

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

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

??? 26?? ?????????? 2019 (*)

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

???? ?????? C?135/17,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Bundesfinanzhof (????????????? ?????????? ??????????, ?????????) ?? ???????
??? 12?? ?????????? 2016, ? ????? ?????? ??? ?????????? ??? 15 ?????? 2017, ???
?????? ??? ???

X GmbH

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Finanzamt Stuttgart Körperschaften,

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

????????? ??? ??? K. Lenaerts, ???????, J.?C. Bonichot, ?. ??????, E. Regan, F. Biltgen, K. Jürimäe ??? ?. ???????, ?????????? ??????????, A. Rosas (?????????), E. Juhász, M. Ileši?, J. Malenovský, E. Levits ??? L. Bay Larsen, ???????,

????????? ??????????: P. Mengozzi

?????????: R. ?ere?, ?????????? ??????????,

?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
5?? ?????? 2018,

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

- ? X GmbH, ?????????????? ??? ??? K. Weber ??? D. Pohl, Rechtsanwälte,
- ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? R. Kanitz,
- ? ??????? ????????, ?????????????? ??? ??? D. Colas ????? ??? ??? ??? E. de Moustier ??? S. Ghiandoni,
- ? ??????? ????????, ?????????????? ??? ??? A. Falk, C. Meyer-Seitz, H. Shev ??? L.

Zettergren ????? ??? ??? ??? L. Swedenborg,

– ?????????? ???????, ?????????????? ??? ??? B.-R. Killmann ????? ??? ??? ??? N. Gossement,

???? ??????? ??? ??????? ???????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ???????????
??? 5?? ??????? 2018,

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

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1 ?????????? ?????????????????? ?????????????? ?????? ??? ?????????? ??? ?????? 63 ??? 64 ????.

2 ? ?????? ??? ??????????? ?? ?????? ?????? ?????? ?????? ??? X GmbH,
?????? ?????????? ???????, ??? ??? Finanzamt Stuttgart –Körperschaften (?????????
????????????? ?????????? ??????????? – ??? ?????? ?????? ???????, ??????????) ??????? ?? ???
????????????? ??? ?????????? ??? ?????? ? Y, ??????? ?????? ?????? ?????? ??????
???? ?????? 30 % ??? X, ??? ?????? ??? ?????? X.

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

3 ?? ??????? ?????? ??? Gesetz über die Besteuerung bei Auslandsbeziehungen (????? ??? ???. ??????????? ????? ?????????? ?????? ?? ?? ??????????), ??? 8?? ??????????? 1972 (BGBl. 1972 I, ?, 1713), ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ?????? (??? ????: AStG 2006), ??? ?????? ??? ????? «????????? ?? ?????????? ??? ?????????? ??????», ?????????????? ?? ?????? 7 ??? 14 ??? ?????? ?????.

4 ?? ?????? 7, ??????????? 1, ??? AStG 2006 ?????? ??? «????????? ???????» ?? «??????
???????, ????? ??????? ? ????? ??????????, ??? ?????? ?????? Körperschaftsteuergesetz
[(????? ??? ?????????????? ?????????????? ?????????? ?????????)], ?? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????????? ??? ??? ??????????
????????? ??? ?????? ?????????????? ?????????? ?????????? ??? ?????? ??? ?????? 3, ??????????? 1, [??]
????????? ??? ?????? ?????]». ??? ?? ? ???? ?????? 7, ?????????? 1, ??? ?????????? ?? ?????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ?? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ?????????? ??? ??
????? ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 8 ??? AStG
2006 ?????? ??????????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???
?? ?? ??? ?????? ??????????.

5 ?? ?????? 7, ??????????? 6, ??? AStG 2006 ?????? ?? ????:

«???? ?????????? ??????? ??????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????????? 6a ??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ???
??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????????
????????? 1 %, ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? 1, ??? ???? ?? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? [...]»

6 ?? ?????? 7, ??????????? 6a, ??? AStG 2006 ?????????? ?? ????:

«?????????? ?????????? ?? ?????????? ?????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? [...] ??? ?????????? ??? ??? ??????, ??????????, ?????????? ?????? ?????? ??? ??????

????? ????????, ????????, ????????, ????????, ?????? (????? ??? ????????????) ???
?????????? ??? ???? 8, ?????????? 1, ?????? 8 ??? 9) ? ?????? ??????????????
?????????, ??? ? ? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ? ? ?????????? ???
????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? 8, ?????????? 1,
????? 1 ??? 6, ????? ?????????? ??? ?????? ?????? [...]».

7 ????? ?? ????? 8, ?????????? 1, ??? AStG 2006, ?????? ?????????????? ?? ?????? ???
????? «????????? ??????» ??? ?????????? ?? ?????? ?????????????? ?? ??????
????????? ??? ??? ?????????? ??? ?????????? ?????? ?????????????? ?? ??????
????????? ??? ?????? 1 ??? 10 ??? ?????????? ??????. ??? ? ?????? ???, ???
????????? ??? ?????? «????????? ??????» ?? ?????? ??? ?????????? ??????????
?????????, ??? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????
??? ?????????? ?????????? ???, ??? ??? ?????????? ??? ?????????? ??? ??????????
?? ?????????? ?????? ???, ??? ??? ?????????? ?????? ??? ?????? ??????????
??? ??? ?????? ???, ??? ??? ?????????? ?????? ?????????????? ??????????
????????? ?????? ???, ??? ??? ?????????? ??? ?????? ?????? ?????????? ??? ??????
??? ??? ??????, ??? ??? ?????? ? ??? ??? ?????? ?????? ?????????? ?????????? ?? ??? ??
????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ??? ?
????????? ?????????? ??? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??? ?
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??? ? ? ???? ??
??? ?????? ??? ??? ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ??? ?

8 ??? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????????????? ?? ?????? ??? ??????????
???????, ?? ?????? 8, ?????????? 3, ??? AStG 2006 ?????????? ??? ?????????? «?????»
????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ??? 25 %.

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

9 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ? X, ?????? ??????????????
????? ??? ?????????? ???, ?????????? ??? ?? ?????? ??? ? ?????? ??? ?????????? ??? ??????
????? ?????? ??? ?????? ??? 30 % ??? Y, ?????????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????? ??? ?????? ??? ??????. ??? ?????? ??? 2005, ? Y ?????? ?? Z
GmbH, ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??????????
«????? ?????? ??? ?????? ?????? ?????? ??????».

10 ?? ?????????? ??? ?????????? ???' ?????? ??? ?????? ??? Y ?????????????? ??
????????? ??? ? Z ?????? ?? ?????????? ?????????? ??? ?????????? ?? ??????????
????????, ?????????? ??? ?????????? ??? ?????????? ???, ??? ? ?????????? ??????????
«????????? ??? ??????» ?? ??? ??? ?????? ?????????? ???' ?????? ??? ??? ???
??? ?????????? ??? ? Z ?????????? ???, ??? ?????? ?????? ??? ?????? ??? ?
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ??? ??? ???,
????? ??? ?????? ??? ??????.

11 ? Y ?????? ??? Z, ?? ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ??
?? 11 940 461 ???, ?? ?????? ?????????? ?? ?????? ??? ?????????? ?????????? ???.
????????? ??? 2005, ? X ?????? ??? Y ?????? ??? 2,8 ?????????? ???.

12 ?? ?????? ??? 1?? ?????????? 2007, ? ?????? ?????????? ?????????? ??????????
????? ?????? ?????? ?????? ??? ? X ??? ?????? ?????? ?????????? ?????????? ???
??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ? Y ??????, ?????? ?? ??? ?????? ???, ?? ?????????? ??? ?????? ???
????? ??? «????????? ?????????? ??? ??????», ??? ? ??? ?????? ??? ?????? 7,

?????????? 6 ??? 6a, ??? AStG 2006, ????? ??? ???????????? ??? ?????????????? ? Y ???
???? ?????????? ??? ?????? ???????? ??? ?? Z ?????????????? ??? ?????????? ??? ??
X, ??? ????? ??????????????, ??? ?? ??? 2006, ?????? ??? 546 651 ???, ??? ?? ???
????????? ?? ?????? ??? ?????? ??? ?????????????? ??? 95 223 ???.

13 ??? ??? ?????? ???, ? X ?????? ??????? ??? Finanzgericht Baden-Württemberg (?????????? ?????????? ?????-??????????, ???????), ?? ??? ???
????????? ??? ??????? ???.

14 ?????? ??? ?? ??? ??????????, ? X ?????? ?????? ??? ?????? ??? Bundesfinanzhof
(?????????? ?????? ?????????? ???????????, ???????). ???' ???, ??? ?????????????? ??? ? Y
????????? ??? ?? X «????????? ??????» ??? ??? ?? ?????????? ??? ?????????? ? Y
????????? ??? ?????????? ?????????? ??? «????????? ?????????? ??? ? Y
?????????», ??? ??? ?????? ??? ?????? 7, ?????????? 6, ??? ??? ?????? 8, ?????????? 1,
??? AStG 2006. ??? ?? ?????? ??? ? X ?????? ?????????? ??? ?? 1 % ??? ??????
????????? ??? ?? ??? ?????????????? ?? ?????? ??? ???????, ?????? ?? ?? ???
????????? ??? ?? ?????? ?????????? ? Y, ?????????????? ??????? ?? ??? ?????????? ??? ??
????????? ??? ?? X ???' ?????????? ??? ?????????? ??? ??? ?? ??? ?????????? ??? ??
????????? ??? 1?? ?????????? 2007 ????

15 ?? ?????? ?????????? ?????????? ??? ?? ??? ?? ??? ?????? ?????????? ??????????????
???? ??? ?????????? ?????????? ?????????? ??? ?? ??? ?? ?????????????? ?? ???
????? ??????. ??? ?? ?????? ?????, ?????????? ??? ?? ?????????? ?? ??????????
????????? ?????????? ??? ?? 63, ?????????? 1, ???, ?? ?????? ???????, ??????
????, ??? ?????????? ?????????? ?????????? ??? ?????????? ?? ?????????? ??????
????? ??? ?? ?????? ???.

16 ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??
?? ??? 63 ???, ?? ?????? ?????????? ?????????? ???, ??? ?? ??? ??????????
????? standstill ??? ?????? 64, ?????????? 1, ???, ? ?????????? ??? ?? ?????? ?????????? ??
????? 63 ??? ?? «??? ??????, ?????? ?????, ???, ?????? ?????????? ??? ??
????? ??? 31 ?????????? 1993 ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
?? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ?? «??? ?????? ??? ?? ?????? ??? ??
????? ??????, ???, ?????? ?????, ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
????? ??? ?? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
????????? ??? ?? ?????? ??? ?? «??? ?????? ??? ?? 31 ?????????? 1993», ?????????? ??? ??
????????? ??? ?? ??? ?? ?????? ??? ?? ?????? ??? ??.

17 ??????, ?? Bundesfinanzhof (?????????? ?????????? ??????????) ??????????
?? ?? ?????? ???, ??? ?????? ??? 31 ?????????? 1993, ???????????, ????
????, ??? ??? Gesetz zur Senkung der Steuersätze und zur Reform der
Unternehmensbesteuerung (???? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????????? ??? ?????? ??? ?????????? ???), ??? 23?? ?????????? 2000 (BGBI. 2000 I, ?,
1433, ??? ???: StSenkG 2000), ??? ?????? ?? ??? ?? 1? ?????????? 2001. ?? ???
????????? ??? ?? StSenkG 2000 «????????? ??? ?? ?????? ??? ?? ?????? ??? ??
31 ?????????? 1993 ??????, ??? ?? ???' ?????? ??? ?????? ?????????? ??????????
????????? ??? ?? ?????? ??? ?? ??? ??? Gesetz zur Fortentwicklung des
Unternehmenssteuerrechts (???? ??? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??).

?????????????), ??? 20?? ?????????? 2001 (BGBI. 2001 I, ? . 3858, ??? ????: UntStFG 2001), ?
?????? ?????? ??????? ?? ??? ?? 25 ?????????? 2001 ??? ? ??????, ??? ?????? ??
?????????? ??????? ?? ?????? ?? ?????????????? ?? ?????? ??? ?????????? ???????, ??????????
?????????? ?? ?????? ?????????? ??????? ?? ?????? ?????? ?????????? ??????? ??' ??????
?????????? ?? ??? ?????????? ??????? ?? ?????????? ?? ?????? ?????? ?? ?????? ?????? ??
31 ?????????? 1993. ??? ?????? ?? ?? ?????????? ?? ?????? ?????? ?????? ? StSenkG 2000
??? ???????, ??????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????, ?? ???????????, ???
????? ??? ?? ??? 2002, ?????????? «????????? ?????????? ??? ?????? ???» ???
????????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??, ??
????????? ??? ?? ?????? ?????????? ??? ? ?????????? ??? ?????? ??? ??, ??
????????? ??? ?? ?????? ??????????.

18 ??? ??? ??????? ????, ?? Bundesfinanzhof (????????????? ?????????? ????)
????? ??????? ??? ????? standstill ??? ?????? 64, ?????????? 1, ??? ?? ??? ??
???????.

19 ??????, ??????????, ???' ??????, ??? ? ??????? ??? ?????? 64, ?????????? 1, ???
????????? ??? ??????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??' ??? ?????? ?????? ????????
??? ??????? ?????????? ?????????? ??? 31 ?????????? 1993 ?????????? ??
?????? ??? ?????? ??????????, ?????? ?????? ??? ?????????? «????????? ??????????».
??????, ?? ?????? ?????????? ??? ?????? ??? ?? ?????? 7, ?????????? 6, ?? AStG 2006,
???? ?????????? ?? ?? UntStFG 2001, ?????? ?????? ?????? ?? ??? ?????? ?????????? ???
????????????? ?? ?????? ??? ?????? ?????? ?? ?????? ?????????? ??? ?????? ??? ??????
????????????? ??? ?? 10 % ??? 1 % ??? ?????? ??? ?????? ?????? ??????. ?????????? ?? ??
? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????, ? ????? standstill ?? ?????? ??? ?????? ?? ?????? ?????????? ??? ??? ?????????? ???
????????? ??? ?????? ???.

20 ?? ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?? ?? ??
64, ?????????? 1, ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ???
????? ?????? ? StSenkG 2000 ?????? ?????? ??? ?? «????????? ?????????? ???
?????????». ?? ?????????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????????? ??
????????? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?? ?????? ?????????? ??????????
??? ?? UntStFG 2001. ???????, ? ?????? ??? ?????? ??? ?????? 31 ?????????? 1993
????? ?????????? ????, ??? ?????? ??????, ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ???' ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ????. ??????, ?? ?????? ?????????? ??????????
?? ? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? 31 ?????????? 1993 ?????? ?? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ???.

21 ??? ??? ?????????? ???, ??????? ??? ?????? ??? ?? ??? ?????? ??????, ? ?????? ??????
????????? ??? ??????? ??? ?????? standstill ??? ?????? 64, ?????????? 1, ??? ?? ??? ??,
?? ?? ??????, ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?? ??
????????? ?????????? ??? ???????, ?? ?????? ?????????? ?????????? ?? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? 63, ?????????? 1,
???? ???, ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??????

????????????????? ??? ?????????????? ??????? ?????????? ??????????????. ?? ?????? ??????????????
????????????? ??????? ??? ?? ?????????? ??????? ??????? ?? ?????????? ??? ?????????????? ???
????????????? ??? ?? ?????????? ??????? ??????? ?? ??????? ?????????? ? ??????????
??? 12?? ?????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas
(C?196/04, EU:C:2006:544) ??? ? ??????? ????? ?????????????? ??? ?????????? ??? ??????????
?????????????, ??? ??????? ?? ??? ?????? ?????????? ??????? ??? ?????? ?????????? ???, ??? ??? ??
????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.

22 ?? ?????? ?????????? ??????? ???, ?? ?? ?????? ??? ?????????????? ??? ?? ???
????????? ??? ?????? ??? ?????????? ?????????????? ??? ?????? ?? ?????????? ?????????????? ??
????? ?????? ??? ?? ??? ?????? ?????????? ?????????? ?????? ?????? ?????? ??? ?????? ???,
? ?????? ?????????? ?????????? ?? ?????????? ??? ?????? 63, ?????????? 1, ????.
?????????, ??? ?? ?????????? ???, ?? «????????? ?????????? ??? ??????????»
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???
??? ??? ?? ?????????? ?????? ?????????? ??????????, ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????????? ?????????? ???, ??? ??? ?????? ??? ?????????? ??? 12??
????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas (C?196/04,
EU:C:2006:544). ??????????, ? ?????? ?????? ?????? ?????????? ?????????????? ?????????? ??? ??
????????? ?????????? ??? ?????????? ??? ??????????, ??? ??? ?????????? ??? ?????? ???
? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

23 ??? ???????, ?? ?????? ?????????? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?? ?????? ??? ??????????????
????? ?????? ??? 12?? ?????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes
Overseas (C?196/04, EU:C:2006:544), ?????? ?????? ??? ?????? ??? ?????? ??? ?? ???
????? ???, ??????????, ?? ?????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?? ?????????? ?? «????? ??????».

24 ??? ?? ??????? ???, ?? Bundesfinanzhof (????????????? ?????????? ??????????)
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ??
????????? ?????????? ??????:

«1) ??? ?? ?????? 57, ?????????? 1, ?? (??? ?? 64, ?????????? 1, ???) ??? ?????? ???
?? ?????? ??? ?????? 56 ?? (??? ?? 63 ???) ??? ?????? ?????????? ??? ??????
????? ??? ??????, ??? ?????? ??? ?????? ??????????, ??? ??? 31? ?????????? 1993
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????, ??? ?????? ??? ?????? ??????????
??? ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????, ?? ???
????? ?????????? ? ?????? ?????????? ??? ? ??? ?????? ?????? ???, ???' ?????? ?????? ???
??? ??? ?????? ??????????, ??? ?????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ??????????
??? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? 10 %;

2) ?? ?????????? ?????????? ?????????? ??? ?????? ??????: ??? ?? ?????? 57,
????????? 1, ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? 31? ?????????? 1993 ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ? ?????? ?????????? ??? ? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
?????????, ?? ?????????? ??? ?????????? ?????????????? ?????????? ??? ?????? ??? ??????
????????? ?????? ?????????? ?????????? ?????????? ?????????? ???, ? ?????? ?????? ???' ??????
????????? ??? ??? ?????????? ??????, ??? ? ?????? ??? ?????? ??? ?????????? ??? ??????

????????????? ??? ?????????????? ????????, ??? ?? ?????????????? ?????????????? ??? ??
?????? ???????, ?? ??? ? ??????, ??????? ?????? ??????? ?? ???, ?????? ???
????????????? ??? ?? ??????, ??????, ??? ??? ??? ?????????? ??? ??????????
????????? ??? ?? ?????????????? ??????????, ?????????????? ??? ?? ??? ??????????????
????????? ?????;

3) ?? ?????????? ?????????? ?????????? ?? ??? ?? ??? ?????? ??????????: ??????????
??? ?? 56 ?? ??????? ??????? ?????? ?????? ??? ?????, ??? ?? ?????? ?????????? ??? ??
????????? ??? ?? ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????????? 1 % ?? ?????? ?????????????? ?? ??? ??? (?)
????????? ??? ??????), ??????????????, ??????????, ?????????????? ??? ?? ?????? ???
?????? ??????????, ?? ?????????? ??? ?????????? ?? ??? ?????? ?????? ?? ?? ??? ??????
?????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ?????????? ??? ??
????????? ??????;»

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

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

25 ?? ?? ?? ?????? ?????????????? ???????, ?? ?????? ?????????????? ????, ???' ??????, ??
????????????? ??? ? ????? standstill ??? ?????? 64, ?????????? 1, ??? ?????? ??
????????? ??? ?? ?????? ??? ?? ?????? 63, ?????????? 1, ??? ?? ?????? ?? ??????
????????? ??? ?????? ?????? ?????????? ??? ? ?????? ?????? ?????? ??? ?????? ??????
?????????, ? ?????? ???' ?????? ?????? ??? 31? ?????????? 1993 ??????
????????? ?????? ??????, ?????????? ?? ??? ?????? ?????? ??? ?????????? ??????
?????????, ??? ?? ?????????? ???, ??? ?????? ?????? ??? ?? ?????????? ??????
?????????.

26 ?? ?? 63, ?????????? 1, ??? ?????????? ?????? ??? ?????????????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ????. ?????????? ??????
????????? ??? ?????? ?????? ?????? ?????, ?????? ?????, ?? ?????? ?????????? ???
????? ?????????? ?? ?????????? ??? ?? ?????? ?????? ?? ?????? ?????? ?????? ??
????????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? (?????????)
«?????» ??????????) ??? ?? ? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ???
?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????????
?? ?? ?????? ??? ?????????? (????????? ?????? «?????????») [???.
?????? ??? 28?? ?????????? 2006, ??????? ??? ?????? C?282/04 ??? C?283/04,
EU:C:2006:608, ?????? 18 ?? 19, ?????? ??? ?????????? 2/15 (????????? ??????)
????????? ?? ?? ??????????) ??? 16?? ????? 2017, EU:C:2017:376, ?????? 80 ??? 227].

27 ????????, ??? ?? 64, ?????????? 1, ???, ?? ?????? ?????? ?????? ??
?????????, ??? ?????? ??? ?????? ?? ??? ?????? ???, ?????????????? ??? ??????
?????????, ?? ?????? ?????? ???' ??? ?????? ?????? ?????? ??? ?????? ???, ???
?? ?? ?????????? ??? ?????? ?????? ??? 63, ?????????? 1, ??? ?????? ???
????????? ?????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?? ?????????? ????
????? ??? ?? 31 ?????? 1993 (???. ?????? ??? 12?? ?????? 2006, Test
Claimants in the FII Group Litigation, C?446/04, EU:C:2006:774, ?????? 187, ??? 24?? ???
2007, Holböck, C?157/05, EU:C:2007:297, ?????? 39, ??? ??? 24?? ?????? 2016, SECIL,
C?464/14, EU:C:2016:896, ?????? 86).

28 ??? ?????? ??? ????? standstill ??? ?????? 64, ?????????? 1, ??? ?????? ??? «[?]?
????????? ??? 63 ??? ?????? ??? ??????, ?????? ?????? ???, ????
????????? ??? ?????? ??? 31 ?????? 1993 ?????? ??? ?????? ??? ?? ??? ?????? ???

?????? ??????? ?? ??? ??????? ?????????? ??? ? ??? ????? ?????? ??? ?????? ??? ??????? ?? ??????? ?? ???????
?????????? [...]», ??? ? ? ?????? ??? ?????????? ??? ? ? ?????????? ??? ? ? ?????????? ??? ? ? ???????
????????? ??? ? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ? ????'
???? ? ??? ?????? ?????????? ??? ?????? ?????.. ????????, ?? ?????????? ?????????? ?????????? ??? ?
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ? ? ??? ? ???.

29 ???????, ??? ??? ??????? ??? ?????????? ??? ?????????? ???????, ??????, ??? ? X ???????????,
???? ??? ??????? ??? ?????? ??? ?????????? ??? ?????, ??? Y ??? ?????? 30 %,
????????? ??? ?????? ?? ?????? ?????????? ?????????? ?? ?????? ???????, ???,
?????????, ??? ? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??????????
????????? ??? 31 ?????????? 1993, ?? ??????? ? ?????????? ??? ? ???? ?? ??? ????
????? ??? ?????????? ?? 10 % ?????????? ??? ?????????? ??? ?????????????? ??
????? ??? ?????????? ??? ??? ?????????? ??? 10 % ?????????? ??? ?????????????? ??
????????? ???????, ?????????? ??? ?????? ?? ???? ?????????????? ?????? ??????????????
?? ?????????? ??????????.

30 ??? ???, ??? ??? ??????? ??? ?????? standstill ??? ?????? 64, ?????????? 1, ???
??? ??? ?????? ??????? ? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?
????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??????????
? ?????? ???.

31 ???????, ?? ?????????? ??? ?????? ??? ? ??????? ??? ?????? ?????????? ??????? ?? ???
????????? ??? ??? ??? ??? ?? ?????? 64, ?????????? 1, ??? ?????? ?????? ?????????? ???
??? ? ???? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? standstill ??? ??? ?????????? ?? ?????? ??????????. ??????????, ?? ????'
????? ?????????? ??? ? ???? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????????? ??? ??? ? ???? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ??? ??
????? 64, ?????????? 1, ??? ?????? ?????? ?????? (????. ?????? ??? 15?? ??????????
2017, X, C?317/15, EU:C:2017:119, ?????? 21 ?? 22).

32 ???????, ?? ??? 63, ?????????? 1, ??? ??? ?????? ??? ?????????? ?????????? ???
????? ??? 31 ?????????? 1993 ?????? ??? ?????? ?????? ??? ? ????
????????? ?????? ??? ?????? ??? ?????? 64, ?????????? 1, ???, ??? ?????, ???
????, ??? ?????? ?????????? ??? ? ??? ?????? ?????, ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??? ? ???? ?????? ???
? ?? ??? ?????? ?????? ??? ? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???.

33 ??? ??? ??????? ????, ??? ?????????? ???' ?????? ? ?????? ?????????? ???
????? 58 ??? 59 ??? ?????????? ???, ? ?????????? ??? ?????? ?????? ? UntStFG 2001 ???
? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ? 10 % ??? 1 % ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? 31 ?????????? 1993 ?????? ??? ?????? ??????, ?????? ?????? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? 64, ?????????? 1, ???.

34 ?????? ??? ??????? ???????, ??? ?????? ?????????? ?????? ?????? ?? ??? ?
????????? ??? ? ?????? standstill ??? ?????? 64, ?????????? 1, ??? ?????? ?? ??????????
??? ??? ?????? ??? ?? ?????? 63, ?????????? 1, ??? ??? ?????? ??? ?????????? ?????????? ???
????? ?????? ?????? ??? ? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?
????? ???' ?????? ?????? ??? 31? ?????????? 1993 ?????? ?????????? ??????
??????, ?????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ???

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

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

35 ?? ?? ??????? ?????????????? ???????, ?? ?????? ?????????????? ??? ?? ???? ??????????
????????????? ?????????? ??? ?????? ??????, ?? ?????? ?????????? ???, ???' ??????, ??
????????????? ??? ? ????? standstill ??? ?????? 64, ?????????? 1, ??? ?????? ??
????????? ??? ??? ?????? ??? ? ?????????? ??? ?????? ?????????? ?? ????? 63,
????????? 1, ??? ?????????????? ?? ?????????? ??? ?????????? ?????????? ??? ? ??? ?????? ??
????? ??? ?????? ?????? ??????????, ??? ?????????? ??? ? ?????? ??????????
????????? ??? ??? ?????? ?????????? ? ?????????? ??? ?????? ?????????? ?????? ??? ????
??? 31 ?????????? 1993 ??? ??? ?????????? ?????? ? ?????? ?????? ??? ?? ??? ??????
?????????????, ??? ?????? ?????????? ??? ??????, ??? ?????????? ???' ??????
????????????? ??? ?????? ? ?????? ?????? ??? 31 ?????????? 1993.

36 ????. ??????????, ???' ??????, ??? ?? ????? 27 ??? ?????????? ??????????, ? ????? standstill ??? ?????? 64, ?????????? 1, ??? ??????????, ??? ?????????? ??? ?? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ?????????? ?????????? ??? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? «????????[?] ??? ?????? ??? 31 ?????????? 1993».

38 ?????????? ? ??? standstill ??? ?????? 64, ??????????? 1, ??? ?????? ???' ???? ???
????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????????? ?? ?????????? ??????????
????????????? ??? ???' ??? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ??????????
????? ?? ?????????? ??? ?????? ?????????? ?? ?????? ?? ??? ?????? ??? ?????? ???,
????????????? ???, ??? ?????? ?????? ?????????? ?? ??????????, ? ?????? ??? «????????? [??]
??? ?????? ??? 31 ?????????? 1993» ?????????? ?????? ??? ?? ?????? ?????? ???
????? ?????????? ? ?????? ?????? ?????????? ?????????? ?????????? ?????? ??? ??????
????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? (????????? ??? 18??
????????? 2007, A, C?101/05, EU:C:2007:804, ??? 48, ??? 5?? ??? 2011, Prunus ???
Polonium, C?384/09, EU:C:2011:276, ??? 34, ??? 24?? ??? 2016, SECIL,
C?464/14, EU:C:2016:896, ??? 81).

39 ????? ????????, ?? ?????????? ?????? ??? ???? ?????????? ?????????? ??? ?????? ?
????? standstill ??? ?????? 64, ?????????? 1, ??? ???? ?????? ?? ?????????? ???
????????? ?? ?????? ?????????? ??? ?????? ?????? ??? ??????, ??? ?????? ???' ??????
????????? ??? ?????? ?????? 31 ?????????? 1993 ??????, ??????????
????? ??? ??? ?????? ?????????? ??? ?????? ??? ??????, ?????? ??? ??????????
?? ?????????? ??? ?????? ??? ?????? ???

????????????? ??? ??? ?????? ??????????? ? ?????????? ???, ??? ?????? ?? ??????????
(????. ?????????? ??? 12?? ?????????? 2006, Test Claimants in the FII Group Litigation,
C?446/04, EU:C:2006:774, ??? 192, ??? 18?? ?????????? 2007, A, C?101/05,
EU:C:2007:804, ??? 49, ??? ??? ??? 24?? ?????????? 2016, SECIL, C?464/14,
EU:C:2016:896, ?????? 87 ??? 88).

40 ???????????, ?????? ?? ?????? ??? ?? ?????? ?????? ??????, ??? ??????????? ?? ???
?????? ?????????? ? ???????, ??????????? ??? ??? ?????? ??? ?????? ??????, ???
??? ?????? 64, ?????????? 1, ???, ?? ??????????? ?? ?????????? ??? ?????? ???
?????? ?? ??? ?????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ??????
?????? ??? 31 ?????????? 1993 (????. ?????? ??? 24?? ?????????? 2016, SECIL,
C464/14, EU:C:2016:896, ?????? 86 ??? 88).

41 ????????, ? ????????, ??? ??????? 64, ?????????? 1, ??? ?????????????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ?????????????? ?????????????? ??? ?????????? ?????????????? ???
??? ?????? ?????????? ?????????? ??? ?? ??? ????? ??????????. ??????????, ?? ??? ??????????
?? ?????????? ?? ?????????? ??? ?????????????? ??? ?????????????? ?????????? ??? ?????????????? ???
????? ?????? standstill ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????
??? ??? 31 ?????????? 1993, ?? ?????? ??? ?? ?????????? ?????????????? ?? ??????????????
????????????? ??? ?????????? ?????????? ??? ? ??? ?????? ?????? ??? ?????? ?????????? ???
????? ?????? ??? ??? ?????????? ??? ?????????? (????. ??????????
??? 18?? ?????????? 2007, A, C?101/05, EU:C:2007:804, ??? 48, ??? 5?? ??? 2011,
Prunus ??? Polonium, C?384/09, EU:C:2011:276, ??? 34, ??? ??? 24?? ??????????
2016, SECIL, C?464/14, EU:C:2016:896, ??? 81).

42 ????????, ?? ??????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????????? ???
??????????, ? ????? standstill ??? ????? 64, ?????????? 1, ??? ?????? ?? ???????????
?????. ??????, ?? ?????????????? ??? ?????? ?????? ?? ?????? ? ?????? ??????????
?????????? ?? ?????? «????????» ??? ?? 31? ?????????? 1993, ??? ??
?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????? ?????? ?? ?????????? ??? (????. ?????? ??? 20?? ?????????? 2018, EV,
C?685/16, EU:C:2018:743, ?????? 80 ??? 81).

43 ?? ???????????, ?? ??????????? ???? ? ??????? ????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?
? ?????? ?????? ??? 31 ?????????? 1993 ?????????? ?? ?????????? ?????? ??? ?????? ?????? 17 ??? 20 ???
????????? ??????, ??? ?????????, ????? ?????????, ?????? ??????, ?????? ?????? 17 ??? 20 ???
????????? ??????, ?? ?????? ?????????? ?????????? ?? ?????? ??? ?? ?????????? ??? ?????? ??????
????? ? StSenkG 2000 ??? ?????????? ??? ???? ?? ?????? ?????????? ?????? ?????? ??????
????????? ??? ???? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ???
UntStFG 2001.

44 ?????????????? ???, ??????? ??? ?? ?????? ????? ?????? ?????? ?????????? ??? ?????????? ??? ?
StSenkG 2000 ?????????? ??? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? 31
????????? 1993 ??????????, ??? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ???,
????????? ?????? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ???, ??? ?????? ?????? ???
????????? ?????? ?? ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????? ?????? ?? ?????? ???, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????? ???, ?? ?? ?????? ??? StSenkG 2000, ? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ???, ??????????????
??? ?????????? ??? ?? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ???, ?????? ???
????????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ???, ???, ??? ?? ?????? ?????? ???,
«????????? ??? ?? ??????».

45 ?? ???????, ??? ?? ??????? ?????????? ??? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ??
????????? ??? ?????? ???' ??? ?? ?????? ?????? ?????? ? StSenkG 2000 ??? ??????
????????? ?????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ??? ??????????
????????? ? ?????? ??? ?????????? ?? ?????? ???, ?????? ?? ?????????? ??
????????? ??? ?????? ?? ?????????? ?????? ??? ?????? standstill, ??? ????????, ??
????? ?????? ?? ?????? ??????????, ??? ?? ?????? ???, ?????? ?????? ?????? ??
????? ??? 1? ?????????? 2001, ??? ?????????? ?? ?????? ??? ?????????? ?? ??????????
«????????? ?????????? ??? ??????» ??? ?????????? ??? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?? ?????? 2002, ??? ?????? ??? ?????? ??? ?? ?????? ??????????, ???
????? ?? ?? ?????? ?????? ??? ?????? ??? UntStFG 2001 ??? 25 ?????????? 2001.

46 ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
39 ??? 40 ??? ??????? ??????????, ?????????? ??? ?? ?????? ?????? ?????? 31 ?????????? 1993 ??? ?????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?? 31 ?????????? 1993 ??? ?????? ??
????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?? ?????????? ???, ?????? ???, ??? ?????? ?????? ??? ? ?????? ?????? ???
??? ?????? ?????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ? ?????? ?????? ???
????????? ??? ?? ?????? ?????????? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???.
????????? ? ?????????? ??? ?????? ?????? ??? ??????.

47 ???????, ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?
????????? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ? ?????? ?????? ??? 31
????????? 1993, ? ?????????? ??? ?????? ?????? ?? ?????? ?????? ?????????? ??????????
???? ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ? ?????? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????.

48 ??? ??? ??????? ??????, ???, ?????? ?? ?????? ?????????? ??? ?????? ?????? ?????????? ???
????????? , ? ?????? ??? StSenkG 2000 ?????????? ??? ?????? ?????? ?? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ??????????
??? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??
????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? 64,
????????? 1, ??? ?????????????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? 1??
????????? ??? 25? ?????????? 2001, ?????????? ?????? ?????? ??? UntStFG 2001, ??
????? ?? ?????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????.

????????????? ???????????? ??? ?? 31 ?????????? 1993, ??? ?? ?????? ???
????????????? ??? ??????? ??? ????? standstill.

49 ???????????, ?? ?? ?????? ??????????? ?????????????? ??? ?? ?? ?????????? ??? StSenkG
2000 ?????????? ?????????????? ??? ?? ?????? ?????? ?????? ???, ?? ?????? ?? ?????? ??????
??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
?????????????, ??? ?? ?? ??? ?????????? ?????? ?? ?????? ?? ?????????????? ? ?????????? ???
?????? 64, ?????????? 1, ???.

50 ?????? ?? ?????? ?? ??????????? ??? ?? ?????????????? ??????? ?? StSenkG 2000, ?
?????? ?????? ?? ??? 1? ??????????? 2001, ?????????????? ?? ?? ?????????????? ??? ??
????????? ?? ?? ????? 2001 ?????????? ?????????? ?????????????? ?? ?????????????? ??
????????? ?? ?? ?????????????? ?????????????? ?? ?????????????? ?? ?? ?????????????? ??
???, ?????????? ?? ?? ?????????? ??, ??? ?? ?????????? ?? ?? ?????? ?? ?? 25
????????? 2001, ? ?????????? ?? ?? ?????????? ?? ?????? ?? ?? ?????????? ?? ?? ?? ??
????????? ?? ?? ?????????? ?? ?? ?????????? ?? 2002.

51 ?????? ??? ??????? ????????, ??? ??????? ?????????????? ??????? ?????? ?? ?????? ?
????????? ??? ? ????? standstill ??? ?????? 64, ?????????? 1, ??? ?????? ?? ??????????
??? ??? ?????? ??? ? ?????????? ??? ?????? ?????????? ?? ?????? 63, ?????????? 1, ???
????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ? ??? ?????? ?????? ??? ??????
????? ??????????, ??? ?????????? ??? ? ?????? ?????????? ?????????? ??? ? ??? ?????
????????? ? ?????????? ?????? ?????? ?????????????? ?????????? ??? ? 31 ?????????? 1993
????? ??? ?????????? ??? ? ?????? ?????? ??? ? ??? ?????? ?????? ?????????????? , ??? ????
????????? ??? ?????? , ??? ?????????? ???' ?????? ?????????????? ??? ?????? ?????? ?
????? ??? 31 ?????????? 1993, ??? ???? ???? ? ?????????? ??? ?????? ?????? ??????????
????????? ??? ?????? ???????, ????, ??? ???? ?????? ?????? ???, ??? ?????????? ??
????????? ??? ??? ??? ???? ?? ?????? 64, ?????????? 1, ??? ?????????????? ??????????
????????? , ??? ???? ?? ?????? ?????????? ??? ?????? ?????????? ?? ??????????????.

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

52 ???, ???, ?????, ???????, ???, ??, ?????, ???????, ???????, ?????, ???????, ???, ?????, ???, ???????, ???
??????, ???, ?????, ???????, ???????, ?????, ???, ???, ?????, ???, ?????, ???, ?????, ???, ?????
??????, ???, ???, ?????, ???, ?????, standstill ???, ?????, 64, ???????, 1, ???, ???,
??????, ???, ??, ???, ???, ???, ???????, ???????, ???, ???, ?????, ???, ?????, ???????, ???
??????.

53 ?? ?? ??????????????? ????????, ?? ??????? ?????????????? ??????, ???' ??????, ??
?????????????? ?? ?? ?????? 63, ??????????? 1, ???? ?????? ?? ??????????? ?? ???? ?? ????
??? ??????????? ?? ?????????? ??????? ??????? ??????? ?? ?????? ?? ??????????? ??
????? ??????? ??????????????? ?? ?????? ?????? ?????? ??????? ?? ?????? ?? ??????????? ??
????? ??????????????? ?? ?????????? ?????, ???? ?????? ?? ?????? ??????????????? ??
«????????? ?????????? ?? ??????????», ???? ??? ?????? ?? ?? ??? ???????????,
??????????????, ???' ??????? ?? ??????????? ???????????, ??? ??????????? ?? ??? ??
?????????? ?? ?? ???? ? ?????? ??????? ?? ?????? ?????? ?????? ???, ??? ??????????? ?? ??
?? ??????????? ?? ?? ???? ?????? ??????????? ?? ?????? ?? ?????? ??????? ?? ?? ???? 1
% ??? ?? ?????????? ?? ???????????????, ??? ???????????, ??? ?????? ???, ?? ???????????
?????????? ?? ?? ?????? ?? ?????? ?????? ?????? ?????? ??????? ?? ?????.

54 ??????????? ?? ????, ?????????? ?? ???? ?????????????? ???????, ?????? ??
??????????, ??????, ??? ????? ?????? ?????????? ?????????????? ?? ?????????? ?????????????? ??
??????????, ??? ?? ?????? ?? ?????? ?? ?????? 63 ????. ???. ?????????????? ??????????, ??? ??

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55 ??? ????? ?????? ?????????? ??? ???????????, ??? ????? ??? ?????????????? ??
????????????? ??? ?????????? ?????????? ?????????????? ?????? ??? ??????? ?? ???????????
???? ?????????? ?????????? ??? ??? ?????????????? ?????????? ?? ?????? ?????? ??? ??
????????? ??? ?????????? ??? ?? ??? ?????? ?????? ?????? ??? ??? ??????????????
????????? ?? ??? ?????? (??., ?????? ?????, ?????????? ??? 18?? ?????????? 2007, A,
C?101/05, EU:C:2007:804, ??? 40, ??? 10?? ?????????? 2011, Haribo Lakritzen Hans Riegel
??? Österreichische Salinen, C?436/08 ??? C?437/08, EU:C:2011:61, ????? 50, ????? ??? ??
8?? ?????????? 2012, ?????????? ??? ???????????, C?342/10, EU:C:2012:688, ????? 28).

56 ???' ?????????? ??? ??????? ??? ?????? ??? ???????????, ??? ?????? ??
????????? ?????????? ??? ??? ??????? ?????????? ??? ??????, ? ?????? ??????????? ???
????? ?????????? 1 % ?? ?????????? ?? ?????? ??? «?????» ??????????
??????, ???????????????, ???' ?????????? ?? ?????????? ???, ?? ?????????? «?????»
??????????, ??? ?? ??? ?????? ??? ?????? ??? ?????????? ????? «????????? ?????????? ???
?????????», ?? ?????? ?????? ?? ?????? ???, ?????????? ??? ?????????? ?????? ?????????? ???
?????. ??????????, ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?? ??? ??????????, ??????????
??? ?? ??????? ??? ?????? ?????? ?????? ??? ?????????????? ?????? ??????????????.

57 ??? ?????? ?????????? ??? ?????????? ?????????? ??? ?????? ?? ??? ?????? ??????????
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??????????
????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? «?????????»
?????????, ?????? ?? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ?????????? ???
??? ?????????? ??? ?????? ???' ?????????? ??? ?????????? ??? ?????? ?????? ???.
?????????, ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??????????
?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ?????????? ???
?????????, ? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??? ???
????????? ??? ??? ?????? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ? ??????
????? ??? ?????? ?????? ?????? ?????????? ?? ?????? ?????????? ?????? ?????? ?????? ???
??? ?????????? ??? ?????? ??? ?? ?????????? ?? ?????? ??? ?????????? (??., ???' ??????????,
????? ??? 12?? ?????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas,
C?196/04, EU:C:2006:544, ????? 45).

58 ??? ??? ??????? ????, ?????? ?? ?????? ??? ? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? 63,
????????? 1, ???.

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

59 ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????,
????? ??? ??????????, ??? ?????????? ??? ? ?????? ?????? ??????????, ?? ? ?????????? ???
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ? ?????? ?????? ??? ?????? ???
????????? ??? ?????? 65, ?????????? 1, ?????? ??, ???, ???, ??? ? ????? «[?]»
????????? ??? ?????? 63 ??? ?????? ?? ?????? ??? ?????? ?????? [...] ?? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???

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

60 ??? ??? ???? ?????????? ?????????? ??? ?? ??? 65, ?????????? 1, ?????????? ?, ???,
????????? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ?????????? ?????
?????????, ?????? ?? ?????????? ?????. ???????, ? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?? ??? ?????? ??? ??? ?????????? ?????? ??? ?????????? ?????????? ?????
??? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ?????????? ?????
????????? ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?? ?? ?????? (????????? ???
11?? ?????????? 2008, Eckelkamp .??., C?11/07, EU:C:2008:489, ????? 57, ??? 10??
????????? 2011, Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, C?436/08 ???
C?437/08, EU:C:2011:61, ????? 56, ????? ??? ??? 10?? ?????? 2014, Emerging Markets
Series of DFA Investment Trust Company, C?190/12, EU:C:2014:249, ????? 55).

61 ??????????, ?? ?????????? ??? ?????? ?????????? ?? ?????? 65, ?????????? 1,
????????? ?, ??? ?? ?????? ?? ??????????, ??? ?? ?????????? 3 ??? ?????? ????, ???
???? ?????????? ?????????? ??? ?????????????? ????? ?????????? ?????? ?. ?? ?????????? ?????? ??
?? ?????? ?? ?????? ?????????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ???
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???? ?????????? ??? ?????????????? ??? ?????????? ?????? ??? ?????? ?????????? ?????? (???.
????????? ??? 6?? ?????? 2000, Verkooijen, C?35/98, EU:C:2000:294, ????? 43, ??? 7??
????????? 2004, Manninen, C?319/02, EU:C:2004:484, ????? 29, ??? ??? 17?? ??????????
2009, Glaxo Wellcome, C?182/08, EU:C:2009:559, ????? 68).

62 ?????? ?????? ?? ???????????, ??????, ?? ? ?????? ?????????? ?????????? ??????????
????? ?????????????? ?????????? ?????????? ???, ?????? ?????? ?????? ???,
?????????, ???????, ?? ? ?????? ?????????? ??? ?????????? ?????????? ???
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- ??? ??? ?????????????? ??? ??????????

63 ? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
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?????????, ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?? ??????????
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64 ??? ?????? ??????????, ? ?????????????? ??? ?????????????? ?????????????? ?? ???
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????? ??? ?????????? ??? ??? ?????? ?????? ?????? ?????? (???. ?????????? ??? 18??
????? 2007, Oy AA, C?231/05, EU:C:2007:439, ????? 38, ??? 1?? ?????? 2014, Felixstowe
Dock and Railway Company .??., C?80/12, EU:C:2014:200, ????? 25, ????? ??? ??? 12??
????? 2018, Bevola ??? Jens W. Trock, C?650/16, EU:C:2018:424, ????? 32).

65 ???????, ??????? ?? ?? ?????????? ??? ?????????? ??????????????, ? ??????? ??
????????? ??? ????? ?? ????? ?????????? ??? «?? ?????????????? ? ?? ?????????????? ??
????????? ??? (?????????) ?????????? ??? ?????????? ??? ????? ?? ????? ?? ?????? ???
????????? ??? ????? ?? ?????? ??? ?????? ?????? ?????? ». ??? ?? ??????????
?????????, ? ?????????? ??? ??????????, ??????, ?? ?????????? ??? ?????? ??? ?????????? ???
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66 ???????, ??? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ?????????????? ???
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67 ??? ???, ??? ?????????? ?? ??????? ?????????? ??? ?????? 71 ??? ?????????? ???,
? ??????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ??????
??? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
?? ?????????? ??? ?????? ?? «?????» ?????????? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ??????, ??????????, ?????? ?????, ?? ?????????? ???
????? ?????????? ?????????????? ?? ?????? ?? ?????? ?????????? ?? ?????????? ???
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?????????, ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? (??.,
??' ????????, ?????????? ??? 12?? ?????????? 2006, Cadbury Schweppes ??? Cadbury
Schweppes Overseas, C?196/04, EU:C:2006:544, ??? 45, ??? 21?? 14?? ??????????
2006, Denkavit Internationaal ??? Denkavit France, C?170/05, EU:C:2006:783, ?????? 35 ???
36).

68 ??? ??? ?????????? ??? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????
????????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
?????????, ?? ?? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ???
????? ?????? ? ?????????? ?????????? ?????? ?????????? ?? ?????????? ??? ?????? ???
??????, ??? ?? ????? 63, ?????????? 1, ??? ?????????? ?????? ??? ?????? ?????????? ???
????????????? ?????????? ?????????, ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ???
(??., ??' ????????, ?????? ??? 12?? ?????? 2018, Bevola ??? Jens W. Trock, C?650/16,
EU:C:2018:424, ??? 35).

69 ?????? ??? ??????? ???????, ? ??????? ??? ?????? ??? ?????????? ?????????? ???
????? ?????????????? ?????????? ?????????? ???.

- ??? ??? ?????????? ?????????? ??? ?????? ?????????? ??????????

70 ??? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ???
??? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ???
????????? ??? ?????????? ???, ?? ?? ?????? ?????? ?????????, ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?????? ??? ?????? ?????? (???. ?????????? ??? 11??
????????? 2007, ELISA, C?451/05, EU:C:2007:594, ?????? 79 ??? 82, ??? 23?? ??????????
2014, DMC, C?164/12, EU:C:2014:20, ??? 44, ??? 21?? ?????? 2018, Fidelity
Funds ???., C?480/16, EU:C:2018:480, ??? 64).

71 ??? ?????? ?????????? ?????????? ???, ? ?????????? ??? ?????? ??? ?????????? ???

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????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ???? ?????? ???
????????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????,
??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??? ??? ??? ??????
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72 ???????, ?????????????? ????? ?????? ??? ? ?????? ?????????? ??? ?????????
????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ?? ?????????????? ?????????? ??? ?????????? ?????????????? ??? ?????????? ???,
?????, ??? ?????????? ??? ?? ??????? ?????? ?????? ?????? ?????????? ??? ??????????
????????????? ?????? ?? ?????????????? ?? ?????????? ??? ?????? ?????? ?????? ??
????????? ??? ?????????? ?? ?????? ?? ??? ?????????????? ??? ?????????? ??? ?????????? ???
??? (???. ???????? ??? 10?? ?????????? 2011, Haribo Lakritzen Hans Riegel ???
Österreichische Salinen, C?436/08 ??? C?437/08, EU:C:2011:61, ??? 121, ??? 10?? ???
2012, Santander Asset Management SGIIC ???, C?338/11 ??? C?347/11, EU:C:2012:286,
????? 47, ????? ??? 10?? ?????? 2014, Emerging Markets Series of DFA Investment
Trust Company, C?190/12, EU:C:2014:249, ??? 98).

74 ???????, ??? ????? ??????????? ?? ??????????????, ? ?????? ?????????????? ???
????????????????? ??? ?????????????? ?????? ?????? ?????????? ??? ??????
????????? ??? ?? ?????????????? ?????????? ??? ?????? ?????????? ??? ??????
????????? (????. ??????? ?? 9?? ???????? 2014, van Caster, C?326/12, EU:C:2014:2269,
????? 46, ??? ?? 22?? ???????? 2018, Huijbrechts, C?679/17, EU:C:2018:940, ????? 36).
??????, ?????????????? ??? ?? ?????????????? ?????? ?????????? ??? ?? ?????????? ???
??????????, ??? ?????????????? ??? ?????????????? ??? ?????????? (????. ???????
?? 5?? ?????? 2012, SIAT, C?318/10, EU:C:2012:415, ????? 44).

75 ?????? ??? ???????, ??? ???????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????, ??
?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ??
????????? ??? ?????? ?????? ??? (??., ???' ???????, ?????????? ??? 13?? ?????????? 2005,
Marks & Spencer, C?446/03, EU:C:2005:763, ??? 51, ??? 21?? ?????????? 2010, SGI,
C?311/08, EU:C:2010:26, ??? 69, ??? 5?? ?????? 2012, SIAT, C?318/10,
EU:C:2012:415, ??? 48). ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
??????????, ??? ?????????????? ??? ?????? 65 ??? ?????????? ??????????, ?????????? ???'
????? ??? ?????? ?? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ???, ?????? ?????? ??? ?????????? ??? ?????????? ???
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????????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???.

76 ??????? ?? ?? ??????? ?? ? ?? ????? ?????????? ?????? ?????????? ?? ??????? ?? ?????????? ??
????? ?? ?? ???????????. ???????????????. ??? ? ?????????? ?????? ?????? ???????????. ?????? ?????? ??

????? 7, ??????????? 6, ??? ??? ???? 8, ?????????? 3, ??? AStG 2006, ??? ?? ?????? ???
?????????????? ?? ??? ?? ?????? ??? ?????? ??? ?????? «????????? ?????????? ???
?????????» ?? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?? ???
?????????, ??? ?? ?????? ??? ?????????? ???, ??? ?????? ??? ?????? ???,
?????????????, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???,
?? ??? ?? ?????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ???,
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????? ??? ?? ?????? ??? ?????? ???.

77 ??????, ??? ??????????, ??? ?????????? ???' ?????? ? ?????? ?????????? ???
????? 94 ??? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
?????, ? ?????? ?????? ?????????? ??? ?? Z, ?????? ?????????? ??? ??????????, ??? Y,
????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ??????????, ?? ?????? ?? ??? ??
????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????????
??? ?????????????? ??? ?????? ??????, ?? ?????? ?????? ?? ?????????? ??? ??????????
?????????????, ??? ?????? ??? ?? ??????, ??? ?? ?????? ?????? ?????????? ??????????, ???
???? ?? ?????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????? ??
????????? ??? ?? ?????? ??????????. ??????, ?????? ?? ?????????? ??? ??????????
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????? ?????? ??? ?????? ?????????? ??? ?????? ??????????, ??? ?????????? ??? ??????????
????? ?????? ??? ?????? ?????????? ??? ?????? ??????????, ??? ?????? ?????? ??? ??????????
?????????, ??? ?????? ??? ?????????? ??? ?????? ?????? ??? Y ?????? ? ?????? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??????
??? X ??? Y ?? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ??????
????????? ??????????, ?? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? ??????
??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ??????
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78 ?????? ?????????? ??? ? ?????? ??? ?????? ???, ?????????????? ??? ??????????????
??? ?????????? ??? ?????????????? ??? ?????? ??? ?? «?????» ?????????? ?????????? ???
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????????? ???, ?????? ??? ?? ?????????? ???, ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ???, ?? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??????????
??? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
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79 ?????? ??? ?????? ?? ?????????? ??? ? ?????? ??? ?????????? ??? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ???.

80 ??? ?????? ?????????? ??? ??????????, ?? ?????? ??? ?????? ??? ?????? ??? ??????
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????????? ??? ?????? ??? (????. ?????? ??? 16? 1998, ICI, C?264/96,
EU:C:1998:370, ??? 26, ??? 21? 2002, X ??? Y, C?436/00, EU:C:2002:704,
????? 62, ?????? ??? 11? 2007, ELISA, C?451/05, EU:C:2007:594, ?????? 91).
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? 73 ???
????????? ?????????, ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

81 ???????, ?? ?????? ??????????? ?????? ?? ??????????????? ??? ? ??????? ?? ??????? ?? ???????
??? «?????? ??????? ???????????», ??? ?????? ?????? ?? ??????????? ??? ??????? ??
12?? ??????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas (C?196/04,
EU:C:2006:544), ??????? ?? ??????????? ??? ??????????????? ??? ??????????? ??? ??????
?????. ?? ?????? ??????????? ??????????? ??????????? ??? ? ??????? ??? ?? ?????? ???????????
? ??????? ??? ??????????? ?????? ??? ??????? ??? ??????????? ???????????, ? ??????
?????????? ?????? ??? ?????? 49 ???, ??????? ? ?? ??? ????? ??????????? ??????????? ???
?????????? ?????? ?????? ??????? ?? ?? ??????????? ??? ??????????????? ??? ??????
???? ??????????? ??? ?????? ??? ?? ??????????? ??? ??????????????? ??? ?????? ??????
????? ???????, ?????? ?????? ??? ??????????? ??? ? ??????????????? ??? ??????
?????????? ??? ?????? ?????? ??????????? ??? ?? 50 % ??? ??????????? ??? ???????
?????.

82 ??????????? ??? ?? ??????????? ????, ??? ??????? 67 ?? 68 ??? ??????? ??
12?? ??????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas (C?196/04,
EU:C:2006:544), ??? ? ??????????? ??? ??????? ?? ?????? ??? ?????? ??? ??????????? «??????
?????????? ???????????» ??? ??????????? ??? ???????????, ??? ??????????????? ???
?????????????? ??? ??????? ???????????, ??? ? ??????? ??? ?????? ??????????? ???????????
??? ??? ?????? ?????? ??????????? ??????????? ??????????? ??? ?????? ??????????? ???
????? ???????, ???????, ?????? ?????, ??? ?????? ??? ?????? ??? ??????????? ??????????? ??? ??
???? ??????? ?? ??????, ??????? ??? ?????? ??? ??????????? ?? ??????????? ??????????? ?? ?????? ???
????????? ??????????? ???????????, ?????? ?????? ??? ?????? ??? ??????????? ?? ???????????
???? ??????????? ??? ??????????? ?? «?????????? ??????» ? ?? «??????????», ??????? ??
?????????? ?? ?????? ??????????? ??????? ??? ??? ??????????? ??? ??????????? ?? ??????????? ??
??????????, ?????? ?? ??????????? ??? ?????? ??? ??????????? ??? ??????????? ?? ??????????? ??
?? ??? ???????.

83 ?????, ??? ????? ?? ??????, ??? ?????? ?????? ??????????? ?? ??????? ???????????,
??? ??????????? ??? ??????????? ??? ??????????? ?????? ??????????? ??? ?????? ??????? ??
?????????? ?? ??????????? ??? ?????? ?????? ??????????? ??????????? ?? ?? ??????????? ???
?? ??? ??????????? ?? ?????? ??? ?????? ??????????? ??? ??????????? ?? ?? ??????????? «??????
?????», ??????????? ??? ?????? ??????????? ??? ??????????? ??? ??????????? ??? ?????? ???????
??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????? ??? ?????? ??? ??????????? ??? ?????? ???
????????? ??????? ?? ??????????????? ?????? ??? ??????????? ??? ?????? (????. ??????? ??
13?? ??????? 2012, Test Claimants in the FII Group Litigation, C?35/11, EU:C:2012:707,
????? 100), ??? ?? ?????? ?? ?????????? ??? ??????????? ??? ??????????? ??? ??????????? ???
????????? (????. ??????? ?? 14?? ?????????? 1995, Sanz de Lera ??., C?163/94,
C?165/94 ??? C?250/94, EU:C:1995:451, ??? 19, ??? ?? ??? 10?? ??????????? 2011,
Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, C?436/08 ??? C?437/08,
EU:C:2011:61, ??? 46).

84 ??? ???????, ??? ??????? ??? ??????????? ??????????? ?? ???????????, ? ??????? ??
«?????? ??????? ???????????» ??? ??????? ?? ??????????? ??????????? ??? ???????????
?? ??????? ?? ??? ?????? ??????????? ??????????? ??? ??????????? ?? ?? ??????????? ???
????????? ?? ?????? ??????????? ??? ?????? ??? ??????????? 67 ?? 68 ??? ??????????? ??? 12??
?????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas (C?196/04,
EU:C:2006:544), ??????? ??? ? ??????? ??????????? ??? ??????????? ??? ??????????? ??
????? ??? ??????????? ??????? ??? ??????????? ?? ??????????? ??? ?????? ??? ???????????
???? ??????????? ??????????? ??? ??????????? ??? ?????? ??? ?????? ??? ??????????? ??
???? ?????? ??????????? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ???????, ??? ?? ???
????????? ??? ?????? ??? ?????? ??? ??????????? ??? ??????? ??? ?????? ??? ???????????

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

85 ??????, ?? ??????????, ?????? ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ??????????
??? ?????????? ??? ?????? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ?????????? ????. ??????????, ??? ?????? ?????? ??? ?????????? ?????? ?????????? ???,
????????? ?? ?? ?????? 7, ?????????? 6, ??? ?? ?????? 8, ?????????? 3, ??? AStG 2006, ???
????????? ??? ?????????????? ??? ? ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ?????????? ?? 1 % ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????
????? ?? ?????? ??????????, ??? ?????? ?????? ??? ?? ?????? ??????????, ???????, ? ??????
???????? «????????? ?????????? ??? ??????????», ??? ?????? ?????? ??? ?????????? ??? ?????? ???,
?? ?????????? ??? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?? ???
????????? ??? ???, ??? ?? ?????????? ?? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ???
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

86 ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????, ? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???.
?????????, ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ???
????????? ?? «?????????» ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ???.

87 ??? ?????? ????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ??????
?????????, ?????????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??
????????? ?????? ?????? ?????? (????. ?????? ??? 13? ?????? 2007, Test Claimants in the Thin Cap Group Litigation, C?524/04, EU:C:2007:161, ??? 82, ??? 5?
????????? 2012, SIAT, C?318/10, EU:C:2012:415, ??? 50, ??? ??? 3? ?????? 2013, Itelcar, C?282/12, EU:C:2013:629, ??? 37).

88 ?????????? ??? ?????????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ???, ? ??????
????? ?????? ??? ??????????, ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

89 ??? ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

90 ???????, ?????????????? ??? ? ?????????? ??? ??? ?????????????? ??? ????? ?????? ???
????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ?????????? ???
?? ??????? ?????? ?????? ?????????? ?? ?????????? ?????? ?????? ?????? (?).., ?????? ???,
?????? ??? 28?? ???????? 2010, Établissements Rimbaud, C?72/09, EU:C:2010:645, ???
40 ??? ??? ?????????? ???).

91 ????? ??????, ?????? ?????, ??? ??????????? ??? ?????? ?????????? ?? ?????? ?????? ??
????????? ?? ?????? ??????????? ??? ?????? ?? ??????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????? ??????????? ??? ?????? ?? ?????????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?????, ??? ?? ?????????? ??? ?????????? ?????????? ?? ???? ?
????? ?? ?????? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?? ?????? ??
????? ?? ?????? ?? ?????????? ?? ?????? ?? ??????, ?????? ??????????,
????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? (????. ??????????)
??? 11?? ?????? 2007, ELISA, C?451/05, EU:C:2007:594, ??? 98, ??? 28?? ??????
2010, Établissements Rimbaud, C?72/09, EU:C:2010:645, ?????? 45 ??? 46, ??? ??? 10??
????? 2014, Emerging Markets Series of DFA Investment Trust Company, C?190/12,
EU:C:2014:249, ??? 85).

92 ??????? ??? ?????? ??????????? ??? ?????????????? ??????????? ???, ??? ??????????? ??? ?
?????????? ??????? ??? ?????? ??????? ?? ??????? ?????????? ?????????????? ???
????????????? ??? ?????? ? ??????? ??????? ?? ?????????? ??? ?????????????? ??? ??? ??? ??????
????????????? ??? ??? ??????? ?????? ?????? ???????, ?? ??????? ?????? ??? ?????? ?????? ?????? ??????
????????? ?? ?? ?????????? ?? ?????????????? ??? ??? ? ??? ??? ??? ?? ??? ?????????????? ??? ???
????? ??? ??? ??? ?????? ??????? ??????? ??? ??? ??? ??? ??? ??? ??? ??? ??? ??? ?????? ?????? ??????
????????? ?????????? ??????? ??????????? (????. ?????????? ??? 18?? ?????????? 2007, A,
C?101/05, EU:C:2007:804, ??? 63, ??? 10?? ?????????? 2011, Haribo Lakritzen Hans Riegel
??? Österreichische Salinen, C?436/08 ??? C?437/08, EU:C:2011:61, ??? 67, ??? 77 ?? ??
10?? ??????? 2014, Emerging Markets Series of DFA Investment Trust Company, C?190/12,
EU:C:2014:249, ??? 84).

93 ?? ????????????, ? ??????????? ???? ? ??????????? ??? ?????????? ??? ?????? ???
?????????????? ???? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??????? ??????? ???? , ??? ???? ???? ?????? ??? ?????????????? ??? ?????? ???
????????? 6, ??? ??? ?????? 8, ?????????? 3, ??? AStG 2006, ?????????? ??? ?? ???
??? ?????????? ?????????? ?????? ?????? ?????? ?????? ???????, ?????? ????, ?? ??
????? ??? ?????????????? ??? ???? ?????????????? ??? ?????? ??? ?????? ??????.

94 ??????? ?? ?????? ??? ??????????????? ?? ??????????? ??? ?????????????? ??????? ??
??? ??????????????? ??? ??????????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?????????? ? ??????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????, ?????? ?? ??????? ??
??????????, ?????? ???????????, ??? ?????? ??? ?????????? ?????? ?????? (????. ??????? ??
10?? ??????? 2014, Emerging Markets Series of DFA Investment Trust Company, C?190/12,
EU:C:2014:249, ????? 85), ?????? ??? ?? ?????????? ??????????? ?? ???????, ??
??????????, ?? ???????????, ?????? ???, ?????????? ??????????? ??????????? ??
????????????? ??????????? ?? ??????????? ?? ?????? ?????? ?????????? ???????????????, ?? ??
?????? ??????????? ?? ?????? ?????? ?????????? ??????????? ?? ??????????? ???????????
????????????? ?????? ??? ??????? ?????? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ??
?????????? ?? ??????????? ??? ?????? ?????????? ??????????? ?? ?????? ?? ???????????????, ??????
??????????, ??? ??????? ??? ?????? ?????? ?????????? ?????? ?? ??????????? ?????? ??????

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

95 ????? ?????? ??? ???? ??????? ????????, ??????????? ?????? ??????, ??? ??????????
?????? ??? ?? ??? ????? ??????? ??????? ??? ?? ??? ????? ???????, ?????? ?? ?????? ?? ??
????? 63, ?????????? 1, ???? ??? ?????????? ?? ?????? ?????? ?????? ?? ??????????
????????? ??? ? ??????? ??? ?????? ???, ? ?????? ?????????? ??? ?????????????? ???
????????? ??? ?????????????? ?? ?????? ????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????? ???, ?????? ?? ?????????? ??? ?????? ???
? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? ???
????? ??????? ????. ????????, ?? ?????????? ??? ?????????? ?????? ?????? ???????,
????? ?? ?????????? ??? ?????? ?????????? ?????? ??? ? ?????????? ?? ?????????? ???
????? ?? ??? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????????? ???, ???
????????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ???.

96 ?????? ??? ??????? ????????, ??? ????? ?????????????? ??????? ?????? ?? ?????? ?
????????? ??? ?? ?????? 63, ??????????? 1, ??? ?????? ?? ?????????????? ??? ?? ?????? ??
??? ??????????? ?? ?????????? ??????? ??????? ??????? ??? ?????? ?? ?????????? ?? ?????????? ??
????? ?????????????? ?? ?????? ??? ?????? ?????? ??????? ?? ?????? ??? ?????????????? ??? ??
????????????? ??? ?????????? ?????, ??? ?????? ?? ?????? ?????????????????? ?? «?????????»
????????? ?? ??????????», ??? ?????? ?????? ??? ?????????? ?????, ??? ?????????????? ??
??' ?????????? ??? ?????????? ?????, ??? ?????????? ?????? ??? ?????????? ??? ??
????? ? ?????? ??????? ??? ?????? ?????? ?????, ??? ?????????? ??? ? ?? ??? ?????????? ??
????? ??? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????????????? 1 % ??? ??
????????? ??? ????????????, ??? ?????? ??? ???, ?? ?????????? ?????????? ??? ??
????? ??? ?????? ??? ?????? ?????? ?????, ??? ?????? ?? ?????????? ?????? ?????? ?? ??????
?????????, ??? ?????? ?????, ?????????? ?????????? ?????? ?? ?????????? ?? ??????????
????? ?????? ?????????? ?????? ??? ?? ?????? ?????? ?????? ?? ?????????? ?? ??????????, ??? ??
?????????, ??? ?????? ??? ?????????? ?????? ?? ?????? ?????? ?????? ?? ?????? ?? ??????
????????? ?????????? ?? ?????????? ??? ? ?????????? ??? ? ?????? ?????? ?????? ?? ??????
????? ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????.

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

97 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ?????
??? ??????? ?????????????? ??? ??????? ?????????? ??? ?????? ?????????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
????? ?????????? ?????????????? ??? ??????????, ??? ??? ?? ??? ?????????, ??? ??????????.

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

1) ? ????? standstill ??? ?????? 64, ?????????? 1, ??? ?????? ?? ?????????? ??? ???
?????? ??? ?? ????? 63, ?????????? 1, ??? ??? ?????? ??? ?????????? ?????????? ???
????????? ?????????? ??? ? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??????????, ? ??????
???' ?????? ?????????? ??? ??? 31? ?????????? 1993 ?????? ?????????? ?????? ???,
????????? ?? ?????? ?????? ??? ?????????? ??? ?????????? ?????? ??????????, ??? ??? ?????????? ???,
???? ?????????? ??? ??? ?????? ?????? ??????????.

2) ? ????? standstill ??? ?????? 64, ?????????? 1, ??? ?????? ?? ?????????? ??? ???
?????? ??? ? ?????????? ??? ?????? ?????????? ?? ?????? 63, ?????????? 1, ???
????????? ?? ?????????? ??? ?????????? ?????????? ??? ? ??? ?????? ?????? ??? ??????
????? ??????????, ??? ?????????? ??? ? ?????? ?????????? ?????????? ??? ??? ???
????????? ? ?????????? ?????? ?????? ?????????????? ?????? ??? 31 ?????????? 1993

????? ???? ?????????? ?????? ? ?????? ?????? ??? ?? ??? ?????? ??? ??????????????????, ???? ????
?????????? ???? ????, ??? ?????????? ???' ?????? ?????????????? ???? ?????? ? ????
????? ??? 31 ?????????? 1993, ?????? ??? ? ?????????? ??? ?????? ?????? ?????? ??????????
????????? ??? ??????? ???????, ????, ???? ??? ?????? ?????? ???, ??? ??????? ??
?????????? ??? ??? ??? ???? ?? ?????? 64, ?????????? 1, ??? ?????????????? ???????
?????????, ??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ?? ??????????.

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

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