? EStG, ?? ?????? ?????? ??? ????? «????? ?????????? ??????», ??????:

«1. ?? ?????????? ??? ?????????????? ?????? ??? ?????????????? ??? ?????? ?? ?????
????????? ??? ?? ??? ?????????? ?????? ??? ?? ?????????? ??? ?????? ?????????? ??????:

- 1) ???????? ?????? ?????????????? ??? ?? ?????????? ?????? ?????????????? ? ???????????
????????? ?????????? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ???????????
- 2) ???????? ??? ?????? ?????????????? ??? ?????? ?????????? ??? ?????????????? ?? ?? ??????????
??? ?????????????? ?????? ?? ?? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
?????? 1?

[...]

2. ??? ??? ?????????????? ??? ?????????? 1, ?????? 1, ?? ?????????? ??? ?? ??? ??
????????? ??? ?????? ?????????? ??? ?? ?????? ?????? ??? ?? ?????? 66 [??? EStG],
????????????? ?????????????? ??????, ??? ??? ?? ??????, ?????? ??? ?????? ???????????
????????? ?? 5 ????.»

13 ?? ????? 66 ??? EStG ?????????? ?????? ?????? ?? ?? ??? ?? ?????? ??? ???????????
?????? ??? ??? ?????? ?????? ??????? ???.

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

14 ? W. Hudzinski, ?????? ??????, ?????? ??? ?????????? ??? ?????? ??? ??????? ??

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

15 ??? ?? 20 ?????????? ??? ?? 7 ?????????? 2007, ? W. Hudzinski ?????????????? ??
????????? ?????????? ?? ?????????? ?????????? ?????????????? ?????????????? ??? ??????????. ??
?? ??? 2007, ??????? ?????????? ?????????? ???, ?????????? ?? ?????????? ?????????? ???
???? ?????????? ??? ???????.

16 ??? ?? ??????? ??? ?? ????? ?????????? ??? ?????? ? W. Hudzinski ?????? ??
??? ??????????, ??? ?????? ??? ?? ??? ?????? ??? ?? ?????? ?????????? ?????? ???
??????, ??????? ?????? 154 ??? ?????? ?????? ??? ??????, ??????? ?? ?? ?????? 62 ??.
??? EStG.

17 ?? Agentur für Arbeit Wesel – Familienkasse ??????? ??? ?????? ???, ??? ?? ??
????????? ??????? ??? ?? ?????????? ?????? ?????????? ??? ?????????? ??? ? ?????????? ???
???? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ???,
W. Hudzinski ?????? ?????? ??? ?????????? ?????????? ?????????? (Revision) ??? ??
????????? ???????.

18 ? J. Wawrzyniak ?????? ??????? ??????? ? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
????? ??????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ??????????
?????.

19 ??? ?? ?????????? ??? ?? ?????????? 2006, ? J. Wawrzyniak ?????????????? ??
????????? ?? ?????????? ?????????? 2006, ?????????? ?? ?????????? ?? ??????????
????? ??? ??? ??????????, ??? ?????? ?? ?? ?????? ???, ??? ?????? ???.

20 ??? ?? ??????? ??? ?? ????? ?????????? ??? ?????? ?, ? J. Wawrzyniak ??????
?? ??? ???????, ??? ?? ??? ?? ??? ?? ??? ?????? ?? 2005, ?????? ??????, ???
154 ??? ??????, ??????? ?? ?? ?????? 62 ??. ??? EStG. ??? ?? ??? ?????? ???, ? ??????
??? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??????
??? ??? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ???, ??? 48 ?????????? ??? (PLN), ???
?????? 12 ???.

21 ?? Agentur für Arbeit Mönchengladbach – Familienkasse ??????? ??? ?????? ??? J.
Wawrzyniak, ??? ?? ?? ?????????? ??????? ??? ?? ?????????? ??? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????????
????????? ?????? ???????????, ? J. Wawrzyniak ?????? ?????? ??? ??????????
????????? ?????? (Revision) ??? ?? ?????????? ???.

22 ?? ?? ?????? ?????????? ??? ??????? ??????? ??? Bundesfinanzhof, ? W. Hudzinski
?? ? J. Wawrzyniak ?????????? ??? ?? ?????? ??? 20?? ??? 2008, C-352/06,
Bosmann (?????? 2008, ?. I-3827), ??????? ??? ?? ?????? 62 ??. ??? EStG ??????????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? 14?,
?????? 1, ??????? ??, ??? ?? ??? ?????? ?????????? ??? ?????? ??? W. Hudzinski, ??
?????? ?? ?? ?????? 14, ?????? 1, ??????? ??, ??? ?????? ?????????? ??? ?????????? ???
J. Wawrzyniak.

23 ???????, ? W. Wawrzyniak ?????????? ??? ?? ??????? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? 65, ?????????? 1, ???
??????, ?????? 2, ?? ??????? ?? ??? ?????? ??? ?????? 65, ?????????? 2, ??? EStG,
?????? ?? ?? ?????? ?????????? ??? ?????? ??? ?????? ???, ?? ???

???????????, ??? ??????? ?? ??????????? ??? ????? ??? ??????????? ??? ??? ???????????
1408/71.

24 ???????, ?? ?????? ??????????? ????, ???????, ??? ?? ??????????? ??? ???????????
??? ??? ?????????????? ?????? Bosmann ??????? ??? ??? ??? ?????? ????, ????? ???
?? ??? ??? ?????? ??????? ??? ?? ?????? 13 ?. ??? ?????????? 1408/71, ??? ??????? ??
?????????? ?? ??????? ?? ?????????? ?????????? ?????????? ?????????? ?????? ??? ??
?????? ??? ??????.

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

26 ??????, ??? ?????? ?????? ?? ?????? ??? ?????? ?? ??????? ??? ?????? ??? ??????? ??? ??????
13 ?. ??? ?????????? 1408/71 ??? ?? ?????????? ??? ?????? ??? ?????????? ???, ???
???? ??????? ??? ?? ?????? ?????????? ? ?????????????? ?????? Bosmann, ? ?? ??????
?? ??????? ?????? ?????????? ?????????? ?????? ?????? ???????, ?????????? ??
?????????? ?? ?????????? ??? ?????????? ?? ?????? ?????????? ?? ??????? ?????????? ??? ??
?????? ??? ?????? ?? ?????????? ??? ?????????? ??????????.

27 ??????, ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????, ??? ?? ?
W. Hudzinski ??? ? J. Wawrzyniak ??? ?????????? ?? ?????? ?????????????? ??? ?? ??? ??
????????? ?????????? ??? ?? ??????.

28 ????????????, ??????? ?? ?? ??? 14, ?????? 1, ??????? ??, ??? 14?, ?????? 1,
???????? ??, ??? ?????????? 1408/71, ? ?????????? ?? ??? ?????? ?????????? ???
????????? ?????????? ?? ?????????? ??? ?????????? ???, ??? ?????? ?? ?????????? ??? ?? ???
????????????? ?????????? ?? ?????????? ??? ?????????? ?????????? ?? ?????????? ??? ?? ???
?????????.

29 ??? ???????, ??? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ???
?? ?????????? ?????? ?????????? ???, ?????????? ?? ?????????? ?????????? ?????????? ???
???? ?? ??? ??????.

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

31 ??????, ?? ?????? ?????????? ?????? ??? ?????? ?????? ?? ?????? ?? ? ?? ???
????????? ??? ?????? ?? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??????, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
???? ??????? ??? ?? ?????? ?????????? ? ?????????????? ?????? Bosmann, ???
????????? ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

32 ?? ???????, ????? ?? ??? ?????? ???, ??????? ??? ?????? ??? ?????? ??? ?????? ???
??????????, ?????? ??? ??? ?? ?????? ??? ?????????? ??? ???????, ?? ?????????? ??? ??
????? ???, ?? ?????????? ?? ?????? ??? ?????????? ??? ???????, ??????? ??

????????????? ?????? ?????? ?????????? ?????????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ????
?????? ?????????? ? ?????????????? ?????? Bosmann, ??????? ?? ?????? ?? ?? ?????? ???
?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????????? ???
????????????? ? ? ??? ?????? ??? ?????????????? ??? ?????????? ?????????????? ?? ??????, ???
????? ??? ?????? 65 ??? EStG, ??? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ??? ?????????? ?????????? ??? ?????????????? ??? ?????????????? ???
????????? ?????? ?????.

33 ????, ?? ?????? ?????????? ?????????? ??? ?, ??????? ?????? ??? ? ?? ??????, ???
????????? ?????? ?????? ?????????? ???????, ??????? ?? ?????? ??? ?????? ???
????????? ? ?????????? ?????? ??????????.

34 ??? ???? ??????? ??????, ??? ?????? C-611/10, ?? Bundesfinanzhof ?????????? ??
????????? ??? ?????? ??? ?????????? ??? ?? ??????? ??? ?????????? ?? ?????????? ??
????????? ??????:

«???? ?? ??? 14?, ?????? 1, ??????? ??, ??? ?????????? 1408/71 ??? ?????? ??? ??????,
?? ??? ???????, ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????????????? ??????
?????? ?? ?????????? ?? ?????? ?????????? ?????? ?????? ?? ?? ?????? ???
????? ??? ?????????? ?? ?????? ?????????? ?????? ?????????????? ??? ?????? ???, ???
????????? ??? ??? ? ?????? ? ?????? ?????????? ??? ?? ?????? ??? ?????????? ????
????????? ??? ?????? ??????;»

35 ??? ?????? C-612/10, ?? Bundesfinanzhof ?????????? ?? ?????????? ?? ??????????
?? ?? ?????? ??? ?????????? ?? ?????????? ?????????????? ??????????:

«1) ??? ?? ??? 14, ?????? 1, ??????? ??, ??? ?????????? 1408/71 ??? ?????? ???
??????, ?? ??? ???????, ??? ?????? ?????? ??? ?? ?????? ??? ??????????????
?????? ???????, ??? ?????? ?????????? ?? ?????????? ??? ?? ?????? ??? ?????? ???
?????? ?????????? ?? ?????? ?????? ?????????????, ?? ?????????? ??? ?????? ???
????????? ?????????? ?????????? ???????, ??? ?????????? ??? ?????? ??? ?????????? ??
????????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???;
2)

2) ?? ?????????? ?????????? ?????????? ??? ?????? ??????:

???? ?? ??? 14, [????? 1], ??????? ??, ??? ?????????? 1408/71 ??? ?????? ??? ??
?????? ??? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????????? ????
??????, ?? ??? ???????, ?? ?????? ?????????? ???????, ??? ?????? ???
????????????? ??? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
?????;

3) ?? ?????????? ?????????? ?????????? ??? ?? ?????? ??????:

????????? ?? ?????????? ??? [...] ?????? ??? ?????? ?????? ?????? ?????? ???????, ???
???? ?? ?????? 65 [...] ??? EStG [...], ? ?????? ?????????? ?????? ?????? ??????????????
??????, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???
????????? ?????? ?????? ?????? ?????? ??????;

4) ?? ?????????? ?????????? ?????????? ??? ?? ?????? ??????:

??? ?????? ?? ?????????? ? ?????????? ???????, ??????, ??? ?????????? ??? ?? ??????
????? ??? ?????? ?????????? ?????? ?????? ??? ?????, ???, ???????, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???????, ??? ?? ?????? ??????

??? ??????;»

36 ?? ??????? ??? ??????? ??? ??????????? ??? 14?? ??????????? 2011, ?? ???????
C-611/10 ??? C-612/10 ??????????? ??? ??????????? ??? ????????? ?? ???? ??????????
?????????? ??? ????? ?????? ???????.

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

??? ??? ?????????? ?????????? ??? ????? C-611/10 ??? ??? ??? ?????? ??????????
????? ?????? C-612/10

37 ?? ?? ??????? ??? ?????? C-611/10 ??? ?? ??? ?????? ?????????? ???
?????? C-612/10, ?? ??? ?? ?????? ?? ??????????? ??? ??????, ?? ?????? ??????????
?????, ???' ??????, ?? ??????????? ?? ?? ?????? 14, ?????? 1, ?????? ??, ??? 14?,
????? 1, ??????? ??, ??? ?????????? 1408/71 ?????? ??? ?????? ??? ?????????? ???
????????? ?? ?????? ??????? ??????? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ???
????????? ?????????? ??????, ??????? ?? ?? ?????? ??? ??????, ?? ??????????
????????? ? ?????? ?????????? ??????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ??????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

38 ?????? ?????????????? ???, ??? ?????? ?????????? ?? ?????? ??????????, ?
????????? ??? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????? ??? ??????
?? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ?????????? ???, ??? ?????? 14,
????? 1, ?????? ??, ??? 14?, ?????? 1, ?????? ??, ??? ?????? 1408/71.

39 ??????????, ??? ?????????? ???, ???' ??????? ??? ?????? 14, ?????? 1,
????????? ??, ??? ?????????? 1408/71, ??? ?????? ?? ?????????? ??? ?????? ?????????? ???
?? ?????? J. Wawrzyniak ?????????? ??? ??????, ?????????? ?? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

40 ??????, ??? ?????????? ???, ???' ??????? ??? ?????? 14?, ?????? 1, ???????
??, ??? ?????????? 1408/71, ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?? ??????
W. Hudzinski ?????? ?????????? ?????????? ??? ??????, ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

41 ?????? ?????, ?????? ?? ?????????? ???, ??? ?????? ??????????, ?? ?????????? ???
????? ?? ??? ?????????? 1408/71, ??? ?????? ?? ?????? ?????????? ? ?????????? ??????????
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??????, ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??????
????? ??? ?????? ??? ??????, ??? ?????? ?? ?????????? ??? ?????? ?????????? ??????
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ? ??? ??????
????????? ?? ?? ?????? 13, ?????????? 1, ??? ?? ??? ?????????? (??., ?????? ???,
????? ??? 14? ??????? 2010, C-16/09, Schwemmer, ?????? 2010, ?. I-9717, ?????? 40
?? ????? ?????????? ???).

42 ???????, ?????????? ?? ???? 48 ??? ?????????? ?? ?????????? ?? ???? ?? ????
????????? ?? ?????????? ?? ?????? ?????, ?? ?????????? ?? ?????????? ?? ????
????????? ?? ?????? ?? ?????????? ?????????? ?????????? ?? ?????? ?????? ??, ???
????????? ?? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??, ???
????????? ?? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??
????????? ??, ?????????? ?? ?????? ?????? ?????, ??? ?????????? ?????? ?????? ?? ????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? 30?? ??????
2011, C-388/09, da Silva Martins, ?????? 2011, ?. -5737, ????? 71 ??? ??? ??????????????
?????????).

43 ??? ??????? ??, ?? ?????????? ?????? ?? ?????? ?? ?????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ????
????? ?? ?????????? ??, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??, ???
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? 1408/71, ??? ?????? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??
????? ?????? ?? ??? ?????????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ??
??? ?????????? ?????? ?????? (??., ???' ??????, ?????? ?? 30?? ??????
????????? ?????? ?????? da Silva Martins, ?????????? 72).

44 ??? ??? ?????? ?????? ?????? ?????????? ?? ?????? ?? ?????????? ?????? ??
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????, ?? ?????????? ?? ????
????????? ?? ?????????? ?? ?????????? ??, ?????????? ?? ?????? ?? ?????? ??, ??
????, ???????, ??????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ??, ??
????????? ?? ?????? ?? ?????? ?????? ??, ??? ?????????? ?????? ?????? ?? ?????? ??
????????? ?? 1408/71, ?????? ?? ?????, ??? ?????? ?? ?????? ?? ?????? ??, ?? ?????? ??
????? ?????? ?? ?????? ??' ??, ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ??, ??
????????? ??????.

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

46 ??????, ??? ?????????? ?? ?????????? ?? ?? ?????? 29 ??? ??????????????
????????? Bosmann, ?? ?????????? ?? ?????????? 1408/71 ?????? ?? ?????????? ??
????????? ?? ?????? 42 ???, ?? ?????? ?????? ?? ?????????? ?? ?????? ?????? ??
??? ?????????? ?? ?????????? ??, ???, ?? ?? ?????????? ?????? ?????????? ??, ??
?? ?????????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?????? ??
???? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ??, ??
????????? ?????? ?? ?????? ??.

47 ?????, ?? ??????????, ?? ?? ?????? 30 ??? ?????? ???????, ?????????? ??, ??
????????? ?????? ?? ?????? ?? ?????? ?????? 1408/71, ?? ?????? ?????????? ??, ??
????????? ?????? ?? ?????? ?????? ??, ??? ?????? ?????? ?????????? ?? ?????? ??,
????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ??, ??
????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ??.

48 ?????????? ?? ?????? ?? ?????? ??, ?? ?????????? ??, ?? ?? ?????? 31 ??

????????????????? ?????????? Bosmann, ?????? ???, ??? ?????????? ???? ?????? ???
????????? ??? ???? ?????? ?????????? ? ?? ??? ?????? ??????, ?? ?????? ?????? ?????? ?????????? ???
????? ?? ?????????? ??? ?????????????? ?? ?????? ?????????????? ?????? ??? ?????? ???
????????? ??? ?????? ????. ??????????????, ?????????? ?????? ??? ?????? 13, ?????????? 2,
????????? ?, ??? ?????????? 1408/71 ?? ?????? ??? ?????? ?????? ?????????? ?????????? ???
????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??????, ?????????? ??? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

49 ?? ??????????, ?? ?? ??? 32 ??? ?????? ??????????, ?????????? ??? ? ??? ????
????????? ??? 41 ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ??? ?????????? 1408/71
????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ??????, ?? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ??? ?????? ??
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
?? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ???, ??? ???? ?????? ???.
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

50 ??? ??? ?????? ??????????, ?? ?????? ?????????? ?????? ??? ?? ?????????? ??
????????? ??? ???? ?????? ?????? ??? ??????????, ??? ?????????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ??? ?????????? ?????? Bosmann, ?? ?????? ???
?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ??? ?????? II ?? ?????????? 1408/71
?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? Bosmann.

51 ??????, ??? ?????? ?? ?????? ??? ?????????? ??? ?? ?????????????? ??? ??????
????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? , ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? , ?? ?????? ??? ?????? ??? ?????? , ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

52 ??????????, ?????? ?? ?????? 29 ??? ?????????????? ?????? Bosmann ??
????????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ?????? ?? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????
??? ??? ?????? ??? ?????? , ?????? , ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? 48 ??? ??? ??? ?????????? ??? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 1408/71.

53 ??????????, ? ?????? ??????????, ? ?????? ?????? ?? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????? ??? ??? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? , ??? ??????
??? ?????? 1408/71 ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
48 ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
??? ?????? ?????? ?????? ??? ?????? ?????? ?????? (??., ?????? ???, ??? da Silva Martins, ???, ???).

54 ?????? ?????? ?????? ?? ?????????? ??? ??? ?????? ?????? ?????????? ???

?????????? 1408/71 ?????????? ??? ?????? ??? ?????? ?? ???????? ??? ?????????? ??? ?????????? ???
????????? ??? ???? ??? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ???.

55 ??? ??????? ????, ????, ?? ?????????? ??? ????? ?????????? ??? ?????? ??? ?????? ?????????? ???
?????????? 1408/71 ??? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????????????? ??? ???? ??? ?????? ??? ?????????? ??? ????? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ? ?????????? ????, ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 48
????| (????????? ??? 16?? ?????? 2009, C-208/07, von Chamier-Glisczinski, ??????? 2009, ?. I-
6095, ??? 56).

56 ???????, ? ??????? ??? ?????? ??? ???? ?????????? ??? ?????? ?????????? ???????????
????????? ?????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????, ??? ??????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????????? ??????, ??? ???? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? (??., ?????? ????, ?????? da Silva Martins, ??????????????, ??? 75).

57 ?????????? ??? ?????? ??? ?????? ?????????, ?????????? ? ?????????? ???
????????? ??? ?????? 14, ?????? 1, ??????? ?, ??? 14?, ?????? 1, ??????? ?, ???
????????? 1408/71 ??? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ?? ?????? ??? ??????
????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??????????, ?????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ??????????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????

58 ???????, ??? ?????? ??? ?????????????? ??? ?????? ?????????????? ??? ?????? Bosmann
????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
? ?? ??? ??????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? 62, ?????????? 1, ??? EStG, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

59 ???????, ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ????,
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???.

60 ??????, ?? ??? 62, ?????????? 1, ??? EStG ?????????? ??? ?????? ???
????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

61 ??? ?? ?? ?? ??????? ?????????? ??????? ?? ?? ???? ?????????????? ???
?????? ?? ?? ?????????? ??? ?????? ???.

62 ??? ?????, ??????, ??? ?????? ??? ?????? ?????? ?? ?? ???? ?????????? ?????????? ???
????????????? ??? ?????? 62, ?????????? 1, ??? EStG ??????????, ??? ??????, ???
????????? ??? ?????? ??????, ?????? ??? ?????????? ??? ?????? ?????????? ???
????????? ?, ??? ?????? ?????? ??? ?????????? ?????? ?????? Bosmann ?????? ???
????????? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?? ??? ??
????????? ??? ?????? ?????? ?? ?????? ??? ?????? ?? ?????? ??????, ?????? ???
??? ?????? II ??? ?????????? 1408/71, ?????? ?? ?????? ?????????? ?????? ??? ??
????????? ??? ?????? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????????? ??? ??,
????????? ?, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ??
????????? ??????.

63 ??? ?????? ???, ?? ?????? ?????????? ??? ?????? ?????? ?? ?????????? ???
??? ?????? ?? ?????? ???, ??? ?????? ???, ??? ?????? ???, ?????? ??? ?????? ???
??? ??? ?????? ?????? ? ?????????? Bosmann, ?? ?????? ??? ?????? ???
????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ???.

64 ?????? ?????????? ???, ??? ?????????? ?????? Bosmann, ?? ??????????
??? ?????????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?? ??? ?????? ?????????? ???
?? ?????? ??? ?? ?????? ?????? ???, ??? ?????? ??? ?????? ?? ?????? ???
?? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???.

65 ?????, ?????????? ???, ???, ??????, ?? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ? ?????????? Bosmann, ? ?????? ??? ?????? ?????? ???
????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

66 ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????.

67 ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????????? ???
?????, ??? ?????? ??? ?????? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
1408/71, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? 41 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ???.

68 ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? C-611/10 ??? ??? ???
????? ?????? ??? ?????? C-612/10 ?????? ??? ?????? ??? ?????? ??? ?????? 14,

?????? 1, ??????? ??, ??? 14?, ?????? 1, ??????? ??, ??? ?????????? 1408/71 ???? ??
?????? ??? ?? ?????????????? ??? ?? ?????? ??????? ??????? ?? ?????? ??? ?????? ?? ??
??? ?????????? ??? ?? ?????? ??????? ?????????? ???????, ??????? ?? ?? ?????? ?? ??
??????, ?? ?????????? ?????? ?????????? ??????? ?????????? ??????? ??????? ?? ?? ??
??? ?????????? ??? ?? ?????? ?????? ??????? ?????? ???????, ??? ?????? ?? ?? ??
????????? ??? ???????????, ??????, ??? ? ?? ????? ?????????? ??? ?????????? ??
????????? ?????????? ??? ?? ?????? ??????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????????? ??? ?? ?????? ??????? ?????? ?????? ?????? ?? ?????? ?????? ???
????????? ??? ?????? ?????? ???????, ???, ??????, ??? ? ?? ?????? ?????????? ??? ?????????? ??
????????? ?????? ?????? ?????? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ??????????.

??? ??? ?????? ??? ?? ??????? ?????????? ??? ?????? C-612/10

69 ?? ?? ?????? ??? ?? ??????? ??????? ?????? ?????? C-612/10, ?? ?????? ?????? ??
????????? ??? ?? ??????, ?? ?????? ?????????? ?????, ???' ??????, ?? ?????????????? ?? ??
?????? ??? ?????? ???, ?????, ?? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????????????
??? ?? ?????? 76 ??? ?????????? 1408/71 ??? ?? ?????? 10 ??? ?????????? 547/72, ??
?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ? ?? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??
????????? 65 ??? EStG, ? ?????? ?????????? ?? ?????????? ??? ?????????? ??????, ?????? ??????
????????? ?? ??? ?????? ?????????? ?????? ? ?? ??? ?????? ?????????? ?? ??? ?????? ??????????
????????? ??????.

70 ??????, ??????? ??, ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? C-
612/10 ??????? ??, ??? ?? ?????? 14, ?????? 1, ??????? ??, ??? ?????????? 1408/71 ??????
?? ?????????? ??, ??? ?? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ?????? ??????, ?
????????? ?????? ??? ?????????? ??, ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?? ??
????????? ?????? ??, ??? ?????????? ???, ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??
????????? ?????? ??, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????? ???, ?? ?? ??? ?????? ??? ??????, ???????, ??? ?????????? ??
????????? ?????? ??, ?? ?????? ?????? ?? ?????????? ?? ???, ?????????? ??, ?? ??? ?????? ??
????????? ??, ?? ?????? ?????? ?? ?????????? ?? ??? ?????? ??? ?????? ??, ?? ??? ?????? ??
????????? ??, ?? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ??????.

71 ??????, ?? ?? ??? ???????, ??? ?? ?????? ??? ?????? ??? ?????? ???, ? ?????????? ??????
?????? ?? ?????? ??? ?????? ?? ??????? ?????????? ?????????? ??? ?????????????? ??????
????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ??? ?? ?? ?????? ??????
????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??
?? ?? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?? ??? ?????? ???????, ??? ?????? ??? ?????? 65 ??? EStG, ??? ??????
?? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ??????.

72 ??? ?????? ???, ?? ???????, ?? ??? ?????????? ?????? ??? ?????? Schwemmer, ???
????? ?????????? ?? ?????????? ??? ?????? ?????? ???, ?????? ???, ??? ?????????? ???
??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
????? 10 ??? ?????? 574/72 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ??????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ???' ????????

??? ??????? 65, ??????????? 1, ??? EStG, ????? ??? ????? ?? ????? ?? ??????? ??
?????????? ????.

73 ??????????, ?????????? ? ?????????? ??? ? ?????? ?????? ?????? ?????? ??????????
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? 76 ??? ?????????? 1408/71, ?????????? ??? ???? ?????? ??????????
????????? ?????????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????????
??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
????????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ??? ???? ?????? ?????? ??????
(??., ??? ??? ?????? ???, ?????????????? ?????? Bosmann, ??? 24, ??? ??? ???
Schwemmer, ??? 43 ??? 51).

74 ??????????, ??? ?????? ??? ?????? ??? ?????? ???, ? ?????????? ??? ?????? ??????
??? ? ???? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ? ???? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??????
????? ??? ?????? 14, ?????? 1, ?????? ??, ??? ?????????? 1408/71, ??? ? ????
????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ?????? ??? ?????? ?????? ?????? ??????
?????????.

75 ???????, ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ? ????
76 ??? ?????????? 1408/71 ??? ? ???? 10 ??? ?????????? 574/72 ??? ?????????? ???
?????????, ?? ??????????, ?? ?????????? ?????? ?????? ?????????? ???, ???' ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 65 ???
EStG.

76 ???????, ??? ????, ??? ?????? ???, ??? ?????? ??? ?????? ??? ???? ??????????
?????????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??
????? ????, ??? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ???
????????? ?? ????, ??? ???, ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????????
????????? ??' ?,?? ?? ?????????? ???, ??? ?????? ?? ?????? ??? ?????? ?????? ???
??? ?????? ?????? ????, ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

77 ??????????, ?? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ?????????? ????, ?? ??? ?????? ??? ?????? ?????? ?????? ???, ?? ???
?????, ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????.

78 ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ???
??, ??? ??? ?????? ?????? ??????, ? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
?????????.

79 ??????, ??? ?? ?????? ??? ?????? ??? ???? ?????? ??? ?????? ?????? ??? ?
????? ??? ?????? 45 ??? 48 ??? ???? ?? ?????? ?? ??????????, ?? ??
????????? ?????? ?????? ??????, ??? ?????? ?? ?????? ?????? ?????? ?????? ??????
?? ?????????? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ???
??? ??? ?????? ?????? (??., ??? ??? ?????? ???, ?????????? ?????? da Silva
Martins, ??? 74 ??? ??? ?????? ?????? ??????).

80 ??????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ? ???? 45 ???
?? 48 ???, ??? ??? ???? 1408/71, ? ?????? ??? ?????? ??? ???? ?????? ???,

????? ?? ????, ?????? ????, ??? ??????? ??? ?????????????? ?? ?????????? ? ?????????????? ?
????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ?
????? ??? ?????? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????? (??., ?? ???? ?? ????
???, ?????????? ?????? ?????? 76 ?? ?????? ?????????? ??????????).

81 ???????, ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? 76 ?? ??????
?????????, ?????? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ??????????
???? ?????????? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????????? ?? ??????????
????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??????
?????, ??????, ?????? ??? ?????? ?????? ?????? ?? ?????? ?? ?????????? ?????? ??? ??????
????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? (??.. ?????? ???, ???' ??????,
????? da Silva Martins, ??????????????, ?????? 72 ?? 73 ?????? ??? ?????? ??????????????
?????????).

82 ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? 14, ?????? 1, ??????????
??, ??? ?????????? 1408/71 ? ??????, ???? ?? ?????????? ??? ?????????? ??? ??????
????????? ?? ?????? ??????????, ?????????? ??? ?????????? ??? ?????????? ??????????
????????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ??????????
????????? ?????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? ???, ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ?????? ?????? ???,
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? (??.. ??? ??? ?????? ???, ?????? ???, ?????? ??? 10??
????????? 2000, C-202/97, FTS, ?????? 2000, ?. I-883, ?????? 28 ?? 29).

83 ???????, ?????????????? ??? ? ?????????? ??? ?????? ?????? ?????? ??????????
????? ??? ?????? ??? ?????? ???, ???' ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? 65 ??? EStG, ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?????????? ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??????.

84 ???????????, ??? ?????????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ??? ??????????, ??? ?????? ???, ?????????? ??? ??????.

85 ???????, ??? ?????? ??? ??? ?????? ?????? ?????? ??? ?????? C-612/10 ?????? ??
????? ? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? 65 ??? EStG,
????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

86 ?????????? ??? ? ?????? ?????? ??? ? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

1) ?? ??? 14, ??? 1, ??????? ?, ?? 14?, ??? 1, ??????? ?, ?? ???? ?????? (??) 1408/71 ?? ??????????, ?? 14? ?????? 1971, ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??) 118/97 ?? ??????????, ?? 2? ?????????? 1996, ??? ?????????????? ?? ?? ?????????? (??) 647/2005 ?? ?????????? ?????????????? ?? ?? ?????????? ?? ?? 13? ?????? 2005, ??? ?? ?????? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?? ??????.

2) ?? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (Einkommensteuergesetz), ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????.

(?????????)

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