

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

PAOLO MENGONZI

??? 18?? ?????????? 2014 (1)

???????? C?559/13

Finanzamt Dortmund-Unna

?????

Josef Grünwald

[?????? ??? Bundesfinanzhof (?????????)
??? ??? ?????? ?????????????? ?????]

«????????? ?????????? ??? ????????? – ????? ????????? – ????? ?????????? – ??????????
????????? ??? ?????????? ??? ?????????????? ?? ????? ?????????? ?????????????? ?????????????? ??
????? ?????? ??? ?????? ?????? ?????? ?? ?????????????? – ?????????????? ??? ????? ?????????????? ??????????
?????????»

1. ?? ??? ?????? ?????? ?????????????? ?????????? ??? ??????? ?? Bundesfinanzhof
(?????????), ?? ?????????? ?????? ?? ??? ?? ?????? ??? ?????? ??? ?????????????? ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????????? ?????????? ?????????? ??????????
????????? ??? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???
????????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???.

2. ? ?????? ?????????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? J.
Grünwald, ?????? ?????? ?? ?????? ??????, ??? ??? ?????????? ?????????? ??? ?????? ???
??? ?????? ??? ?????????? ?? ?????? ??? ??????, ??? ??? ?????????? ??? ?????? ??? ? J.
Grünwald ?????? ??? ??????, ??? ?????? ?????? ?????????? ??? ?????????? ?????? ??????
??? ?????? ??????????, ?? ?????? ?????? ??? ?????? ?????????? ?????????? ??????????
????????? ?? ?????????????? ??????????????.

3. ??? ??????????????, ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
Schröder (2) ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?? ?????? ??? ??????
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???.

4. ???? ????, ??? ??????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??????? ??? ???????, ?? Bundesfinanzhof ??? ?????????? ?? ???
?? ?? ? ??? ?? ?????????? ?????? ?????? ?????? Schröder ?????????? ?????????? ???
?????? ?????????? ??? ?? ?????? ??? ?????? ???, ???????, ?????? ?? ?????? ??????????
????????? ??? ?????? ?????? ??? ?????? ?????? ????. ???????, ?? ?????? ??????????
????????? ?? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ?? ??????
????????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??????
????????? ?????? ??????.

I – ?????? ?????????? ??????

5. ?????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? Schröder (3), ?????? ??????? ?? ?? ?????????? ?????????? ??? ???????,
????? ???? ?? Bundesfinanzhof ??? ?? ?????? ?????? ?????????? ?????????? ??? ? ??????
????? ?????????? ? ?????? ?????? ??? ?????????? ?????? ?????? Schröder,
????????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ?? ?????????? ??? ??? ??
?? ?????????? ?????? ??? ?????? ?????? ??????. ?????? ???????, ?? ?????????? ?????? ??
????????? ?????? ??? ?????? ??????????, ?????????? ?? ?????? ?? ?????????? ??????
????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
??, ???, ?? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?? ?????? ??????
????? ?????? ??????.

6. ?????, ??? ?????? ?? ?????????? ?????? ??? ?????? ???????????, ?????? ??
????????? ??? ? ?????????? ?????? ??? ?????? ?????? (Einkommensteuergesetz, ???
????: EStG) (4) ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??
????? ?????????? ? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????????? ??????????
????????? ??? ?????? ??? ?????? ???????????. ???????, ?? ?????????? ?????? ??????????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?, ?????? ?????????? ??? ??
????????? ??? ?????????? ??? ?????? ??????. ??? ?????????? ?????????? ??? ?????? ???
????? ?????????? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??
????? ?????????? ? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? (5).

7. ??? ?? ??? 10, ?????????? 1, ??? EStG, ??? ?????? ???????????, ??? ??
????????? ??? ?????? ?? ?????? ?? «?????? ??????» ?? ??????? ?? ?? ??
????????? ??? ?? ?????? ??? ?????? ?????? ???????????, ?????? ??? ?????????? ??? ??
????????? ??? ?? ?????? ?????? ?????? ?????? (6).

8. ?? ??? 50 ??? EStG ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ???
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 1, ??
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??
?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??
????????? ?????? ??? ?????? ?????? ??? ?????? 10 ??? EStG, ??? ?????? ??
????? ??? ?????? ??????.

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

?????? ?????????? ?? ?????????????? ?? ?????????? ?????????? (? ?????????? «????????? ??????????
?????????»). ???? ?? ?????????? ??????????, ? ratio ??? ?????????????? ?????????? ?? ?????
?????? ????? ?????? ?????????? ?????????? ??? ??? ? ?????????? ??? ?????? ?? ?????? ?? ?????????? ???
???? ?? ?????????? ??????? ?? ?????????? ?? ????????, ??? ?? ??? ?? ??????? ??
???????????, ??? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ?????? ???
????????? ?? ????? ?????????? ?????? ?????? ?????? ?????? ??????, ?????????????? ???
????????? ??? ??????????????. ??? ?? ?????????? ??? Bundesfinanzhof, ??? ??
????????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????, ? ??????????
???????, ??? ?? ?????? ?????????? ????????, ?????????? ??? ??? ?? ?????? ??????????????
????????? ??? ?? ??? ?? ?????? ?????? ??????????, ??? ?? ??? ?????? ?????? ?? ?????????????? ??? ??
???? ?? ? ?????????? (7).

10. ?????????? ?????????????? ?????????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ???????????, ???
????? ? ?????????? ?????????????? ?? ??????, ?? ??? ?????? ??? ?????????? ??? ?????????????? ??
????? ?? ??? ?????? ??? ?????????????? ???????????, ??? ?? ?????????? ?? ??? ?????? ??????
????????? ??? ?????????????? ??? ?? ?????????? ?????????????? ??? ?????????? (8). ??
????????? ??? ?????????????? ??? ?? ??? ?????? ??? ?? ?????????? ??? ?? ?????????????? ?????????????? ??
????????? ??? ?????? ??? ?? ???????????, ??? ?? ?????? ?? ?????? ?????????????? ??????????????
????????? ?????????? ?????????? ?? ?????????????? ?????????????? ??? ?? ??????????????
????????? ??????????

11. ??????, ??? ?????? ?? ??????????? ?????????????? ?? ?????????????? ?? ?????????????? ??
????? ?????? ??? ?????? ?????? ???????, ??? ?????? ??????????? ? ?????? ?????? ?????????? ??
?????????? ??? ??? ?????? ?? ? ??????????? ??? ???????????????, ??? ?????? ?????? ?????????? ??
Bundesfinanzhof ?? ?? ??? ?????? ??????? ?? ??????????? ??? ??????????? ?? ??? ?? ???????????
????? ?????? ??????? ??? ??? ?? ? ???????????, ??? ???????????????, ??? ???????????????
??????, ?? ??????? ??????? ??? ??????????? ?????? (9). ? ??????? ?????? ?????? ???????????
??? ratio ??? ??????? ??????????? ??? ??????????? ?????? ??????????? ?? ??? ?????? ?????? ???
?????? ???????????, ??? ? ratio ??? ??????????????? ??? ?????? 9. ??? ?? ????? 10 ???
EStG, ??? ??? ??????????????? ???????, ?? ??????????? ???????????, ?? ??????????? ???????????,
?? ??????? ??????? ??????? ??????????? ??????????? ???????, ??????? ??? ??????????? ??????? ??
??? ??????????? ??? ??????????????? ???????????, ??????? ?? ??????????? ?? ????????????.
??????????, ?? ??????????????? ??????? ??????????? ??????????? ?? ??? ?????? ??????????? ??????????? ??
?????????? ????, ??????? ?? ?????? 50 ??? EStG ?????? ??????????? ?? ??????????? ???????????
??? ??????? 10 ??? EStG ??? ??????? ??? ?????? ??????????? ??????????? ??????????? ??
????? ??? ??? ?????.

12. ??????? ?? ratio ??? ?????????? ?????????????? ??? ?????????????? ?????????????? ??
????? ?????? ??? ?????? ?????? ??????????, ??? ? ratio ??? ?????????????? ??? ?????? 9, ?
????? ?????????????? ??? ? ?????????? ??? ?????????????? ??? ?????? ?????????? ?????????? ???
??? ?????????????? «????????? ?????????? ??????????» (10), ??? ??? ???
??? ?? ? ??????????/????????? ?????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ???
??? ?????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ??????????/?????????
????????? ??? ?????? «????? ??????» (? ?????? «Korrespondenzprinzip»).

|| – ??????????? ???????????, ?????????? ??????? ?? ??????? ?????????????? ???
????????????? ???????

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

14. ?????? ??? 1999 ??? ??? 2002, ? J. Grünwald, ? ?????? ??? ??? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?, J. Grünwald
????? ??? ??? ?????? ?????? ??? ??????.

15. ???????? ??? J. Grünwald ?? ?????? ????????????, ?????????? ??? ?????? ???,
????? ??? ??? ????????????, ?? Finanzamt Dortmund-Unna, ?????????? ??? ?????? ???,
????? ??? ??? ?????? 50 ??? EStG ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????
????? ??? ?????????? ??? ??????.

16. ? J. Grünwald ?????? ??? ?????? ??? ?????? ??? Finanzamt Dortmund-Unna ??????
????? ??? Finanzgericht Münster (????????? ?????? ?????? ??? Münster), ?
????? ?????? ???, ?? Finanzamt Dortmund-Unna ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
Finanzgericht Münster ??? ??? ?????? ??? ?????? ??? J. Grünwald ??? ??????
????? ??? Finanzgericht Münster.

17. ?? ?????? ?????????? ?????????? ???, ?????? ??? ?????????? ?????? ???,
????? ?? Finanzamt ?????? ??? J. Grünwald ?? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? J. Grünwald. ???
?????, ?? ?????? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ??????
Schröder, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

18. ?? Bundesfinanzhof ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? Schröder ??? ?????? ??? ?????? ??? ?????? ???, ???, ???, ?
????? ??? ?????? Schröder ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????, ??? ?????? ??? ?????? ??? ?????? «Korrespondenzprinzip» (11) ????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
(????? ???) ??? ?????? ??? (????? ???). ??????, ? ?????? Schröder ???
????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???, ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ??????.

19. ??? ??????, ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ?? ?????? ??? ??????. ???, ?? ?? ??? ?????? ?????? ??? ??????
?? ??? ?? ?????????? ??? Finanzgericht Münster ??? ?????? ?? ??? ?????? ??? ??????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? J. Grünwald.
????? ??? Finanzgericht ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? (????? ??? ?????? ???
????? ??????), ?????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

20. ??? ?? ?????? ??? ?????? ???????????, ?? ?????? ??????????, ?? ?????? ??? 14??
????? 2013, ?????? ?????? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??
????? ??? ?????? ??? ?????? ?????????? ?????????? ??????:

«????????? ?? ????? 63 ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
??? ?? ?????????? ?????? ?? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????? ?????? ?????????? ?????????? ?? ?????? ?????????? ?? ?????????? ???
????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ?????? ?????? ???
????????? ?????? ?????? ?????????? ?????????? ?????? ?? ?????? ?????? ?????????? ?????
????????? ?????? ?????? ?????? (????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??????)
????????? ???
?????????;».

III – ?????????? ?????? ??? ??????????

21. ? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? 30 ?????????? 2013.
????? ?????????? ?????? ??? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??????. ??? ??' ?????????? ?????? ?????? ?, ? ?????? ?????? ??? 16
????????? 2014, ?????????? ?? Finanzamt Dortmund?Unna, ? ?????????? ??? ? ??????
????????? ??? ? ??????.

22. ?? ?????? ??? 18?? ?????????? 2014, ? ?????? ?????? ?????????, ??' ?????????? ???
????? 16, ?????? ??????, ??? ?????????? ??? ?????????? ?????? ??? ? ?????? ??? ? ?????????? ??
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ? ?????? ??????.

IV – ?????? ??????

23. ?? ?? ?????????? ??? ??????, ?? ?????? ?????????? ?????? ??? ?????? ???
????????? ?? ?? 63 ??? ?????? ?????????? ?? ?????? ?????????? ?????? ??? ?????? ???
????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

? – ??? ?? ?????????? ?????????? ??????????

24. ?????? ?? ?????????? ??' ?????? ??? ?? ?????? 63, ?????????? 1, ??? ?????????? ??
????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

25. ?????? ????, ??? ??????, ??? ?????? ??? «????????? ??????», ??
????????? ??? ?????? ??? ? ?????????? ??? ?????? ?????? I ??? ?????? 88/361 ???
????????? ?????? ???, ?????????? ???, ??? ?? ?????????? ?????? ???
????????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? (12).

26. ??????, ??? ?????? ?????????? ?????????? ??? ?? ?????? ??? ?? ?????????? ???
????? ?????????? ??? ?????? ?????? XI ??? ?????? ?????? I ??? ?????? 88/361, ??????????
????????? ?????? ???, ??? ?????? ??? ?????? 63 ???, ?????? ?? ?? ?????????? ?????? ???
???? ?????????? ??? ?????? ??? ?????? ?????? ?????? (13). ??????, ??? ?????? ??????
????????? ???, ? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??

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

??? ??? ????? ??????? ?? ??? ??????? ?????????? (14).

27. ?????? ?????????? ?? ?????????????? ??? ?????? ?????????????????? ?????????? Schröder ??

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

????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? 63 ????

(15). ??? ?????? ???, ???' ?????? ?? ?????? ??? ? ?????? ??? ? ?????????? ?? ?????????? ??? ????????????

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

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

Schröder, ??? ??????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ????

????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (16).

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

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

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

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

??? ?????????? ?????????? ??? ?????? 63 ???.

? – ??? ??? ??????? ?????????? ??? ?????????? ?????????????? ??? ??????????

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

63, ?????????? 1, ???, ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ??????,

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

????????????? ??? ?????????? ?????? ?????? ?????? ?????? (17) ? ?? ?????????? ???

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

(18).

30. ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ???

????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? 49 ??? EStG, ??

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

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

????????????? ??? ?????? (19). ??? ??????, ?? ?????? ?? ??? ?????? ?????? ?????? ?????? ??????

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

????? 50 ??? EStG, ?????????? ?????? ??? ?? ??? ?????? ?????? –?? ???????

????????? ??? ?????? ??? ?????? ??? ?????? 10, ?????????? 1, ??? EStG? ?????????? ????????

????????? ??? ?????? ??? ? J. Grünwald ?????????? ??? ?????? ?????? ??? ?????? ?????? ???

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

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

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

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

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

????????? ??? ?????? ?????? ?????? ?????? ?????? (20). ?? ?????? ?????? ?????? ???

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

????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? (21).

32. ??? ? ? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ??????????

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

????????? ??? ?????? ??? ?????? ???' ??????, ?????? ?????? ??? ?? ??? ?????? 63 ???.

????????? ??? ?? ??????? ??? ?????????? ?? ??? ?????????? ?????????????? ?????????????? ???
????????? ??? ?? ?????????? ??? ?????????????? ??? ?????????????? ???, ??? ?????? ? ?????????? ???
????????????? ??? ?????? ?????????? ??????????, ?????? ? ?????????? ??? ?????? ?????????? ?? ??????
????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???.. ? ?????????? ?????????????? ???
????????? ??? ?????????????? ?????? ?????????????? ?????????????? ?????? ?????? ?????????? ??????
?? ?????? ?????? ?????? ??? ?????????????? ?????? ??? ? ?? ?????? ?????????????? ??????
????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ?????? (28).

39. ??? ??????, ?????? ??? ?????? ?????????? ??? ?????????? ???, ??? ?????? ?? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?? ?????????????? ??? ??? ??????
????????? ?? ?????????? ?????????? ?? ??? ?????? ??????, ?? ?????????? ?????????? ??? ??
????????? ?????????? ?????????? ?? ?????????? ?????????? ?????? ?????? ???, ????
????????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????????? ??????
????????? ??? ?????? ??????, ??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ??????????,
????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??, ??????, ?????? ?????? ?????? ?????? (29).

40. ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ?? ?????????? ?? ? ?????????? ??? ?????????????? ?????????? ?????????? ???
???? ? J. Grünewald, ? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??????
????????? ?? ?????? ?????? ?????????????? ?????????? ?????????? ?????? ?????? ?????? ??? J.
Grünewald, ? ?????? ??? ??? ?????? ?????? ?? ?????? ?????????? ?????????? ???
????????? ??? ?????? ?????????? ?????????? ??????????.

41. ??????, ?????? ???' ?????? ?? ?????????? ???, ?? ??????????, ??? ?? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? J. Grünewald
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

42. ?? ?? ?????? ?????????? ?????????? ???, ??? ?? ?? ??? ???, ? J. Grünewald
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ???, ?? ?????? ??
????????? ??? ? ?????????? ??? ?????? ?????????? ?? ?????? ??? ?????????? ?????????? ???
????????? ??? ?????? ???' ?????? ??? ?? ?????? ?????? ?????????? ?????????? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????.

43. ????????, ??? ?????????? ??? ?? ?????? ?????????? ?????????? ??? ?? ??
????????? ??? ?????????? ??? ?????????? ? J. Grünewald ??? ?????????? ?? ?????? ???
??? ?????????? ?????????? ???, ? ?????????? ??? ?? ?????? ?????????? ?? ??? ??
????????????? ?????????? ?????????? ?? ?? ?????????? ?????????? ?????????? ??????????
?????, ?????? ?? ?? ?????????? ??? ?????????????? ??? ?????? 39, ?? ?????????????? ??
????? ?????? ?????????? ?? ?? ?????????????? ??? ??? ?????? ?????? ??? ?????? ???
?????????.

44. ??????, ?????? ?? ?????????? ???, ?? ?????????? ?????? ??? ?????? ??? ?????????? ???
?? ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???
????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ???
????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??????, ???????,
????? ?????? ?????? ??? ?????? (30).

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

?????????????, ? ?? ??? ????? ??????? ??????? ?? ???? ?????????? ??????? ?? ?? ??
????????????? ?? ?? ??? ?????, ????? ? ?????????????? ??????? ?????????? ?? ?? ??
????????????? ?? ?? ?????????? ?? ?? ??? ????? ??????? ?????????, ??? ?? ??? ????? ??, ??
????????? ??????? ?? ?????? ?? ????? ?????????? ?????????? ?????????? (31).

46. ?????????? ??? ?????? ???????, ? ?? ??? ????? ?????????? ?????????????? ??, ???
????????? ?? ?? ?????? ?????????? ???????????, ??? ?????????? ?? ?????????? (32), ???
????????? ??? J. Grünwald ?? ?????????? ?? ?? ?????? ??????? ?????????? ?????????? ??
?? ?????????? ??? ?????? ?? ?? ?????? ?????? ????? ?????????? ?????????? ?? ?? ?????????? ??
????????? ?????????? ?? ?? ?????? ?????????? ?????????? ?? ???????, ?? ??????????
????????? ??? ???????, ??? ?? ?? ?????? ?????????? ?? ?????????????? ?? ?? ?????? ??????
????????? ?? ?? ?????????? ??? ?? ?????? ?????????? ?? ?? ?????????? ?? ?????????? ??????
? ?????????? ??? J. Grünwald ?? ?????? ?? ?????????? ?????????? ?? ?? ?????? ???
????????????? ???????, ??? ?? ?????? ???.

47. ??????, ??? ?????? ??? ?????????? ?? Bundesfinanzhof ?????????? ?????? ???,
?????? ?????????????? ?? 18, ??? ?? ?????????? ?? ??????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ??????? ?? ?????? ?????? ??? ?????? Schröder.
????? ??? ?? ?????? ???.

48. ?? Bundesfinanzhof ???????, ??????, ?????????? ??? ?? ??????? ?? ?? ?????????? ??
?? ??? ?????? ??????? ? ?????????? ?????????? ??? ??????? Schröder, ? ???
?????? ?? ??????, ??????????, ??? ??????? ?? «????? ??? ??????????» (33) ?????? ??
????????? ?? ?? ?????? ?????????? ??? ??????? ?? ?????????? ??? ?? ??????????.
??????, ???, ??? ? ???????, ???, ??? ?????? ?? ?????? ?????? ??? ?????? ??? ? ??????
?? ?? ?????? ?????????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ???
?????? ??????, ? ?????????? ?? ??????? ?? «Korrespondenzprinzip» ?????? ??????????
?? ?? ?????? ?? ?????? ??? ?????? ?????????? ?? ?????????? ?????????? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????????? ?????????? ??????????. ???????, ??????, ?
????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??????????
????????? ?? «????? ??? ?????????? ???» ?? ?? ?????????? ??? ?? ?????? ???
????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????????? 66 ??, ???????, ??? ??
????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ??
????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ???
?? ??? ?????? ?? ?? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ???.

49. ??????, ??? ?????? ??? ?????? ??? ?????????? ?????????? ??, ??? ??
????????? ?? Bundesfinanzhof, ??? ??? ?????? Schröder ?? ?????????? ?????????? ???
?? ?? ?????????? ??????? ?? ?????????? ?? ?????????? ?????? ?? ?????????? ??
????????? ?? ?????? ?????? ??????????, ???, ?? ?????????? ??? ?????????? ??
?????????, ?? ??? ?????? ?????? ?? ?????????? ?????? ?????????? ??? ?????? ?????? ???
????, ??? ?????? ?? ?? ??? ?????? ?????? ?????? ?????????? ?????????? ??????????. ???????, ???
???? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? Schröder, ??? ?? ??????????
????????? ?? ?????????? ?????????? Y. Bot, ?????????? ??? ?????? ?????????? ??? ??
????????? ?? ?????????? ???, ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ??
????????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? (34). ???????, ? ??? ?
????????? ?????????? ?? ?????? ?????? ?????? ??? ??' ?????????? ?????????? ??? ?? ??
????????? ??? ?????? ?????? ?????? ??? ?????????? ?????????? ???.

50. ???????, ??? ???? ??? ??????????? ??? Bundesfinanzhof ??????? ?? ?? ??? ??? ??
????????????? ???????????, ??? ???? ?? ??????? ??? ??? ?????? ?????? ?????? ??????????
??? ??????????? ?? ??? ???? ?????? ????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
Schröder, ??? ???? ?????? ?????? ??? ??? ?????? ?? ?????? ?? ?????? ??? ??????.
????????, ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?? ??????
????????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ??? ?????? ?????? ?????? ??? ??????
????? ?????? ?????? ?? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??????, ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ??????
??? ?????? ?????? ??????.

51. ??? ?????? ??? ???????????, ?? Bundesfinanzhof ??????? ?? ?????????? ???
Finanzgericht ??? ??? ??? ?????? ??? ?? ?????????? ?????????? ?????????? ?????????????? ???
?? ?????????? ??? ???????????, ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ???
????????? ??? ?????? ?????? ?????? ??? ??? ?? ???????????, ?????? ?? ?????? ?????? ???
????? ?? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????? ??? ?????? ?????? ?????? (35).

52. ?????? ? ?????????? ?????????? ?????????? ?? ?????????? ??? ?? ???
????????? ?????? ?????? ?????? ?? ???????????, ??? ??? ?????? ?????? ?????? ???, ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (36). ?
????????? ??? ?????? ?????? ??? ? ?????????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ??? ? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??????
??? ?????????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????, ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????? ?????? ??????
??? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
??? ?????? ??????.

53. ???????, ??? ???? ?? ??????? ??? ?????? ?? Bundesfinanzhof ??? ?? ??????????
????????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????????? ??
????????? ??? ?????? Schröder, ?????????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
??? ?? ?????? ??? ?????? ?????? ?????? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?? ?????? ???
????????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
(37).

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

55. ?? ???????????, ?????? ??????? ?? ??????????? ??? ?? ????? ??????????? ???????????
???, ??? ?? ???? ????? ??????? ?? ????? ??????? ??????????? ??? ??????????????? ??? ?? ????
??? ?????? ???????????, ??? ?? ????? ??????? ?? ????? ??????? ??? ??????????????? ??? ?? ????
??? ??????????? ??? ?? ????? ??????? ??? ????? ??????? ??? ?????? (38).

56. ? ??????????? ??????????? ??????????????? ??????????????? ??? ?? ??????????? ??? ???????
?????? ??????????? ??? ?? ????? ?? ?????? ??????? ??????????? ??? ??????? ??? ??
?????????????? ???????????, ??? ?? ??????????? ???, ??? ?? ??????????? ???, ??? ?? ???? ?? ??
?????????????? ??? ?? «?????? ?????????» ?????? ??? ??????????? ??? ?? ??? ???????????
??? ??????? ??????????? ??? ??????? ??? J. Grünwald ??? ?? ??? ??????????? ??
?????????? ?? ??????? ??? ??????????? ?? ??? ??????? ??????????? ??????????? ??? ??????????.
?????????? ??? ?? ??????????? ??? ??????????? ??????????? ??? ??????????? ???, ??? ??
?????????? ?????????, ? ????????? ?? ??? ?? ??????? ??? ??????? ?????? ?????? ??????????
?????????????????? ??????? ??? ?? ??????????????? ??? ??????????? ???????????????
??????????????????, ??????? ??? ?? ??????????????? ??? ???????????????, ? ???????????
?????????? ?? ??? ??????????? ??? ??????????? ??? ???????????.

57. ??? ??? ?????, ??? ?? ??????? ???????????, ? ??????????? ??? ?????? ??? ???????
?????????? ??? ??????????? ??????????? ??? ??????? ?? ??????????????? ??? ???????, ??? ?? ???? ??
?????????? ??? ??????????? ??????? ?? ?? ??????????? ??? ???????????, ? ??????? ???????????
?????????????? ??? ??????????? ??????????? ??? ??????????? ??? ??????????? ??????????? ???
?????????? (39) ??? ??????????? ??? ??????????? (40), ???, ??? ?? ??????????? ???, ??
?????????? ??????????? ??? ??????? ??? ?? ??????? ??? ????? «?????? ???????????».

58. ??? ????, ?? ??????????? ??????? ?? ??????????? ??? ?? ??????????? ??? ??????? ?? ???
?????????? ? ??? ?? ??????????? ??? ??????? Schröder, ??? ?? ???, ?? ?? ???????
?????????? ??????????? ??? ?? ??????????? ??? ??????????? ??? ??????????? ???????????
??????????, ??? ?? ??????????? ??????????? ? ???????, ??? ?? ??????????? ??? ???????????
?????????????? ???????????, ?? ??? ?? ??????? ?? ??? ??????????? ??? ??????????? ???
?????????? ??? ??????????? ??? ?? ??????? ??????????? ??? ??????????? ??? ??????????? (41).

59. ??????, ?? ???????????, ??? ?? ??? ??????????? ??? ?? ??????????? ??? ??????????? ???
?????????? ??? ???????????, ??? ?? ??????? ???, ??? ?? ??????? ??? ??????? Schröder, ? ???????????
?????????? ??? ??????????? ??? ??????????? ??? ??????????? ??? ?? ??????????? ??? ???????????
??? ??????????? ??? ?? ??? ????? ??????????? ?? ??????????? ??? ??????????? ??? ???????????, ?
?????????? ??? ??????????? ??? ?? ??????? ??????????? ??? ??????????? ??? ??????????? ???
???????? ?? ??? ??????? ??? ??????????? ??? ?? ??????????? ??? ??????????? ?? ???????????
??? ??????? ??? ??????????? ??? ?? ??????????? ??? ??????????? ?? «??????????» (Gegenleistung). ??? ?? ????
??, ?? ? J. Grünwald ??? ?? ??????? ??? ??????????? ??? ??????????? ??? ??????????? ???
?????? ???, ??? ?? ??????? ??? ??????????? ??? ??????????? ??? ???????????.

60. ??? ?? ??? ?????, ? ?????? «?????? ?????????» ?? ??????????? ??? ???????????
?????????? ?? ?????? ??????? ??? ??????? ??????????? ??? ??????????? ??? ?? ???????????
??????????, ??? ?? ????? ?? Bundesfinanzhof, ??? ?? ??????? ??? ??????????? ??? ???????????
?????????? ?? ?????? ??????? ??? ??????? ???????????, ??? ???????, ??? ?? ??????????? ??? ?? ???? ??
?????? 9 ???????, ??? ?? ??????????? ??? ?? ????? ??????????? ?? ??????????? ??? ???????????
?????????? ??? ?? ????? ??????????? ?? ????? ??????????? ??? ?? ??????????? ??? ???????????
?????????? ??? ?? ????? ??????????? ? ???????????, ??? ?? ????? ?? ????? ??????? ?? ???????????
??? ?? ??? ?? ??????????? ??? ??????????? ??? ?? ??????????? ??? ??????????? ??? ???????????
?? ??????? ??? ??????????? ??? ??????????? ??? ?? ??????????? ??? ??????????? ??? ???????????
??? ??????? ??? ???????????, ??? ?? ??????? ??? ??????????? ??? ??????????? ??? ???????????

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

62. ??????????, ????, ?????? ?????? ?????????? ???, ?????????????? ?? ???? ?????????? ???, ?????? ?????? ??
????????????? ?? ??????????? ?? ?? ?????? 63 ???, ??? ?????????? ?????????? ?????????? ?????????? ??????????
????? ?? ?????? ?? ?????????? ?????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ???, ???
????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????, ???
??? ????????, ?????? ?? ?????????? ?? ?????? ?????????? ?? ??????. ??????, ?? ????????
?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????, ??? ?????????? ?????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ?????? ?????? Schröder, ???
????? ????????, ?????????? (44), ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ?? ?????????? ??? ?????????? ?? ?????????? ?????? ?????????? ?????? ??? ??????
????? ?? ?????? ??????????. ??????????, ?? ?????????? ?????????? ??? ?????????? ??
????? ?????????? ?????? ?????????? ?? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? (????????? ???)
?? ?????? ??????????, ????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??????), ?? ?????? ???' ???
????? ?????? ?????????? ?? ?? ?????????? ?????????? (?? ?????????? ?? ?????? ??????),
????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??????. ?? ????, ????,
????????????????? ??? ?????????? ??? ?????????? Schröder, ? ?????????? ??? ??????????
????? ??? ?? ?????? ??? ??????????, ?? ??????????, ??? ?? ?????????? ??? ??????????
?? ??????????

63. ? ?????????? ?????????? ?????????? ?????????? ???, ?? ?????? ?? ?????? ??????????
??? J. Grünwald ?????? ?? ?????? ?????? ??? ?????? ?????????? ?????????? ???
????????????? ??? ?????? ?????????? ?????????? ??????????, ?? ?????? ?????????? ??????
????????? ??? ?????????? ?????? ?? ?????????? ??? ??? ?????? ?????????? ??? ???
????????????? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ???
????????????? ?????? ??????. ??????, ? ?????????? ?????? ?????? ?????? ???????, ?
????? ?? ?????????? ?????? ?????? ??????????, ??? ?????? ?????? ?? ?????????? ???
????????? ?????? ?????????? ?????????? ?????????? ??? ?????????? ?????? ??????????.
????????, ??? ? ?????? 77/799/??? ??? ??????????, ??? 19?? ?????????? 1977, ?????? ??
??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ??? ?????????? (45), ? ?????? ??? ?? ?????? ??? ?????? ???

????????????? ?????????????? ??? ?????????? ??? ?????? ??????, ??? ??? ? ?????? 2011/??
??? ???????????, ??? 15? ??????????? 2011, ??????? ?? ?? ?????????? ?????????? ???
????? ??? ?????????? ??? ?? ??? ?????????? ??? ?????? 77/799 (46), ?????????? ???
????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????, ??? ??
????????? ?????????? ?????????? ??? ??????, ??? ?????? ??? ?????? ?????????, ??
????????? ?? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ???
??? ?????????? ??? ?????? ?????????? (47).

64. ?????, ? ??????? ?????????? ?????????? ??? ?????????? ???, ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? 63 ??? ?????? ?????? ?????? ? ??? ?????? ??????????
??? ??? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? ?????? ?????????? ??????????
????????? ?????????, ? ??????? ??? ?? ?????? ?? ?????????? ?????? ??? ?????????? ??????????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? J.
Grünewald ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

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

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

66. ??? ??? ?????? ???????, ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??????????
?????? ?? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????? ??? ??????
????????? (48). ??? ??? ?????? Schröder ? ?????????? ?????????? ??? ?????????? ???
?? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? (49),
????????? ??? ?????????? ??? ?????? ???.

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

67. ?? ?????? ?????????? ?????????? ???' ????, ?? ? ?????? ??? ??????????????
?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? Korrespondenzprinzip (50), ??? ??? ?????? ?????? ??? ?????? ??? ? ?? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????.

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

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

69. ??????????, ???????????, ???????????, ???????, ???????, ?? ???????????, ??? ???? ?? ?
????????? ??? ???????????, ??? ???? ???????????, ??? ???? ???????????, ??? ???? ???????????
????????? ??? ???? ???????????, ??? ? J. Grünwald ???????, ??? ???????????, ??? ???? ??
????????? ?? ???????????, ???????????, ???????????, ??? ???????????, ??? ???? ???????, ??? ????
????????? ???????, ??? ???? ???????, ??? ? J. Grünwald ???????, ??? ???????????, ??? ???? ??
?? ???????????, ??? ???????????, ??? ???????????, ??? ???????????, ??? ???????????, ??? ???????????, ??? ?????.
?????????, ?????????? ?? ???????????, ??? ???????????, ??? ???????????, ??? ???????????, ??? ?????, ??? ???? ???????????
?? ?? ???????, ???????????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ??????????? in concreto
?? ?? ???????????, ??? ???????, ??? ???????, ??? J. Grünwald.

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

71. ?????????????? ??????? ??? ??? ?????????????? ??? ????? ?????????????? ??
Bundesfinanzhof ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ????? ??
?? ??? ??????? ??????? ??? ?????????? ??? ?????????? ??????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????????? ?? ??? ????? ?????????????? ??? ??????? ??? ?????? ???
????????????? ??????? ??? ?????? ??? ?????????? ??????? ??? ??????? ??? ?????? ???
??????????. ??? ?????? ?????????? ???, ??? ????? Korrespondenzprinzip ??? ?? ??? ??????????
????????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
(53), ?? ??????? ??? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????
(Generationennachfolgeverbund) ??????? ?? ??? ????? ?????????? ? ??????? ?????????? ???
????????? ?? ??? ????? ?????? ??? ?????? ?????? ?????????? (?? ??????????, ?? ?????? ??? ??
?????) ?????? ?? ?????????? ?????? ?????????? ?????????? ???, ???????, ?? ??????????
?? ?????????? ??? (54). ??? ?? ?????????? ??????????, ?? ?????? ??? ??????????
????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ??? ??? ?? ??? ????? ??????????, ? ?????? ?????????? ?????????? ?? ?????? ???
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??????????
?????????

72. ?????????????????????? ?? ?????????????? ???, ??? ?????????????????, ?? ?????????????
????????????? ?? ?????????????????? ??? ?????????? ?? ?????????? ?????????????? ??????????????
?? ?????????????? ?? ?????????? ?????????????? (55). ??? ??????, ??? ?? ?????? ?????????? ???
????????? ?? ?????? ?????????????????? ??? ?????? ?? ?????? ?????????? ?????????? ???
????????????????? ?????????????? ?????????????????? ??? ??? ?????????????? ??? ??
????????????? ?????????????? ?????????????, ?? ?????????? ??? ?????????? ?????????? ?????? ??
????????????? ?? ?????????? ??? ?????? ??? ?????????? ?????????? (56). ???????, ???????
?????? ?????????? ?????? ?????? ?????? ?????????? ??? ?????????????? ??? ?????????????? ??
??? ?????????? ?????????? ?????????? ?????? ?????????? (57).

73. ??????, ?? ?????????????? ?????? ?????? ??? ? ?????? ?????????????? ?????????????? ???
????????????? ?????????????????, ??????, ??????, ??? ?????? ?????? ??? ?????????? ?????????? ??????
????????? ? ??????, ?? ?????? ?????????? ??????, ??? ?????????? ?????????? ?????????? ??? ?? ???
????????, ???, ???????, ??? ?????????? ??? ?????????, ? ?????? ?? ?????????? ?????????? ??????
?? ??? Korrespondenzprinzip.

74. ? ?????????? ?????????? ?????? ??? ? ?????? ?????????? ?????? ?????????? ?????????? ??????????
????????????? ??? ?????????????, ??? ?????? ?????? ?????? ? ?????????, ?????? ?? ??????
????? ??? ?? ?????????? ??? ?????????????? ?????????????????, ??????, ??? ??
Korrespondenzprinzip, ? «Generationennachfolgeverbund» ?????? ?? ?????????????? ??
????? ?????????? ???????.

75. ?? ?????????? ??? ?????? ?? ??????.

76. ???????, ??????, ?????? ??? ??? ?????? ?????? ?? ?????? ?????????? ?? ?? ??????????
?? ??????? ? ??? ? ?????????? ?????????? –??? ?????????? ?? ?????? 56 ?? . ???????–
?? ?? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ? ??????????
(?????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????????????? ? ??????????)
?? ?? ?????????? ?????? . ???????, ?? ?????????? ??? ??? ?????????? ?????? ?????????? ??????
????????? ?????? ??? ?????????? ?? ?????????? ?????? ??? ??? ?????????? ?????? ?????????? ??????
????????? ??? ?????? ?? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ?????? ???
????????? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ???.

77. ???????, ?????? ?????? ?? ?????????? ?? ??? ?????????? ??? ?????????? ??????????????
????? ?? ??????, ?????? ??? ?????????? ???????????, ??? ??????????????
?????? ??? Generationennachfolgeverbund ?? ?????? ?????????? ?????????, ??? ??????? ??
? ?????????????? ?????????? ??? ?????? ?????????? ?????????, ??? ?????? ??????????
????? ?????? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???.
?????????, ??? ?? ??? 50 ??? EstG, ?????? ??? ?????????? ?????????? ?????????? ???
????????? ?? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ??
????????? ?????????? ??? ?????? ?????????? ??? ?????? ???.

78. ???????, ??? ?? ??' ?????????? ?????????, ? ??? ? ?????????? ??????????
?????? ?? ?? ? ?????????? ??? ?????????? ?????? ?????? ?????????? ?????????? –????????? ??,
????? ??????, ?????? ?????? ?????????? ?? ?????????? – ? ?????? ??? ?????????? ??????????
????????? ?????????? ??? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?? ?? ??
?? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ??
?? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??.

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

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

80. ???????, ??? ???? ?????? ???, ?????? ??? ?????????????? ??????????????
????? ?????? ?????????? ?????? ?? ?????????????? ??? ?????????? ??????????
??? ?????????? ?????????? ??? ??????????.

V – ??????

81. ??? ??????, ??? ???? ?????? ???, ?????? ??? ?????????????? ?????????? ???
????? ??? ?????????? ??? ?????? ??? Bundesfinanzhof ??? ?????? ??????:

«?? ??? 63 ??? ?????????? ?? ?????? ???????, ??? ???? ?????? ???, ??? ???? ?????? ???
????, ? ??? ?????? ?????? ??? ?????????? ?????? ???????, ??? ???? ??? ??????
????????????? ?????? ???????, ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????? ???????, ?? ?????? ?????? ??? ??????
?????????, ?????????? ??? ?????? ?????? ?????????? ???????, ?????? ???? ??????
????????? ??? ?????? ?????? ?????? ???????, ?? ?????? ?????? ??? ?????????? ???
?????????, ?????? ??? ???? ?????? ?????? ???????, ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ???????, ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ???????, ??? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

1 – ?????? ??? ??????????: ? ??????.

2 – C-450/09, EU:C:2011:198.

3 – ?. ?????? 5 ??? 7 ??? ?????? Schröder (EU:C:2011:198) ?????? ??? ?????? 13 ??? 23
??? ?????? ?????? ??? ?????? Y. Bot (EU:C:2010:761).

4 – ??? ?????????? ??? ?????? ??? ?????? BGBI. 2002 I, ? . 4210.

5 – ?. ????? 1 ??? 49 ??? EStG.

6 – ??? ?????????? ?????????? ??? ?????? 4 ??? 9 ??? EStG.

7 – ?????? ??? Bundesfinanzhof ??? 5?? ?????? 1990, GrS 4/89 ??? 6/89, ??????????
C.II.1.C, ??? ??? 12?? ????? 2003, GrS 1/00, ?????????? C.II.3.

8 – ?????? ??? Bundesfinanzhof ??? 5?? ?????? 1990, GrS 4/89 ??? 6/89, ?????????? C.I.1.

9 – ?????? ??? Bundesfinanzhof ??? 5?? ?????? 1990, GrS 4/89 ??? 6/89, ??????????
C.II.1.C, ??? ??? 12?? ????? 2003, GrS 1/00, ?????????? C.II.1.C.

10 – ?????? ??? Bundesfinanzhof ??? 31?? ?????? 2004, X R 66/98, ?????????? II.3 ???
????? ?????????? ??????.

11 – ?. ????? 12 ??????.

12 – ?. ?????? Welte (C-181/12, EU:C:2013:662, ????? 19).

13 – ?. ?????? Welte (EU:C:2013:662, ????? 20 ??? ??? ?????????? ??????????),
????? ??? Schröder (EU:C:2011:198, ????? 26).

14 – ?????????? ???????? ??? ??????? (C-127/12, EU:C:2014:2130, ?? 53), ??? Mattner (C?510/08, EU:C:2010:216, ?? 20 ??? ??? ??????????? ??????????).

15 – ????? ?????????????????? ???????? Schröder (EU:C:2011:198, ????? 27), ?? ???????????
?????? ????? ? ?? ????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ???????, ???
????????????? ?? ??? ?????? ??????, ?? ?????? ?????? ?????? ??? ????? ?????????? ?????? ???????
?????? ?????????? ?? ?????? ?????????? ??? ?????? 63 ???.

17 – ?????????? Halley (C-132/10, EU:C:2011:586, ????? 22 ??? ??????????????????????????????), ????? ??? Schröder (EU:C:2011:198, ????? 30).

18 – ?????????? ??????? ?? ?????????? (EU:C:2012:688, ????? 28), ??? ??????? ??
????????? (C-600/10, EU:C:2012:737, ????? 14).

19 – ??., ????. ????? ?????????? ??? ???. ????????, ???????, ??????? Schröder (EU:C:2011:198, ??? 31).

20 – ??., ???' ????????, ???? ????? ?? ?????????? ????????, ??????? Schröder (EU:C:2011:198, ????? 31). ??????? ?? ??? ??????? ?????? ??? ?????? ??????? ?? ????????, ?? . ???????? Haribo Lakritzen Hans Riegel (C?436/08 ??? C?437/08, EU:C:2011:61, ??????? 52 ??? 53), ????? ??? Glaxo Wellcome (EU:C:2009:559, ??????? 57 ??? 58).

21 – ?. ?????? Schröder (EU:C:2011:198, ???? 32).

22 – ???. ?????????? ?????????? ????. ?????????? (EU:C:2014:2148, ??????? 45 ??? 46), ?????? ??? Welte (EU:C:2013:662, ??????? 42 ??? 43 ??? ??? ?????????? ??????????).

23 – ??????? ??????? ???. ?????????????? (EU:C:2012:688, ??? 35 ??? ??? ?????????????? ??????????).

24 – ?????????? Schröder (EU:C:2011:198, ????? 35 ??? ????? ??????????????????????????????),
????? ??? ?????????? ??? ?????????? (EU:C:2014:2148, ????? 47).

25 – C-279/93, EU:C:1995:31.

26 – ?????????? Schumacker (EU:C:1995:31, ??????? 31 ??? 32), ????? ??? Schröder (EU:C:2011:198, ????? 37 ??? ??? ?????????????? ??????????).

27 – ?????? ?????????????? ?????? ??? ?????????????? ?????? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ? ?????? ??? ?????? ???
????????? ?????? ??????. ?. ?????? Schröder (EU:C:2011:198, ??? 38 ??? ???)
????????? ??????).

28 – ??????? Schumacker (EU:C:1995:31, ?????? 32). ???. ?????? ?????????? ??? ???????
?????????? Y. Bot ????. ?????? Schröder (EU:C:2010:761, ?????? 44 ??? 45).

29 – ?????????? ???????? ??? ??????????? (EU:C:2012:688, ????? 37), ??? Schröder (EU:C:2011:198, ????? 40 ??? ??? ?????????????? ??????????).

30 – ???. ?????? Centro Equestre da Lezíria Grande (C-345/04, EU:C:2007:96, ?????? 25).

31 – ?. ?????? Schröder (EU:C:2011:198, ???? 46).

32 – ??, ?????? 59 ???????.

33 – ?????? ? «Korrespondenzprinzip» ??? ?????????????? ??? ?????? 12.

34 – ???. ??????? 9, 12 ????? ??? 42 ??? 43 ??? ?????????? Schröder (EU:C:2011:198), ???, ??? ?????? ??? ?????? ??????, ?????? 20 ??? 23 ??? ?????????? ??? ?????? ?????????? Y. Bot ????. ?? ??? ?????? (EU:C:2010:761).

35 – ???. ?????????? ??? ?????????????? ??? ????? ?????????? 25.

36 – ? ?????????? ?????????? ?????????????? ?????????????? ??? ? ?????????? ??? ???? ??? ??????????
????????? ?????????? ?????????? ??? ?? ??? ???? ?????????? ??? ?????????? ??? ???? ??????????
??? ?? ?????????? ???????, ??? ?? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? ???
????????????? ??????? ?????????? ??? ??????? ??? ??????????, ??? ?? ?????????? ??? ?
????????? ??? ?????????? ?? ?????????? ?? ??? ?????????? ?? ??? ?????? ??? ???????????, ??? ?? ??????????
?? ?? ?????? ?????????? ?????????? ??? ?????????????? ??? ?? ?????????? ??? ?????????????? ???
????????? ??? ???????, ??? ?? ?????????? ??? ?? ?????????????? ??? ?????????????? ?????????? ??? ??
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??????????
?????????????.

37 – ???. ?????? Schröder (EU:C:2011:198, ???. 43).

38 – ???. ?????????? Schumacker (EU:C:1995:31, ????? 21)? Itelcar (C?282/12, EU:C:2013:629, ????? 26 ??? ??? ?????????????? ??????????), ????? ??? Conijn (C?346/04, EU:C:2006:445, ????? 14 ??? ??? ?????????????? ??????????).

39 – ??????? ??????? ?????????? (EU:C:2012:688).

40 – C?600/10, EU:C:2012:737.

41 – ???. ?????? 45 ??????? ??? ??????? Schröder (EU:C:2011:198, ??????? 45, 46 ??? 49).

42 – ????? ?? ??????? ?????? ?????? ??????????? ?????????????? ?????????????? ?????????????? ?? ?????? ???
?????????????? ?? ??????????? ??? ?? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ???
??????????, ?? ??????????? ??? ?? ??? ?????????? ?????????????? ??? ?????????????? ??? ???????????????
??????????, ? ??????????? ??? ?? ?????????? ??? ?????????? ??? ??????. ?. ?. ??????? ???????
???? ?????????? (EU:C:2012:688, ??????? 25 ??? 26).

43 – ? ?????? ?????? ??????????????? ?? ?? ???????????, ??? ?????? ?????? ?????????? ??
?????????? (EU:C:2012:688, ?? 42), ?? ? ?????? ?????????? ?? ?? ?????????? ?? ??
??????????, ?????????? ?? ??????? ?? ?? ?????? ???????????, ?? ?? ?????? ??
??????????, ?????????? ?? ?? ?????? ???????????.

44 – ??????? ???????? ??? ?????????? (EU:C:2012:737, ???. 17).

45 - ?? ??. ???. 09/001, ?. 86.

46 - ?? L 64, ?. 1.

47 – ??., ??? ???? ??????, ?????? ?????????? Centro Equestre da Lezíria Grande (EU:C:2007:96, ????? 36), ??? van Caster (C-326/12, EU:C:2014:2269, ????? 55).

48 – ??., ????, ?????, ?????? DMC (C?164/12, EU:C:2014:20, ????? 44 ??? ?????????????? ??????????).

49 – ?. ?????? Schröder (EU:C:2011:198, ???? 48).

50 - ???. ?????? 12 ???????.

51 – ?. ?????? DMC (EU:C:2014:20, ?????? 46 ??? 47 ??? ??? ??????????????????????????).

52 – ??? ??????? ??? ???????????, ?? Bundesfinanzhof ??????????? ??? ?????? Schempp (C-403/03, EU:C:2005:446). ??????, ??? ??????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??., ????????, ??? 35), ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????.

53 – ??, ?????? 10 ??? 12 ???????.

54 – ? ?????????? ?????????? ?????????? ?????????? ????, ?? ?????????? ??????????, ???
????? ??? ?????? ???????, ?? ?????????? ??? ?????????? ?????????? ?????????? ??????????
?????? ?? ?????? ?????????? ?????????? ? ?????? ?? ?????????? ?????????? ?????????? ????

?????? Papillon (C?418/07, EU:C:2008:659).

55 – ??., ??? ??????, ?????????? Manninen (C-319/02, EU:C:2004:484, ???? 42), ??? Papillon (EU:C:2008:659, ???? 43).

56 – ??., ??? ??????, ???????? Emerging Markets Series of DFA Investment Trust Company (C?190/12, EU:C:2014:249, ????? 92 ??? ??? ?????????????? ??????????).

57 – ???. ??????? DI. Finanziaria di Diego della Valle & C. (C?380/11, EU:C:2012:552, ???? 47 ??? ??? ?????????????? ??????????). ???????, ?????????? ?????? ??? ?????? 35 ???. ??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????????? (C?493/09, EU:C:2011:344).