

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

?? 30?? ?????? 2016 (*)

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

???? ?????? C?123/15,

? ? ?????????? ??? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ???
??????? ?? Bundesfinanzhof (??????? ?????????????? ?????????????? ??????????????, ??????????) ??
??????? ?? 20?? ?????????? 2015, ? ???? ?????? ??? ?????????? ??? 12 ??????
2015, ??? ?????? ??? ????

Max-Heinz Feilen

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Finanzamt Fulda,

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

????????? ??? ??? M. Ileši?, ?????? ???????, C. Toader, A. Rosas, A. Prechal ??? E.
Jaraši?nas (????????), ????????,

??????? ??????????: M. Watheler

?????????: I. Illéssy, ??????? ????????????,

??????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????????? ?????????? ???
27?? ?????????? 2016,

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

- ? M.-H. Feilen, ?????????????? ??? ??? P. Thouet, Rechtsanwalt,
- ? ?????????? ????????, ?????????????? ??? ??? T. Henze,
- ? ?????????? ????????, ?????????????? ??? ??? A. Rubio González,
- ? ?????????? ??? ????????, ?????????????? ??? ??? S. Sutton ??? ??? M.
Holt, ?????????????? ??? ??? R. Hill, barrister,
- ? ?????????? ????????, ?????????????? ??? ??? M. Wasmeier ??? W. Roels,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?? ??????????
?? 17?? ?????? 2016,

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

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1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 63, ?????????? 1,
??? ?? ?????? 65 ???.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Max-Heinz
Feilen ??? ??? Finanzamt Fulda (?????? ?????????? ?????? ??? Fulda, ???????), ??
????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???.

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

3 ? ???? 1, ?????????? 1, ?????? 1, ??? Erbschaftsteuer- und Schenkungsteuergesetz
(????????? ??? ?????? ??? ?????????? ?????????? ??? ??????, ??? ????: ErbStG), ???
????? ?? ?????? ?? ?? ?????????? ??? 2007, ?????????? ??? ?????? ?????? ??????????
????? ?????????? ?????? ?????? ??????.

4 ? ???? 2, ?????????? 1, ?????? 1 ??? 3, ??? ErbStG ?????? ?? ???:

«????????? ?????????? ??????????:

1. ??? ?????????? ??? ?????? 1, ?????????? 1, ?????? 1 ??? 3, ?? ? ??????????????
????? ?? ?????? ??? ?????? ??? [...] ? ? ?????? ??? ?????? ??? ?????????? ???
??? ?????????? ?????????? ??? ?????? ?????????? ?????????, ??? ?? ?????? ???
????????????? ?????? ??????????. ?????????? ?????????? ??????????:

a) ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????????,

[...]

3. ?? ??? ???? ?????? ???????????, ??? ?? ?????????? ?????????????? ??????????
????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 121 ???
Bewertungsgesetz [(????? ??? ??? ??????????)]. [...»

5 ? ???? 15 ??? ErbStG, ?? ?????? ?????????? ??? ?????????? ???????????, ??????,
????? ?????????? 1, ?? ???:

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

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

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

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

3. ?? ?????? ??? ?????????? ??? ?????????? ??? 2 ?????? ??? ?????? ??? ??? ????,

4. ?? ?????? ??? ?? ?????? ?????????? ?? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ???
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[...]».

6 ??? ?????? ?? ?????? ??? ?????? ????????????, ?? ?????? 27 ??? ErbStG ?????????? ??
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«(1) ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 3:

%

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

50

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45

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

40

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

35

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

30

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

25

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

20

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

10

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

[...]

(3) ? ?????? ??? ?????????? 1 ??? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? 1 ?????????? ??? ?????? ??? ?????? ?????????? ???
????? ?????????? ? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
?????????»

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

7 ? ?.-?. Feilen, ? ??????? ?????????? ??? ????????, ????? ? ?????????? ??????????? ???
?????? ??? ??? ?????????? ?? 2007 ??? ??? ????? ??????, ??? ?????????? ??? ? ??????????
????????? ????. ? ?????????? ??? ?????????? ??? ?.-?. Feilen ?????????????? ??? ?????????? ???
?? ?????? ??? ??? ?????????? ??? ?????? ??? ??? ????? ?????????? ?? 2004 ??? ??????,
???? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ?????????? ??? ? ??????
??? ?????????? ??? ????? ?????????????? ??? ????? ?????? ??? ?????? ??? ?????? ??? ??????,
? ?????? ??? ??? ??? ????? ?????????? ???, ????? 11 961,91 ???, ?????????? ??? ??? ???
??. Feilen.

8 ??? ?????????? ?????? ??? ??? ?????????? ?????? ??? ?????? ???, ? .?. Feilen,
??????, ?????? ??? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???
???????????, ???, ???????, ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
??? ?????? 27 ??? ErbStG. ?? ?????? ??? ?????? ??? 28 ?????? 2009, ? ??????
????????? ?????? ??? Fulda ?????? ??? ?????? ??? ?????????? ??? ?????? ??????
????? ?????????? ?? ?????? ??? ??????????, ??? ?????? ?? ?????? ?????? ???
????? ??????????.

9 ?? Finanzgericht (?????????? ??????????? ????????, ????) ??????? ??
?????? ???. Feilen ????. ???. ?????????????? ???????, ???. ?????????? ???. ???.
????? 27, ?????????? 1, ??? ErbStG ?????????? ???. ?????? ?????????????? ??????? ???.
????????? ???. ??????? ???. ?????? ?????????? ?????? ???. ?????? ???. ??????. ?????? ???. ???.
?????????, ???. ??????????, ???. ?????? ?????? ??????, ?????, ?????? ? ?????????????? ??????, ???. ???.
??????, ????. ?????????? ???. ?????? ???. ?????? ?????? ?????????? ???. ?????? ?????????? ???.
????????, ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????, ?????? ???. ?????? ???.
????????, ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? 2, ?????????? 1, ?????? 1, ???.
ErbStG ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
2, ?????????? 1, ?????? 3, ??? ErbStG.

10 ?? Bundesfinanzhof (????????? ??????????????? ??????????? ???????????, ??????????),
????????? ??? ?????? ?????????? ?????? ???????????, ?????????? ??????????? ??? ?????? ??
????????????? ??? ?????? 27 ??? ErbStG ?? ?? ?????? ??? ??????.

11 ???????????, ??????, ??? ? ?????????? ?? ? ?????????? ? ?????????????? ?? ????
????? ?????? ?????? ?? ??????? ?? ?????????? ?? ? ?????????? ?? ? ?????? ?? ???? ??
????????? ?????????? ??????. ??? ? ???? ?????? ??????????, ? ?????????? ??
????????? ? ?.?. Feilen ??? ? ???? ?????? ?? ???? ?????? ?? ? ?????????? ?? ???? ??
????????? ??????, ??? ? ?????????? ?? ???? ?????? ?? ? ?????????????? ?? ???? ?? ???? ??
?? ???? ?? ???? ?????????? ?? ???? ?????? ?? ???? ??????.

12 ????????, ?? ?????? ??????????? ??????????? ??? ? ??????? ?? ?????????
?????? ?? ???? ?????????????? ???' ?????????? ??? ?????? 27, ?????????? 1, ??? ErbStG
????? ??????, ?????????????? ???? ??? ?????????? ??? ???????????, ?? ??????
?????????? ??? ??????? ?????????, ???? ?????????????? ?????????? ??? ?????? ???
?????????? ??? ????? ?????????????? ?????????? ??? ?????? ??? ??????
?????????? ?????????? ??? ????? ?????????? .. ?????????? ?????????? ?????????? ?? ??? ?? ?,
?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? 12?? ?????????? 2009, Block
(C?67/08, EU:C:2009:92), ?????? ?? ?????????? ??? ?????????? ?????? ??????????.

13 ???????, ?? ?? ???? ?????????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ??????????

????????? ?? ?????? ?? ?????? ? ?????? ?????? ?? ?? ?????? 27, ?????????? 1, ??? ErbStG

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

14 ???, ??, ????????, ????, ?? Bundesfinanzhof (???????, ??????????????, ??????????)
?????????) ???????, ?? ???????????, ?? ???????????, ?? ???????????, ?? ???????????, ??
????????? ???????????, ?? ???????????, ??:

«???????????? ????? ?????????? ?????????????? ??? ?????????? ????? ?? ?????? 63, ?????????????? 1,
?????, ?? ?????????? ?? ?? ?????? 65 ????, ? ??????? ?????? ?????? ?????? ???' ?????????? ???
??????, ?? ?????????? ??????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?? ??????????????
?????????? ????????, ? ????? ?????????? ?????????? ?????? ? ?????? ? ??????????
?????????? ?????????? ?????????? ??? ?????? ?????????? ?? ?????????? ?????????? ??????????
????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ???
????????? ??? ?????? ?????????? ?????? ?????????? ?? ??? ?????? ?? ?????? ??????, ??? ? ????
????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ??? ?????????? ??????
????????? ??? ?????? ?????????? ?????? ??????????;»

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

15 ?? ?? ?????????????? ????????, ?? ?????? ?????????????? ?????, ???' ??????, ??
????????????? ?? ?? ?????? 63, ?????????? 1, ??? ?? ?????? 65 ????? ?????????????? ??
????????? ????????, ????? ? ??????? ????? ?????????? ?? ????????, ????? ?? ??????,
?? ????????, ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????????? ????????, ?????????? ?? ?????? ?? ?????? ?????????????? ?? ?????? ?? ??????????
????????????????? ?????????????? ?????????? ?? ??????, ?????? ?? ?????????? ?? ??????????
?? ??????????, ?????? ?? ?????????? ?????????????? ?????????????? ?? ?????? ?? ??????
????????????? ?????? ?? ?????????? ?? ?????? ?? ??????

16 ????? ?????????? ?? ?????? ????????????, ? ?????????????? ????????, ??? ?????????? ???
????????? ??? ???? ? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?
???????????????, ????????, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???, ??????
????????? ??? ?????? ??? ?????? ??? ?????? 63 ????, ?????? ?? ?? ?????????? ?????????? ???
????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? (??., ??' ???? ???
??????, ?????????? ??? 23?? ??????????? 2006, van Hilten-van der Heijden, C?513/03,
EU:C:2006:131, ?????? 39 ?? 42? ?? 17?? ?????????? 2008, Jäger, C?256/06,
EU:C:2008:20, ?????? 24 ?? 25? ?? 17?? ?????????? 2013, Welte, C?181/12,
EU:C:2013:662, ?????? 19 ?? 20, ?????? ??? ??? 3?? ?????????? 2014, ?????????? ???
???????, C?127/12, ?? ????????????, EU:C:2014:2130, ?????? 52 ?? 53).

17 ? ??????? ???. ?????? ???. ?????? ???. ?????? ?????????? ???. ?????????????? ???. ?????????????? ???.
????? ???. ?????????? ???. ?????? ?????? ???. ?????? ?????? ???. ?????? ?????? ???. ?????? ???. ?????? ???.
??? ?????? ???. M.-H. Feilen ????. ??????, ????. ????. ?????? ?????? ???. ???. ????. ?????? ?????? ???.
????? ???. ????. ?????? ???. ?????? ???. ????. ????. ????. ????. ????. ????. ????. ????. ????. ????. ???.
????? ???. ????. ?????? ???. ????. ????. ????. ????. ????. ????. ????. ????. ????. ????. ????. M.-H.
Feilen ? ?????????? ???. ????. ????. 27 ????. ErbStG ?????. ????. ????. ?????? ?????? ???.
????? ???. ????. ????. ?????? ???. ????. ????. ?????? ???. ?????? ?????? ???. ????. ?????? ?????? ???.
?????, ? ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ?????? ???. ?????? ???. ?????? ???.
???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. 63, ?????? 1,
?????.

18 ????????, ??? ?? ????????, ?? ?????? ?? ???? ?????? ?? ???? ? ???? ?????? ?? ???? ?????? ??
????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?? ???? ?????? ?? ???? ??
63, ????????, 1, ??? ??, ?? ????????, ?? ????????, ?? ???? ????????, ?? ???? ????????, ?? ???? ??????

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

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

19 ?????????????? ????. ?????? ????. ?????????? ?????? ?????? ? ?????? ?????????? ??
????????? ?????????? ?????????????? ?????????????????? ?? ?????????? ?????????????? –????? ???
????????? ?????????????? ?????? ????. ?????????????? ?????? ???? ?????????????? ?????? ?????–????
??? ????. ?????????? ????. ?????????????? ?????? ????. ?????????? ?????? ???? ????. ????. ????. ????.
????????? ? ?????????? ?????? ?????? ????. ?????????? ?????? ?????? ?????????? ?????? ?????? ??????
????????? ?????????? ????. ????. ?????? 63, ?????????? 1, ????, ????. ?????? ????. ?????????? ????.
????????? ?????????? ?? ?????????? ?????? ?????????? ????. ?????????? ?????? ?????? ?????? ??????
????????? ? ????. ?????????? ????. ?????????? ?????? ?????????? ?????? ?????? ?????? ????.
????????? ??????, ?? ?????? ????. ?? ?????????? ????. ?????????? ????. ?????????? ????.
????????? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????????? ????.
????????? ?????? ?????????? ????. ?? ?? ??????, ????. ?? ?????? ?????? ????. ?????? ?????? ????.
??? ?? ????. ?????????? (??., ??' ????. ????. ??????, ?????????? ????. 17???. ?????????? 2008,
Jäger, C?256/06, EU:C:2008:20, ?????? 30 ??? 35? ??? 17???. ?????????? 2013, Welte,
C?181/12, EU:C:2013:662, ?????? 23 ??? 26? ??? 3???. ?????????? 2014, ?????? ????.
?????????, C?127/12, ?? ??????????????, EU:C:2014:2130, ?????? 57 ??? 60, ?????? ????.
4???. ?????????? 2014, ?????? ????. ??????????, C?211/13, ?? ??????????????,
EU:C:2014:2148, ?????? 40 ??? 43).

20 ?? ???????????, ?? ??? 27, ?????????? 1, ??? ErbStG ?????????? ?????? ??? ???
?????????? ??? ???? ????, ??? ?????????????? ????????, ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? I, ?? ? ?????????? ???, ????? ??? ?????????? ???
????????? ??? ?? ??? ????? ??????, ?????????? ?? ??? ????? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ?????????? ??? ?? ??? ??? ?????????? ??? ?????? ???
????????? ??? ????? ?????????? ??? ????????. ?????????? ???, ?????? ??? ?????? 2 ???
ErbStG, ??? ?????????? ?????????? ??? ? ???????????????, ??? ??? ??? ?????? ???
??????, ? ? ??????, ??? ??? ????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??????????, ??? ??? ????? ?????? ??? ? ?????????? ??? ?????? ??? ??????????
? ??? ? ?????????? ??? ?????? ?? ??? ?????? ??? ? ?????? ?????? «?????? ??????»,
????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????????
????????? ??? ??????? ?, ?? ?????????? ??? ?????????? ??? ?????? ??? ??????????, ??? ??????????
?? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????

21 ??????????, ? ??????? ?????? ????? ??????? ?? ?????????? ??? ?????????????????? ??? ??????????
??? ?????? ?????????????? ??? ?????? ??? ?????? ?????? ?????????????? ?? ?????????????? ??? ??????????
??? ?????? ? ?????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????????? ??? ? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ???
????????????? ??????. ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ? ?????????? ??? ? ???
????????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
??? ?????????? ?????????? ?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
? ?????????? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
????? ??? ?????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ??????????
????????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????
????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
?????????. ??? ??? ??? ??? ???, ??? ?????????? ?? ??? ?????? ??? ?????????? ???, ??? ??? ??? ??????
????????????? ??? ?????????? ??? ?????? ??? ??????????.

23 ?????????? ??? ?? ?????? ??????????? ?????????? ?????????? ?? ??? ?? ??? ?????? ???? ?
?????? ?? 12?? ??????????? 2009, Block (C-67/08, EU:C:2009:92), ?????????? ?? ??????
??????????, ??????????????? ??, ?? ?????????? ?? ??? ?????????? ?? ?????? ?????????? ?????
??????????, ? ??????? ?? ?????? ?????? ?????? ?????? ??? ?? ?????? ??????????? ??????????????
?????????? ?? ?????? ??????????? ??, ?? ?????? ?????????? ?????? ???, ??? ?? ??????????
?????????? ??????????? ??, ?? ?????? ?????? ??????, ? ?????? ?????????? ?????????? ??? ?? ?
?????????? ??, ?? ?????????????? ??, ?? ?????? ?????????? ?????????? ?? ?? ?????? ???
??????????, ??? ?? ??? ?????? ??????, ?????? ??? ?????????????? ?????????????? ??????????.

24 ????? ?????? ??????????? ?????????????? ?????? ?????????????? ??? ?????? 65 ????,
????????????? ???, ??? ???? ?????????? 1, ?????????? ??, ??? ???? ?????? ??? ?????? 63
???? «??? ???[?] ?? ?????????? ??? ?????? ?????? [...] ?? ?????????? ??? ?????? ?????????? ??????????
??? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ?????? ?????????? ??? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? »..

26 ????????, ?????? ?? ??????? ?????????? ??????? 65, ?????????? 1, ??????? ??, ????.
??? ?? ?????????? ?????????? ??? ?????????? 65, ?????????? 3, ??.
???? ?????? ?????????? ??? ?? ?????????? ??? ??????????, ?????? ?????????? ?????? ?
????, ?????????? ??? ?? ?????????? ??? ????? ?????????? ? ??????, ?????????? ??
????????????? ?????? ?????? ?????????? ?????????? ??? ?????????? ? ?????? ??????????
????????? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??????
????????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????? ?????????? ??? ?????? ?????????? ?????? ??? ?????????? ?????????? ??????????
????? ?????????? ??? ??? ?????? ?????????? ?????? ??? ?????????? ? ?? ?????????? ???
????????? ??? ?????? ?????????? (??????? ??? 3? ?????????? 2014, ??????? ???
???????, C127/12, ?? ???????????, EU:C:2014:2130, ??? 73 ??? ????? ??????????).

27 ????? ?????? ?? ?????????????????? ??? ??????????????, ??? ??????????????? ?? ? ???????
????? ??????? ?? ?????? ?????? ?????? ?????? ?????????? ?????????????? ??? ????? ??????????????, ??? ??????

????? ????????????, ??? ?????? ??? ???????? ??? ?????????? ??? ?????????? ?????????? | ??? ??????????
????? ?????? ??????????, ?? ??? ?????? ???????? ??? ?????????????? ??????????, ?????????? ???
????????????? ?????????? ?? ????, ???? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ????
?????????, ?????????? ?????????? ?????????? ?????? ?????????? ?????????? ??? ?????????? ???
????? ?????????? ??? ?????? ?????? ?????????? ??????????, ?????????? ??? ?????? ??? ??????
????????? ?? ?????????? ??? ???? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????????
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????????????
????????? ?????????? ???? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ???? ??
????? ?? ?? ?????????? ??? ?????? ?????????? ???' ?????? 27, ?????????? 1, ??? ErbStG
????????? ??? ?????? ?????????? (??., ???' ?????????, ?????? ??? 17?? ?????????? 2013,
Welte, C?181/12, EU:C:2013:662, ????? 51 ??? ??? ?????????????? ??????????).

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

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

30 ?????????????? ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ? ?????? ??????????????
??? ?????? ??? ?????????? ??? ?????????? ?????? ?? ?????????????? ?????? ?????????? ???
????? ??? ?????????? ??? ?????????? ?????? ?? ?????? ??? ?????????????? ??? ?????? ??? ??
????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????????????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????????? ???
??? ?????????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? (????????? ??? 17?? ??????????
2013, Welte, C?181/12, EU:C:2013:662, ????? 59, ??? ??? 7?? ?????????? 2013, K, C?322/11,
EU:C:2013:716, ?????? 65 ??? 66 ??? ??? ?????????? ??????????).

31 ?? ??????????, ?? ?????? ?????????? ?????????? ??? ?? ?????????? ??? ?????? ??????????
??? ??? ?????????? ?? ? ?? ?????? 27, ?????????? 1, ??? ErbStG ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ?? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? I, ?? ?????????, ??? ???' ?????? ??? ??
50 %, ? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????, ??? ?????? ??? ??
????? ?????????? ??? ?????? ??? ?????? ?????????? ??????????.

32 ?? ??? ?????? ?????? ?????????? ?????????? ???' ?????? ? ?????????? ??????????, ? ????
????????? ??? ?? ?????? 27 ??? ErbStG ?????????? ??? ?????????? ??? ? ??????????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?? ??????
??? ?????? ??????????, ??? ?????????? ??? ?????? ?????????????? ??? ?? ?????? ??? ??????
????? ?? ??? ?????? ??????. ???????, ? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
?? ?????????? ?????????? ?????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ??????

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33 ?? ??? ?? ??????? ????????, ????? ??????? ??? ?? ??????????? ??? ?? ??????????? ??? ?? ???????????,
???' ?????????? ??? ?????? ? ?????? ??? ????? ??????????? ??????????? ??? ?? ??????? ??? ?? ??????
??? ??????? ??? ?????????????? ?????????? ?????????? ??? ?? ?????? ??? ???????????
?????? ?????? ??? ?????? ??? ??????? ?????????? ?????????????? ??????????? ??? ?? ???????, ???
????????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ?????? (??., ??' ??????? ?? 1??
?????????? 2011, ????????, C?250/08, EU:C:2011:793, ??? 73, ???
????????? ??? ??????????, C?253/09, EU:C:2011:795, ??? 74). ? ?????? ??? ??
????????????? ?? ?? ?? ??? ?????????? ?????????? ?????????? ?????????? ??????? ??
????????????? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????????? ???
?????? ?????? ????.

34 ??? ?? ??????? ?????????? ???, ??? ??????? ??? ?? ??? ?????????? ?????????? ???
????? ????????????, ?????????? ?????? ?????????? ?????? ??? ?? ??? ??????????????
????????????? ??? ?? ??? ?????????????? ??????????????.

35 ???????, ?? ?????????? ??? ???????, ?? ?????????? ??? ?? ??????? ?? ?????????? ?? ???????????
??????????, ?? ?????? ?????????? ??? ???????, ?????? ??????, ??? ??????????? ??
?????????? ??? ?????????????? ? ?? ?? ?????????? ?????????? ?????????? ?????????????? ??
????????????? (??., ??' ??? ?? ??? ??????, ?????????? ??? 18?? ??????????? 2003, Bosal,
C?168/01, EU:C:2003:479, ??? 30, ??? ?? 24?? ??????????? 2015, Grünwald, C?559/13,
EU:C:2015:109, ??? 49).

36 ???????, ?? ??????? ??????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? 27 ???
ErbStG, ? ?????????? ?? ?????????? ??? ??????? ??? ????? ?????????????? ??? ?????? ?? ???????,
????? ?? ??????? ?? ?????? ??????? ??? ????? ?????????????? ??? ?????? ???
????????????? ?????????????? ?????????? ??? ?????? ????.

37 ???????, ??? ?????????? ??? ?? ?????? 31 ??? 32 ??? ??????? ???????????, ?
????????????? ?? ?? ?????? 27 ??? ErbStG ?????? ?????????? ??? ?? ?????? ??? ?????
????????? ??? ?????????? ?????????????? ??? ?????? ?????????? ? ?????? ??????????????
????????????? ?????????? ?????????????? ?????? ?????? ?????????? ??? ?? ?????? ???
????????? ?? ?????????? ?????? ?????, ??? ?? ?????? ?????????? ?????????? ??? ?? ?????
????????????? ??? ?? ??? ?????????????? ?????????? ??? ?????????? ??? ?????????? ?? ??????? ?????
?????. ??? ?? ?????? ??? ?????? ?????, ?????????, ??? ?????????? ? ???????
????????????? ??? ?????? 71 ??? ?????????? ???, ?????? ?????????? ?????? ???
????????????? ?? ?? ??????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ??
????????????? ?????????? ?????? ???????????, ?????????? ??? ?? ?????????? ?????????? ??????????
??? ?? ??????????? ??? ????? ?????????? ?? ?? ??? ?????? ?????, ?? ??? ???????????
????????? ??? ?? ?????? ?????????? ?????? ??? ?????? ??????????.

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

39 ?????????? ? ?????????? ?? ??????? ?????? ???????????????, ?????? ?????????? ?? ??????
????????? ??? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? (??., ??' ??? ?? ??
?????, ?????????? ??? 1?? ?????????? 2011, ??????? ??? ?????? C?250/08,
EU:C:2011:793, ??? 78, ??? ??????? ??? ?????? ?????? C?253/09, EU:C:2011:795, ???
79).

40 ?????????????? ??????? ??? ?????? ??? ?????? ?????????????? ? ?????? ?????????????? ??
????? ??????? ??? ??????? ??????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ??
????????? ??????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?????????? ??? ??
????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??
????? ?????????? ??? ?? ?????? 27 ??? ErbStG ??????, ??? ?????? ?????????????? ??? ??
37 ??? ??????? ??????????. ? ?????? ??? ?????? ?????? ?????? ?? ?????????? ?? ??? ??
????????????? ????, ?????????? ??? ? ?????????????? ?????????????? ??? ?????????? ??? ??
????????? ??? ?????????? ??? ?????????????? ?????????????? ?????????? ??? ?????????? ??? ??
?????, ? ?????????? ??? ?????????? ?????????? ??? ?? ?????????????? ??? ?????? ??
????????????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??
??? ?? ??? ??? (??., ??' ??? ?? ?????, ??????? ??? 1?? ?????????? 2011, ???????
????? ?????????? , C?253/09, EU:C:2011:795, ?????? 80 ??? 81).

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

42 ??? ???????, ??? ??????? ??? ?????? ??? ?????? ?? ?????? ? ??????? ??? ?? ?????? 63,
????????? 1, ??? ?? 65 ??? ?????? ??? ?????????? ?? ?????? ?????????? ??? ??????, ??? ?
????????? ??? ?????? ??? ?????? ??? ?????, ??? ??? ???, ?? ?????????? ??????????
????????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??????????
????????? ?? ?????, ??? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????
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43 ??????? ??? ? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??????????????, ??' ???
????????? ?? ?????????? ??? ?????? ?????? ??????. ?? ?????? ??? ?????? ??????????
????? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??????????, ??? ??????????.

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

?? ??? 63, ?????????? 1, ??? ?? 65 ??? ?????? ??? ?????????? ?? ??????
?????? ????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????, ??? ??? ???, ??
????????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????
????????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??????????
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????? ???.

(?????????)

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