

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

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

??? 14?? ?????????? 2017 (*)

«????????????? ?????????? – ?????????? ?????????? ?????????? – ?????? 63 ??? – ?????
????????? – ?????????? ?????????? ?????? – ?????? ?????????? – ?????? ?????? –
????????????? ?????? – ?????? ?????????? ??? ?????????????? ??? ?????????? ??????
????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? – ?????????? ??? ?????????? ??? 12?? ?????????? 2006,
Test Claimants in the FII Group Litigation (C-446/04, EU:C:2006:774) – ?????? ??????
????????? ?????????????? – ?????? ??????????»

???? ?????? C-628/15,

?? ?????????? ?????? ?????????????? ?????????? ?????? 267 ????, ???
?????? ?? Court of Appeal (England & Wales) (Civil Division) [?????? (?????? ???)
(?????? ???), ?????? ??????] ?? ?????? ??? 11?? ?????????? 2015, ? ???
????????? ??? ?????????? ??? 24 ?????????? 2015, ??? ?????? ??? ???

The Trustees of the BT Pension Scheme

????

Commissioners for Her Majesty's Revenue and Customs,

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

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

????????? ??????????: M. Wathelet

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

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
9?? ?????????? 2016,

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

– ?? Trustees of the BT Pension Scheme, ?????????????? ??? ??? M. Gammie, QC, ???
C. McDonnell, barrister, ??? ??? ??? N. Hine ??? ??? R. Collins, solicitors,

– ? ?????????? ??? ?????? ???????, ?????????????? ??? ??? S. Simmons ??? J.
Kraehling, ??? ??? ??? D. Robertson, ?????????? ??? ??? R. Baldry, QC,

– ? ?????????? ???????, ?????????? ??? ??? R. Lyal ??? W. Roels,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?? ??????????
?? 21?? ?????????? 2016,

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

?????????

1 ? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 49 ??? 63 ???.

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ??????? ??? Trustees of the BT Pension Scheme (??? ????: Trustees) ??? ??? Commissioners for Her Majesty's Revenue and Customs (????????????? ??? ?????????????? ??? ??????? ??? ?????????? ??????????) (??? ????: Commissioners), ? ?????? ??? ?????? ??? ?????? ?????????????? ?????????????? ?????????? ??? ?????? ??? ?????????????? ???, ?? ?????????? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???, ?? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???.

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

??? ??? ?????????????? ??? ?????? ?????????? (**advance corporation tax**) ??? ??? ???
????????????? ?????????? ????

3 ??? ??? ??? ??????? ??? ?????????????? ?????????? ???, ??? ??? ?????????? ??? ?????? ???
????????? ??? ??????? ????, ?? ??????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??????? ?????????? ?????????? ??? ?????? ??? ?????????? «????????? ???????
?????????», ??? ?? ????, ??? ?????? ??? ?????????? ??? ?????? ?????????? ???, ???
????????? ??????? ?????????? ????, ?? ??????? ??? ?????????? ??? ?????? ?????????? ???, ???
?? ?????? ??????? ?? ??? ??? ?????????? ??? ?????? ??? ?????????? ? ?? ?????????? ??? ?????? ???.

4 ???' ?????????? ??? ?????????? ?????????? ?????????? ??????????????, ?????? ??????
????????? ??? ?????????? ?????????? ?????????? ?????????? ???, ???, ???,
??? ?????? 14 ??? Income and Corporation Taxes Act 1988 (????? ??? 1988 ??? ???
????????????? ??? ???????, ??? ????: ICTA), ?????????? ?????????????? ??? ?????? ??????????
(advance corporation tax, ??? ????: ACT), ?? ??? ??? ?????? ?????????????? ??? ?????? ???
?? ?? ??? ? ??? ??? ?????????????????? ???????.

5 ??? ?????? ?????????? ??????? ??? ???????, ??? ??????? ??????????
????????????????? ??? ?? ??????? ?????????? ?????????? ???, ?? ?????????? ???
????????? ACT ?? ?? ??? ?????? ??? ?????? ?? ?????????? ??? ?? ?????? ??? ?? ???
????????? (mainstream corporation tax) ? ??????? ?? ?????????? ?????????? ???
????????? ACT ??? ?? ?????????? ? ?????????? ???, ??? ??? ??????????
?? ?????? ?????? ?????????? ??? ???????, ?? ?????? ?????? ??? ?????????? ?? ?????????? ???
???? ?????? ?? ?? ??? ??? ?? ?????? ??????? ?? ??? ?????? ???.

6 ? ?????????? ??? ACT ??? ?? ?????????? ?? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????????? ???.

7 ??? ??????? ???, ??? ?? ?????? 20 ??? ICTA, ??????? ?????????? ?????????? ??????????
????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????, ??? ??? ?????? ??? ?? ?????????? ??? ??? ??????????
????????? ??? ?????? ???.

8 ????? ?? ?????????? ??? ?????????? ??????? ?????????? ??? ??????? ?????????
????????? ??? ACT, ? ?????????? ?????? ??? ?????????? ?? ??? ?????? ?? ?????? ?? ??????????,
??????? ??? ?????? 231, ?????????? 1, ??? ICTA, ?????? ?????? ??? ?? ?? ??? ACT
?? ????? ?????????? ??? ?? ?????????? ??????.

9 ????? ?? ?????? 231, ??????????? 3, ??? IICTA, ????? ? ??????? ?????? ?????????? ??
????????? ??? ?? ??? ???? ? ??????? ??????? ?? ??? ????? ??????????? ??? ?? ?????? ?, ??????
?? ??? ???? ??????? ?????????? ?????? ??????????? ?? ??? ????? ?? ??? ????? ??????????? ??? ?
????????? ??????, ? ??????? ?????? ?????? ??????? ?? ??????? ??? ?? ?????????? ??? ?? ???
?????????, ??? ??????????, ????? ??????????? ??? ??? ?? ??? ????? ?????????? ???.

???? ???? ??????????? ???? ???? ?????????? ?????????? ?????????????(foreign income dividend)

10 ????? ??? 1?? ??????? 1994, ???? ??????? ?????????? ??? ?????? ?????? ??????????
????????? ?????? ??? ?????? ?????????? ??? ??????, ?? ???' ????? ??? ??? ????
????????????? ??? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ? ?????? ??? ?????????? ?? ?? ??? ?????? ?????????? ??? ?????????? ??????
????? ??? ? ?????????? ????. ???' ?????????? ??? ?????? 788 ??? 790 ??? ICTA, ? ?? ???
????????? ?????????? ?????????????? ?????????? ??? ??? ?????? ??? ? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ???, ?????? ?????????? ?????????? ?????????? ??? ??? ??? ??????????
??? ?????? ?????????? ??????????, ???? ?????????????? ?????????? ??? ??? ?????? ???
????? ??????????, ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????? ???
?????.

11 ??????? ?? ??? ??? ??? ??? ?????? ?????? ?????? ?? ?? ?????? 4 ??? ??????????
??????????, ?????? ???????? ??????????? ?? ?????? ?????? ?????????? ?? ?????????????? ??????????
?? ??????? ?? ?????????? ?? ??? ??? ?????? ?????????? ?????? ?????? ?????? ???, ??? ?????? ??
?????????? ?? ACT ??? ??? ?????? ??? ??????????.

12 ??????????, ????, ? ?????? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ??????????????
????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????????????? ??? ??????
????? ??? ACT. ?????? ? ACT ??? ?????? ?????? ?????????? ?????????? ?????????? ??????
????????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ? ??????????
??????? ??? ? ACT ?????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ?????????????? ?
????????????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ? ??????
???? ?????? «?????????» ACT, ?? ?????? ?????? ?? ?????? ?? ?????? ?? ??????????
????????????????? ??????????.

13 ??????????? ?? ???????? ?? ?????? ?????????? ???? ?????????? ?????????? ?? ?????????? ?????????????? ??
????????? ?? ?????????? ACT, ?? ?? ????? 246A ??? 246Y ??? ICTA ?????????? ??
1?? ?????? 1994 ?? ?????????? «????????? ?????????? ??????????» (foreign
income dividend, ??? ????: FID). ???' ?????????? ?? ?????????? ??????, ?????? ??????????
??? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?????? ?????????? ??? ??????
????????????? ?? FID, ??? ??? ?????? ?????? ACT, ?????????? ??? ??? ?????? ??
?????????, ??? ?????? ??? ?????? ?? ?????????????? ?? FID ??????
????????????? ??? ?????????? ?????? ?????????? ?????????? ??????????, ?? ?????? ??????
?? ???' ?????? ?????? ?????? ACT (??? ????: ?????? FID).

???? ???? ????????????, ?? ?????? ?????????????????? ??????? ?????????????????? ??
????? ????????????, ?? ????????????, ?? ?????????????? ?? **FID** ??????????

14 ????. ?? ?????? 246C ??? ICTA, ??????? ??????? ??????????? ??????? ???????????????
?? FID, ??? ??????? ??????? ??????? ??? ?? ??????? ????. ???????????, ?? ????? ???.
?????:

«?? ???? 231, ?????????? 1, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ? ?????? ?????? ?????? ?????? ??????»

15 ?? ?????? 246D ??? ICTA ?????? ??????? ??? ?? ?????????????? ??? ?????? ?????? ?????? ??
?????? ?????????????? ??????? ?????????????? ?? FID ?????????? ?? ??????????????
????????? ?? ?????????????? ?? ?????????????? ?????????? (20 %) ??? ?? ?????? ??????????
????. ??? ?? ?????? ??????????, ??? ??? ?????????? ??????, ? ?????????? ??
????????????? ?????????? ??? ?????? ?????? ?? ??? ?????? ?????????? ?? ?????? ??? ??????????
???? ?? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? 231 ??? ICTA.

16 ????????, ?? ???? 246D ??? ICTA ??? ??????? ?????????? ??? ??? ?????? ??
?????? ?????????????? ??? ?????? ?????????? ?? ??? ?? ??????.

17 ????? ?? ??????? ????? ?????? ??? ?????? ?????? ?????? ????????, ??? «?????????????
????? ??????? ?? ??????? ?????????? ?????????? ??? ??? ????? ?????????????? ??????» (exempt
approved scheme) ????????????, ??????? ??? ?????? 592, ?????????? 2, ??? ICTA, ???
????? ??????????? ?? ??? ?? ????????, ?????????? ??? ?????????? ? ?????????? ? ??????????
???????????, ???.

18 ?????????????? ????. ????. ?????? 246C ??? ICTA, ?????? ??????? ?? ?????????????? ????.
????? ??????????? ?? ???. ?????? ?????????? ?????????? ?????????? ?????????????? ?? FID, ????.
???????, ????. ????. ?????? 231, ?????????? 1, ??? ICTA, ????. ?? ?????? ??????? ????.
?????, ????. ??????? ???. ?? ??????? ???. ?? ?????????? ????. ????. ????. ????????, ????.
???????, ????. ?????? ?????????? ????. ?????? ?????????? ?????? ?????? ?????????????? ?? ????.
???????, ????. ????. ????. ????. ??????????.

19 ?? ??????? ?? ACT ??? ?? ??????? FID ?????????????? ?? ?? ?? ??????? ?? ?? ???????
?????????? ?? 6 ??????? 1999 ?? ???????.

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

20 ?? BT Pension Scheme ????? ?????????????? ?????? ?????????????? ?????? ??
????? ??? ?????????????? ?????????? ??? ?????? ?????????? ??? British
Telecommunications plc. ?? ?? ??? ?????? ?????? ??? ?? ?????????? ??? Trustees, ?? ??????
????????? ??? ?????????????? ???, ??? ?? BT Pension Scheme ????? ? ??????????
????? ??? ?????????????? ???????.

21 ?? BT Pension Scheme ?????????????? ?? ??????? ?????????? ?? ??????? ?????????? ?? ??????? ?????????? ??
?? ????? ?? ?????????? ???. ????. ?? ?????? ?? ??????? ???. ?? ?????? ?? ?????? ???. ?? ?????? ???. ??
???????, ?? ??????? ?? ??????? ?? ???????????????, ?? ??????? ???. ?? ??????? ???. ?? 70 % ?? 75 %
?? ?????????? ?? BT Pension Scheme. ??????? ?? ?? ?????????? ?? BT Pension
Scheme ???. ?????????? ?? ??????? ?? ?????????? ?? ??????? ???. ?? ??????? ???. ?? ??????? ???.
????????? ?? ??????? ?? ?????????? ?? ??????? ???. ?? ??????? ???. ?? ?????????? ???. ?? ?? ??????
?????. ?? ?????????? ?? BT Pension Scheme ???. ?? ?????????? ??, ???. ??
?????? ?? 97 %, ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ???. ?? ?????????? ??
?? ??????? ???. ?? BT Pension Scheme, ???. ?? ??????? ???. ??
?? ??????? ???. ?? ??????? ???. ?? ??????? ???. ?? ??????? ???. ?? ??????? ???. ?? ??????? ??
?? ??????? ???. ?? 2 % ?? ??????? ???. ?? ??????? ???. ?? ??????? ???. ??

???????????, ??????? ?????? ?????????????? ??? 5 %.

22 ?? ??????????? ?????????????? ??? BT Pension Scheme ?????????????? ???????
????????? ?? ??? ?????? ?????? ?????????? ?? ?????? ?????? ?????????? ?? ??????? FID ??? ??
????????? ?????? ?????????? ??? ?????????????? ??? ?????????????? ?????????? ??????????
?????????????. ???' ?????? ??? ?????, ??? ??? ?????????? ??? ??????? ?????????? ??????????, ??
BT Pension Scheme ?????????? ?????????? ?????????????? ??? FID. ???????, ???'
?????????? ?? ?????? 246C ??? ICTA, ?? Trustees ??? ?????????? ?????????? ??????? ?? ?? ??
????????? ???, ?????????? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ??????????????,
????? ??? ?????????? FID, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????.

23 ?? Trustees, ??????????? ??? ???? ? ?? ??????????? ?????????????? ?????????????? ?????? ???
????????? ??????????????? ?? FID ??? ??????? ?? ?? ?????? ??? ??????, ??????? ??????
????? ??? Commissioners ??????? ??? First-tier Tribunal (Tax Chamber) [??????????????
????????????? ??????? (?????????? ???), ??????? ??????], ???????????, ?????? ???,
?????? ?????? ??? ?? ??????????????? ?? FID ?????????? ?? ?????? ?????? ??????????? ???
?? ??????? ??????? ????????. ?????????? ??? ? ?????? ??? Trustees ?????? ?????? ??? ??
First-tier Tribunal (Tax Chamber) [?????????? ??????????? ?????????? (?????????? ???)], ?
?? ??????? ?????? ?????? ??????????? ???' ?????? ??? ?? Upper Tribunal (Tax and Chancery
Chamber) [?????? ??????????? ?????? (????? ??????????? ??? ???????????), ???????
?????????], ?? Commissioners ??????? ??????? ??? ??????????? ??? ?? ???????????
????? ??????????? ??????? ??? Court of Appeal (England & Wales) (Civil Division)
[????????? (?????? ??? ??????) (????????? ???), ??????? ??????????].

24 ?? ??? ??????? ?? Court of Appeal (England & Wales) (Civil Division)
[?????? (?????? ???) (?????? ??)] ???????????? ?? ? ??????? ?? ??????
????? ???. ??????????????? ?? ??????????? ?? 1997 ?? 1998, ?? ? ??????? ?? ??????? ??
????? ?? Trustees ???. ??????????. ?? ??????? ?????????? ?????? ?? ? ??????? ??
?? ?????????? ???. ?? Trustees ?????????? ??????? ?? ?????? ??????? ???????
?? ??????? ???. ?? ??????, ?? ?, ?? ?????? ??????? ?? ??????
63 ???.

25 ?? ??????? ??????????? ??????????? ??????? ?? ?? ???? ??????? ??? 12?? ???????????
2006, Test Claimants in the FII Group Litigation (C?446/04, EU:C:2006:774), ?? ??????????
??????, ?????? ???, ??? ?????????? ?????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ?? ??????? FID ??????????? ??? ?????? 63 ????. ??????????, ?? ??????
????????? ?????????? ?? ? ??????? ??? ?????? ?????????? ?? ??????????, ??? ??
Trustees, ??? ?? ?????????? ??? ??????? ??? ?????? ????.

26 ????? ?? ??????? ??????????, ??? ?? ?????????? ??? ?????????????? ??? ?? ?????
????? ?????? ??? ?? Trustees ?????? ?????????? ?????????? ??? ?? ????? 63 ???, ? ??????
????????? ??? ?????????? ?? ?? ?????????? ??? ?????? 246C ??? ICTA ??? ?? ??????????
????. ??? ?????? ??? ?????? ?? Trustees ?????? ?? ?????????? ?????????? ??
????? ??? ?????? ?????????? ?? ?????????? ?? ?????????? ?????????? ??????, ?? ??????
????????? ?????????? ??? ?????? ?????????? ?????? ?? ?????????? ??? ??????
????? ?????????? ?? ??????????, ??????????, ?????? ? ?????????? ??? ?????.

27 ???, ???, ????????, ????, ?? Court of Appeal (England & Wales) (Civil Division) [???????,
 (???????, ???, ????) (???????, ???)] ????????, ?? ???????????, ?? ????????, ?? ????????, ??
 ??????????, ??, ??, ??, ????????, ??, ??, ???????????, ??, ??, ????????, ??, ???????????, ??, ??????????:

«1) ?????????????? ????. ?? ????????, ????. ?????? ??? 12?. ?????????? 2006
????? ?????? Test Claimants in the FII Group Litigation ????. Commissioners of Inland Revenue

(C?446/04, EU:C:2006:774) ?????? ??? ??????? ??????? ?? ???? ?????? ??? ???? 43 ??? 56
?? –??? ?????? 49 ??? 63 ???– ??????????? ?? ?????????? ??????? ?????? ??? ????
?????? ?????? ??? ??????? ??????? ???????, ??? ??????? ?????? ?????? ??????? ???
????????? ?? ?????? ?????????? ??? ??????? ?????? ??????? ?????? ?????? ???
?????, ?? ?????????? ?? ?????????? ??? ??????? ??? ?????? ?????????? ?? ?????? ???
????????????? ?????????????? ??? ???????, ???, ??????, ?????????? ??? ?????? ???
????? ?? ?????????? ??? ?? ??? ?????????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ???, ???????, ??? ?????????? ?????? ?????? ??? ?????? ?????? ???, ???
?? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???, ?????????? ???, ??? ????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????;???

2) ?? ? ??? ? ?? ?????? ??????? ??????? ?? ???? ???? ? ???? ?????????? ??????????
?? ?????? ??? ?? ?????? 63 ???, ??????? ?? ??????? ??????? ??? ?????????? ??? ??
????? 49 [?] 63 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????;???

3) ?? ??? ?????? ?? ??? ??????? ??????? ?????? ??? ??????? ??? ???? ?????? ??? ??????
?????? ?????????? ??? ?????? ??? ?????? ?? ??? ?????? ?????????? ??? ??? ??????????,
????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ??????;???

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

?) ?? ??????? ?? ?????????? ?? ??? ?????? ?????????? ??? ?????? ?????? ??? ???? ??????????
?? ???????, ???, ?? ?????????? ??????? ??? ?????? ?????? ?????????? ?????? ???
????????? ??????????, ? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ???
????????? ?????????? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????????? ???
????? ??? ?? ?????? ??????;???

?) ?? ??????? ?????????? ?????? ??? ???? ??????? ??? ?????? ??? ?????? ??? ??? ??
?? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??? ??
??? ?????????? ??? ?????? ??? 5?? ?????? 1996, Brasserie du Pêcheur ??? Factortame
(C?46/93 ??? C?48/93, EU:C:1996:79), ?

?) ?? ?????????? ??? ???????????, ? ?????????? ?? ?????? ?????? ?????? ??? ?????? ???
????????????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
??? ?????????? ???;»

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

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

28 ?? ?? ?????? ??????? ?? ???? ?????? ?????????? ??????, ???' ??????, ??, ???' ???
????????, ?? ?????? 49 ??? 63 ??? ?????? ??????? ?????????? ?? ?????? ?????????? ??????????
????????????? ??? FID ? ?????? ??????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???
??? ??? ? ?????????? ?? ?? ?????? ??????? ??????, ?????????? ?????? ??? ?????? ???

?????????? ??? 12?? ?????????? 2006, Test Claimants in the FII Group Litigation (C-446/04, EU:C:2006:774).

29 ?????????????? ????????????, ???, ??? ???? ?????? ????? ????????????, ?? BT Pension Scheme ???????, ??? ?? ??????? ??? ?????????? ??? ?????? ?????? ?????? ????????, ??????? ?????????? ?? 5 % ??? ?????????? ?????????? ??? ?????????????? ??? ?????? ????????, ??? ?????????? ??? ??? ? ?????? ??? ?? ??? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ????????.

30 ?????? ?????? ??????????? ?? ???? ????????????, ? ?????????? ?????? ??? ??????????????? ??
????????? ?????? ??? ??????????????? ?????????????????? ????????????, ?????? ??????
????????? ??????? ?? ???? ?????????????? ?? ???? ?????? ??????? ?? ???? ???????????,
??????????, ???' ?????, ??? ????? ?????????? ?? ???? ?????? 63 ???? ??? ???? ??? ???? ??
????????? ??? ?????? 49 ????, ?? ????? ??????????? ?? ???? ?? ?????????? ?????? ??? ???? ??
????????? ??? ??????? ?? ???? ??????? ?????????? ?????????? ?????????????? ?????? ??? ??
????????? ???????, ?????? ??? ?? ?????????? ?????????? ??? ?????????? ??? ?????????????? ??? (??.,
???????, ??????? ??? 13?? ?????????? 2012, Test Claimants in the FII Group Litigation, C-
35/11, EU:C:2012:707, ??????? 91 ??? 92 ??? ??? ?????????????? ??????????).

31 ?? ??????????, ?????? ?? ?????????? ??? BT Pension Scheme ??? ?????? ??
?????? ???. ?? ?????????? ???. ?? ?????????? ???. ?? ?????????? ???. ?? ?????????? ???. ??
?????? ???. ?? ?????????? ???. ?? ?????????? ???. ?? ?????????? ???. ?? ?????????? ???. ??
?? ?????? 63 ??.

32 ?? ???? ?? ???????, ???? ???? ?????????????????????????????, ????, ???? ???? ?? ????
63 ???? ???????, ??? ??????????? ???? ???? ???? ???? ??????? ???? ??????? ????,
?????????? ?? ?????? ?????????? ?????????? ?????????? ?????????? ?? FID, ??????????????
???, ???? ???? ?????????? ?? ???????????, ?? ????? 63, ?????????? 1, ???? ??????
?????? ???? ??????????? ???? ???? ?????? ?????????? ?????? ???? ?????? ???? ??????
??? ?????? ???? ???? ?????? (??., ???????, ??????? ??? 28?? ??????????? 2006,
?????? ???? ????, C-282/04 ?? C-283/04, EU:C:2006:608, ??? 18 ??? ??
?????????? ???????).

33 ????? ?????? ?????????????? ??? ?????????? ????? ?????????? ??? ?????????? ?????? ??????
????????????? ???????, ?? ?????????????? ??? ?????? ??? ??????????, ?? ?? ?????? 173 ??? ??????????
??? 12?? ??????????? 2006, Test Claimants in the FII Group Litigation (C-446/04,
EU:C:2006:774), ??? ?? ????? 63 ??? ?????????????? ?? ?????? ?????????? ?????, ???
?????????? ??? ?? ?????????? ?????????????? ??? ACT ??? ?????????? ?????????? ???
????????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????????? ??????????????,
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??????????????
??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?? ??????? ??? ??????
??? ??????? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????? ACT, ????, ?????? ??????,
??? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ???, ??? ?????? ?? ??????
?????? ?????????? ?? ?????????? ?????????, ??? ?????? ?????????? ?????? ?????? ?????????????? ???
????????? ?????????? ??????????.

34 ?? ??????????? ?????? ??????????? ???, ???? ?????? ???? ?????? ?? ??????????
?????? ?? ??????? ????????, ?????????????????? ??? FID, ??????? ?? ?? ????
????????? ?? ??????????? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????????
???? ?? ?????? ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ??????????? ??
???? ??????????????? ?????? ?? ???????, ?? ?????????? ??? ?, ?? ?????????? ??? ?? ??
????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??
????????????? ?????????? ?????????? ?? ?????? ??? ?????? ?????????? ?????????? ??

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

35 ?? ??????????, ?? Trustees ?????????? ?????????? ??????????????? ?? FID, ????,
??????, ?? ??? ?????????? ?????????? ??? ??????? ?? ??????? ?? ?????????? ????.

36 ??? ?????? ?? ?????????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?? ??????
??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??
Trustees, ??????? ?? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????????
?? ??? ??? ?????? ?????????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??????????
????? ?????????? ?????????? ???, ?????????, ?? ?????? ?????????? ?????????? ?? ?????? ?????? ??????????
??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??????????
??? ?????? ?????? ?????? (??., ??' ???????, ??????? ?? 12?? ?????????? 2006, Test
Claimants in the FII Group Litigation, C-446/04, EU:C:2006:774, ??? 166).

37 ???????, ? ??????? ?? Trustees ??????? ?? ?????????????? ?? ?????????????? ??
?? ?????? 173 ??? ??????? ?? 12?? ?????????? 2006, Test Claimants in the FII Group
Litigation (C-446/04, EU:C:2006:774), ?????????? ? ?????? ?????????? ?? ?????? 63 ????.
??????, ?? Trustees ??????? ?? ?????????? ?? ?? ?????? ?????? ?????????? ??
????????? ?????? ?? ?????? ?????? ??????, ??? ?? ?????? 246C ??? ICTA, ?? ?????? ??
????? ?? ?????? ?????? ?????? ???.

38 ?? Commissioners, ??????? ?? ?????????? ???????????, ?????? ?? ? ?????????? ??
????????? ???????, ??????? ?? ???????????, ?????????? ?? ???????????, ?????????? ??
?? ?? Trustees ?? ??????? ?? ??????????? ?? ?????? 63 ???? ?? ?????????? ?? ??????????? ??
????? 246C ??? ICTA, ??? ?? ?? ?? ?? ?? ?????? ?????? ?????? ?????????? ??
????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????, ??? ?? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? | ??? ?????? 88/361/?? ??
????????? ?? 24?? ?????? 1988, ??? ?? ?? ?? ?????? ?????? ?? ?????? [63 ????] (??
1988, L 178, ?. 5), ? ????? ?????????? ?? ?????? ?? ?????? ?????????????? ?????? ??
?? ?????? ?? ?? ?? ?????? ???.

39 ??????????? ?? ??????? ??, ??? ?? ?????????? ?? ???????????, ??????
?????????? ?? ??????? ?? ?????? ?????????? ?? ??????????? ?? ?????? ?? ?????? ??
????? ?? ???????, ??? ?? ?????, ?? ??????? ?? ?????? ?????????? ?? ?????? ??
????????? ?? ?????? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??
????? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?????? (??., ??' ?????, ??????? ?? 5?? ?????? 2002, Reisch ??., C-515/99, C-
519/99 ?? C-524/99 ?? C?526/99 ?? C-540/99, EU:C:2002:135, ??? 24).

40 ???????, ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
2014, Caixa d'Estalvis i Pensions de Barcelona, C-139/12, EU:C:2014:174, ??? 42).

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

42 ???????, ? ??????? ?????????? ?????????? ?? ?????????? ?? ?????? ??
????????? ?????? ?? FID, ??? ? ?????????? ?? ?????? ?? 246C

??? ICTA ?? ??????? ?????????? ????, ?????????? ?????????? ??? ??????? ??? ?? ??????????
????? ?????????? ??? ?????? ??? ? ?????????? ?????? ?????????? ??? ??????? ??
????????? ??? ?????? ???????, ???, ??? ?????????? ?????????? ?????????? ?????????? ???
????? ?????????? ??? ?????? ?????? ?????? ?????? ???????, ?? ?????? ?????? ??? ??
????????? ?????? ?????? ???????, ??????, ??? ?? ?????, ? ?????? ?????? ?????? ??? ??
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43 ? ?????????? ??? ??????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??????????
????? ?? ??? ?????????? ?????????? ???????, ????? ?????????? ?????? ??? ?? ??????
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??' ?????? ???
????????? ? ?????????? ???, ?????? ?????, ??? ?? ????? 163 ??? ?????????? ??? 12??
????????? 2006, Test Claimants in the FII Group Litigation (C-446/04, EU:C:2006:774),
????????? ??? ? ?????????? ?? ??? ?? ?????? ?????? ?????????? ??? 63 ??? ??
????????, ??? ?? ?????????? ?? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??????????
??? ?????? ??? ?????? ?????? ?????????? ??????????. ??? ?????????? ? ??????
????????? ?? ?? ?????? 66 ??? ?????????? ???, ?? ?????????? ??? ? ?? ????? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????' ?????? ?? ?? ??????????
??? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????????
??????, ?????????? ??? ?????????? ?? ?????? ??? ?????? ?????? ?? ?????????? ???, ??
????????, ??? ?????????? ??? ?????? 63 ???, ? ?????? ?????????? ?? ?? ????? 36 ???
????????? ??????????.

44 ??? ??? ??????? ????, ??? ??? ?????? ?????????? ?????? ?? ?????? ? ?????? ???,
??' ??? ???????, ?? ??? 63 ??? ?????? ???, ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ???, ?????????? ?? ?????? ? ?????? ?????????? ??????????
????????????? ?? FID.

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

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

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46 ?? ?? ?????? ?????? ??? ?? ?????? ?????????? ?????? ???' ?????? ?? ?????????? ???
?? ???, ???????????, ?? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ?? ?????????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?? ??????, ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????????
????????????? ?? FID, ????, ????, ?? ?????? ?????? ?????? ??? ?? ?????????? ???, ??
????????? ?? ?????????? ??? ?????? ?? ?????? ?????? ?????? ? ?????????? ?????????? ???
????????? ??? ?????? ?????? 63 ???.

47 ??????????????? ?? ?????????? ??? ?????????? ?? ?????????? ?? ?????? ??? ?????? ??????, ????
????????? ??? ?????? ??? ??????????? ?????????????? ? ?????? ?????????????? ??? ?????? 4,
????????? 3, ?????? ??????, ???, ?? ???????????, ?????? ??? ?????? ???, ??? ??????
??? ??? ?????? ??? ??????? ??? ?????? ??? ???, ??????? ??? ?????? 4, ?????????? 3,
????????? ??????, ???, ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????? ??? ?
????????? ??? ??????? ??? ?????????? ?????? ?????????? ??? ?????????? . ???????????, ?? ?????? 19,
????????? 1, ??????? ??????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????????? ?????????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
?????.

48 ??????? ?? ??? ?????????? ??? ?????? ??? ??? ?????? ???????????, ?? ?????? 63 ????
?????????, ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ???, ?????? ??????????
????????????? ?????????? ?????????????????? ?? FID ?? ?????????? ?? ???????, ?? ???? ?? ?
??? ????????, ?????????? ?????????????? ?????? ?? ?????? ??? ?????? ??? ?????? ??????????
?????????? ?? ?????????? ?????????????? ?? ?????? ??? ? ?????????? ??????? ? ??????
????????? ?? ??????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ??????? ?
????? ??????.

49 ????? ?????? ?????????? ??? ????????????, ???????? ??? ?????????? ??????? ??????
????????? ??? ?????? 63 ????, ? ?????? ??????? ?? ??????? ??? ?? ??????? ??????????
???? ??? ?????? ??????? (??., ???????, ?????????? ??? 14?? ??????????? 1995, Sanz de
Lera ??., C?163/94, C-165/94 ??? C-250/94, EU:C:1995:451, ????? 48, ????? ??? ??? 18??
?????????? 2007, A, C-101/05, EU:C:2007:804, ????? 27).

50 ????? ?????? ??????? ??????????? ??? ??????????????, ?? ?????????? ??? ?????????? ?????
????? ??????? ?????? ??? ?????? ????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????????? ?? ???? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ?? ??????????. ????????, ?? ?????? ?????? ?????? ??????, ???' ??????, ?? ?????????? ???
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? (??., ??????,
????????? ??? 9?? ?????????? 1983, San Giorgio, 199/82, EU:C:1983:318, ????? 12? ??? 14??
????????? 1997, Comateb ??., C-192/95 ??? C-218/95, EU:C:1997:12, ????? 20, ????? ???
??? 6?? ?????????? 2011, Lady & Kid ??., C-398/09, EU:C:2011:540, ????? 17).

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

52 ?????????????? ?????????? ??? ?? ??????? ??? ?????????? ?????, ??? ?? ??????
??? ?????????? ?? ?? ??? 50 ??? ?????? ?????????? ??????????, ?????????? ??? ??
????? ?? ?? ??? ?????? ?????????????? ??? ?????? ?????? ?? ?????????? ?????, ??? ?? ?? ???
????????? ??? ?? ??? ?????? ? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ??????
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ??????
????????? (??., ???' ???????, ???????, ??? 8?? ?????? 2001, Metallgesellschaft ??.,
C-397/98 ??? C?410/98, EU:C:2001:134, ????? 87? ??? 12? ?????????? 2006, Test Claimants
in the FII Group Litigation, C-446/04, EU:C:2006:774, ????? 205, ????? ??? ??? 19? ??????
2012, Littlewoods Retail ??., C-591/10, EU:C:2012:478, ????? 25), ??????????????????,
??????, ??? ?????? ??? ?????????? ??? ?????????????? ?? ?????? ?????? ?????? ??? ?????? ???

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

53 ????????, ??? ?????????? ?????? ?????? ????? ?????????? ??? ?????? ?????, ?? ??????
????? ??? ?????????? ??? ?????? ????? ?????????? ?? ?????? ?????????? ??? ?? ?????? ??????????
????????? ?????????????? ?? FID ?????, ??????, ?? ?????? ?????? ?????? ??? ?? ????
?????????, ??? ?? Trustees, ?????????? ??? ?????? ?????? ??? ?????? ??????????????????
????????? ?????? ??? ?????????? ?? ?? ?????? 63 ??? ?????? ?????? ??????????.

54 ?????????????? ?????????? ???, ??? ????? ?????????? ??? ??????????????, ??? ???? ??
?????????? ?????? ??? ?? ?????? ?????????? ?????????? ?? ?????? ?????? ?????????????? ?? ???
????????, ??? ??????? ??? ?????????????? ?????????????? ???, ??? ?????????? ??? ???????
??? ?????? ?????? ??? ?????????? ?? ?????????????? ??? ?????? ?????? ?????????????????? ???
????????? ????, ?????????? ?? ??????, ??????????????, ?????????????? ??? ?????? ??????????
?????? ???????, ?????? ?? ?????????????? ?? ?????? ? ?? ?????????? ??? ??????????????
????????? ??? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??????????????
????????????? ?????????? (??., ???????, ?????????? ??? ??? ?????????? ???, ??????????
????????? ??? 22?? ??????? 1989, Costanzo, 103/88, EU:C:1989:256, ????? 31, ??? ??? 29??
????????? 1999, Ciola, C-224/97, EU:C:1999:212, ?????? 26 ??? 30, ?????? ???, ??????????
??? ?? ?????????? ???????, ?????????? ??? 9?? ??????? 1978, Simmenthal, 106/77,
EU:C:1978:49, ????? 24, ??? ??? 5?? ?????? 2016, Ognyanov, C-614/14, EU:C:2016:514,
????? 34).

55 ???????, ? ?????????? ??? ?????????? ?? ??????? ?????? ?????????? ??
?????????, ?????? ??? ?????? ?????????? ?????????? ?? ??????? ?????? ??????, ??????
??? ????? ??????? ?? ???? ?????? ?? ?????????? ?? ?????????? ?? ???? ?? ?????? ??? ??????
????????? ??? ?????? (??., ???????, ?????????? ?? 22?? ?????????? 1998, IN. CO. GE.'90
?.??., C-10/97 ?? C-22/97, EU:C:1998:498, ????? 21, ????? ?? ?? 19?? ??????? 2012,
Littlewoods Retail ?.??., C-591/10, EU:C:2012:478, ????? 33).

56 ????????, ??? ?????? ?????? ?????????? ?? ?????? ?????? ?? ?? ?????????? ???
????? ?????? ?? ?????????? ?????? ?????????? ?????????? ?? FID, ?????????? ??
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????????????? ?? ???? ?????? ?
????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??????????, ? ?????? ?????? ?????? ??????
???' ?????? ?? ?????? ?????????????? ?? ?????? ?????? ?? ?????? ?????? ??????, ? ?????? ??????
??? ?????? ?? ?????? ?????? ?? ?????? 63 ??? ??????????????, ?????????? ??
????????????? ?? ?????? ?????? ?????????????????? ?? ?????? ?????? ?? ??????.

57 ????? ???, ?????, ?? ??????????? ??????? ?? ?????? ??? ?????? ?????? ???????, ?
?????? ?????????????? ?? ??????? ?????????? ??? ?? Trustees ?????? ?????? ???
????????? ?????????? ?? ??????? ??? ?????????? ??? ?????????? ??? ???????????, ????
????????? ?? ?????? ?? ?????????????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ??????? ???,
????????????? ?? ?????? ?????????? ?? ?????? ??? ?????? ??????????. ??? ?? ?????????? ???
????????????? ?????????? ?????????? ?? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????
????????????? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??
????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??????????
(??., ???' ???????, ?????? ?? 12?? ?????????? 2006, Test Claimants in the FII Group
Litigation, C-446/04, EU:C:2006:774, ?????? 201 ?? 220).

58 ????????, ??????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??????????
????? ??? ????? ?? ?????????? ??? ?????????????? ?????????, ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????????????
????????? ??? ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ?? ??? ?????? ?? ?????????????? ?????? ??? ?? ?????? ??? ?????? ?? ??????

?????? ??? ???????, ??????? ?? ??? ??? ??? ????????????, ?? ????? ??????? ??????? ??????? ??? ??????? ?? ??????? ??? ??????? ??????? ??????? ??????? ??? ??????? ??? ??????? ??????? ??????? ??????? ??????? (??., ???????, ??????? ?? 16?? ?????????? 1976, Rewe-Zentralfinanz ??? Rewe-Zentral, 33/76, EU:C:1976:188, ??? 5? ??? 8?? ??????? 2001, Metallgesellschaft ?.., C-397/98 ??? C-410/98, EU:C:2001:134, ??? 85? ??? 12?? ?????????? 2006, Test Claimants in the FII Group Litigation, C-446/04, EU:C:2006:774, ??? 203, ????? ??? ??? 6?? ?????????? 2015, Târ?ia, C-69/14, EU:C:2015:662, ??????? 26 ??? 27).

59 ???????, ???' ?????????? ??? ????? ??? ??????????????????????, ?? ????. ????. ????.
?????? ?? ???????????, ?? ????. ???????, ?????????????? ?????? ????.
?????????? ?? ??????????? ??? ?? ??????? ??? ?????? ??? ?????? ???, ???????????, ??? ?????? ????.
?????????? ?????????? ?????????? ??? ??????? ??? ?????????? ?? ?????????? ???????????, ?? ????.
?????????? ??? ?? ?????? 47, ?????????? 1, ??? ?????? ??? ?????????? ??????????? ????.
????????? ?????? (??., ??? ??? ?????, ???????, ?????????? ??? 15?? ??????????? 2016, Star
Storage ??., C?439/14 ??? C-488/14, EU:C:2016:688, ????? 46? ??? 8?? ?????????? 2016,
Lesoochranárske zoskupenie VLK, C-243/15, EU:C:2016:838, ????? 65, ????? ??? ?? 16??
????? 2017, Berlioz Investment Fund, C-682/15, EU:C:2017:373, ????? 44).

60 ?? ????????????, ?????????? ?????? ??? ?????? ??????????????, ??????, ?? ????????????, ???
?? ??????? ??, ??? ?????????? ?????? ??? ?????? ?????????????? ?? ?????? ?????????? ??? ?? ??????
????? ?????????? ?????????? ?????????????? ??? ?????????? ?????????? ?????????? ??????????????
????????????? ?? FID, ??? ?? Trustees, ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????
????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ?? ?? ?????? ?????????? ??????????
????? ?? ?????? ?? ?????????? ?????????????? ??????????????, ??? ?????? ??? ??????
????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
???? ??????? ?????????? ??? ? ??? ?????????? ?????????? ?????????????? ?????????????? ???
????????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????????? ??? ?????? ???
????????????? ?? ?? ?? ?????? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??????????
???? ??????? ?????????? .. ???????, ?? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ??? ??
????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????????? ?????????? ??? ?????????? ??? ??
?? ?????? 63 ??? ?????????? ?????? ?? ??? ?????? ??????????.

61 ???????, ??? ??? ????? ?????????? ??????? ?? ?????? ? ???????? ??? ?? ?????? ???
????? ?????????? ?? ???????, ??? ??????? ?????????? ?????? ??? ?????? ?????? ?????? ??????
?????, ?????????? ?????? ?????????? ?????????? ?????? ?? FID, ???, ???, ?? ?????? ???
?????? ?????? ??? ?? ?????????? ???, ?????????? ?? ?????????? ?????? ?? ?????? ??????
? ?????????? ?????? ??? ?? ?????????? ???, ?????????? ?? ?????????? ?????? ?? ?????? ??????
? ?????????? ?????? ??? ?? ?????????? ???, ?????????? ?? ?????????? ?????? ?? ?????? 63 ????. ???
?????, ?? ??????? ?????? ?????????? ?????????? ?? ?????????? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ?????????? ?? ?????? ?????????? ??? ?? ?????? ?????? ?????? ??????
????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????????? ?????????? ?? FID,
???? ?? Trustees, ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????, ???, ?? ??????
????? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?? ?????? ?? ??????????
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??
????? 63 ??? ?????????? ??? ?????? ??? ?????? ???.

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62 ?? ?? ?????? ?????? ??? ?????????? ?????????? ?? ??????? ?????????? ?????? ???
????? ?? ?????????? ?? ?????? ??? ?????????? ?????? ?? ?????? ?? ?????? ?????????? ??? ??
????? ?? ?????? ??? ?????? ?????????? ?????? ?? ?????? ?? ?????? ?????? ?????????? ??
Trustees ??? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??????????.

63 ?????????? ??? ?????? ??? ? ?????????? ??? ?????? 63 ????, ??? ?????? ?? ??????????
????????? ?? ?? ?????? 173 ??? ?????? ??? 12?? ?????????? 2006, Test Claimants in the
FII Group Litigation (C-446/04, EU:C:2006:774), ??????????, ?????? ????, ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ??????, ???
Trustees, ?? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ??
????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?? FID ? ??
????????? ??? ?????????? ?????????? ?????????? ??? ??? ?????????? ?? FID.

64 ???' ?????? ?????????? ? ?????? ? ?????????? ?????????? ?? ?? ?????? 88 ??? ??????????
???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? 63 ??? ?????????? ??? ?? ?????? ??? ??
?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??????????
??????, ??? ?? Trustees, ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ?? FID ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ??
??? ?????????? ?? ?????? ???.

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

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66 ?? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?? ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??
??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???

???? ??????? ??? ????, ??? ???? ????? ??, ?????????? ?????????? ??? ???? ?? ?????????????? ???
?????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????????? ?? FID ????????, ?????? ?? ??? ?????? ??? ??????????????
?? ??? ?????? ??? 5?? ?????? 1996, Brasserie du pêcheur ??? Factortame (C-46/93 ??? C-
48/93, EU:C:1996:79).

67 ?? ??????????, ??? ???? ?????? ??? ?????????? ????? ?????????? ??? ???? ??
????????? ??? ?????? ??? ?????????? ??? ?????? 63 ??? ????? ?????? ??? ??? ?????
????????? ??? ?????? ?????????? ?????????? ??? ??? ??? ??? Trustees.

68 ?????????? ??? ?????? ???, ??? ?????? ???? ? ?????? ?????????? ?? ?? ???? 91
??? ?????????? ???, ?? ?????????? ??? ?? ?????? 63 ??? ????? ?????? ??? ????? ?????????? ???,
?? ??? ??????????, ?????????? ??? ?? ?????????? ??? ?????????? ??? ????? ?????????? ???
????????? ??????.

69 ??? ??? ?????? ????, ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ???
?? ?????? ? ?????? ??? ?? ?????? ???, ??? ?? ?????? ?????????? ?, ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????????
????????? ??? ?????? ??? ?????????? ??? ?? ?????????????? ?? FID ????????, ??????
?? ??? ?????? ??? ?????????????? ?? ??? ?????? ??? 5?? ?????? 1996, Brasserie du
pêcheur ??? Factortame (C-46/93 ??? C-48/93, EU:C:1996:79), ??? ?????????? ??????????
??? ?????????? ??? ?????? ??? ??? ?????? ?????? ?????????? ??????????.

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70 ?? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ?????????? ??????????
???? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ???
????? ?????????? ??? ?????? ???, ?? ?????????? ?????????? ???, ?????? ??????
? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?? FID ?? ??? ?????? ??? ??
????????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??
????????? ?????? ??? ?????? ???.

71 ?? ?? ?????? 207 ??? ?????????? ??? 12?? ?????????? 2006, Test Claimants in the FII
Group Litigation (C-446/04, EU:C:2006:774), ?? ?????????? ?????? ???????, ?????? ???,
??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? FID ???
?????????, ?????? ??? ?????? ??? ??????, ?? ?????????? ?? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ???, ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

72 ? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????????????? ?? FID ??? ??
????????? ??? ??? ?????????? ?? ?????? ?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ???
?????, ??????, ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ??? ?????????? ???
????? ??? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ???.

73 ???????, ?? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ????????,
? ?????? ??, ?? ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ??? FID, ???
????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???

????????? ?? «????? ???????» ?? ?????? ??? Trustees.

74 ???????, ?????????? ?????? ??? ?????? ?? ?????????????????? ?? FID ??????????,
??? ?????????? ??? ?????? ?????????? ??? ???????, ??? ?????????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ???????, ??? ?????? ?????????? ???, ??? ??????
?? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???,
????? ? ?? ?????? ?????? ?????????? ??? ?? ?????????? ?????? ?????? ??? ?????? ???,
????????? ?? ?? ?????? ?????? ?????????? ??? ?? ?????????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ???.

75 ??? ?? ?????? ??????, ??? ?? ?????? ?????? ?????? ??? ?????????? ?????????? ??? ??
????? ? ??????? ??? ? ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????????? ??? ?????????? ?? FID, ??? ?????????? ??? ?? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???.

76 ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ?????? ??????????
????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?? Trustees ??? ?????????? ??? ?? ??
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?????? ??? ?????????? ??? ?? ??? ?????? ??? 5?? ?????? 1996, Brasserie du
pêcheur ??? Factortame (C-46/93 ??? C-48/93, EU:C:1996:79), ??? ? ?? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????????
?? FID, ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ???.

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

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

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

1) ???' ??? ?????? ???, ?? ?????? 63 ??? ?????? ???, ??? ?????????? ??? ?? ??
??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? «????? ?????? ?????? ?????? ???» (foreign income
dividend).

2) ?? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? «????? ?????? ?????? ?????? ???», ???, ???, ???, ?? ??
????? ?????? ??? ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? 63 ????. ??? ?????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? «????? ?????? ???», ??? ??

TrusteesoftheBTPensionScheme, ?? ?????? ??? ??????? ?????? ?????? ?????? ??????? ?? ????,
??????, ?? ?????? ??? ?? ??????????? ?? ?????????? ?????? ?????? ??????? ??????????
????? ?? ???? ?? ?????? ?? ??????????? ??????????????? ???????????, ??? ?????? ??
????????? ?????????? ??? ?????????? ?? ?????? ?????? ??????? ?????? ??????? ?? ??? ??????
????? ?????????? ?????????? ??? ?? ??? ?????????? ?????? ??????? ?????????? ??????????
?????????????? ?? ??? ?????????????? ??? ?????????? ??? ?????? ?? ?????????? ???
?????????????? ?? ??? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??????? ?????? ?? ?? ??
????? ?????????? ??????????? ??? ?? ?????? ?????????? ?????????? ?????????????? ???
????????? ?????????????? ??? ??????? ?????????? ??? ?????? ??????? ???????????, ???,
????????, ?? ??????? ??????? ??? ?????????? ?????? ?????????? ??? ?????? ??????????? ??
?? ????? 63 ??? ?????? ??????? ?????? ???????.

3) ????? ?? ??????? ??? ?? TrusteesoftheBTPensionScheme ??? ??????????? ??? ??
????????????? ?? ??? ?? ?????????? ??? ??????????????, ??? ?? ??????? ?? ?
????????? ?????????? ??? ??????? ??? ??????? ??? ??????, ??? ?? ?????? ??????????
????????? ?????????? ??? ?? ?????????????? ??? ??????? ?????????????? ??????? ??
????????? ?????????? ??????? ??? ??????? ??? ?????????? ??? ?????????? ?? ??????????????
?? «????????? ??????????» ??????????, ??????? ?? ??? ????? ??? ??????????????
?? ??? ??????? ??? 5?? ??????? 1996, Brasserie du pêcheur ??? Factortame (C-46/93 ?? C
-48/93, EU:C:1996:79), ??? ?? ??? ?????? ?????????? ??????????? ??? ??????? ??????????
????????? ?????????????? ???????????, ?????????????????? ?? «????????? ??????????
?????????», ??? ?????????????? ??? ?? ?????????? ?????????? ??????? ??? ??
????????? ??????, ?????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??
?? ?????? ?????????? ??? ?????????? ??????????.

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

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