

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

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

??? 18?? ??????? 2021 (\*)

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

???? ??????? C-388/19,

? ? ?????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???  
?????? ?? Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa – CAAD)  
[????????? ?????????? ?????????? ?????????? (????? ?????????? ??? ?????????? ??? ??????????  
????????? – CAAD), ??????????] ?? ?????? ??? 30?? ??????? 2019, ? ?????? ???????  
??? ?????????? ??? 17 ????? 2019, ??? ?????? ??? ??????

**MK**

????

**Autoridade Tributária e Aduaneira,**

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

????????? ??? ??? J.-C. Bonichot, ?????? ???????, L. Bay Larsen, C. Toader, M. Safjan  
??? N. Jääskinen (?????????), ????????,

?????? ??????????: G. Hogan

?????????: M. Longar, ?????????? ????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
1?? ??????? 2020,

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

– ? MK, ?????????????? ??? ??? A. Gaspar Schwalbach, advogado,

– ? ?????????? ??? ???????, ?????????????? ??? ??? L. Inez Fernandes ??? ??? ???  
??? S. Jaulino, H. Gomes Magno ??? P. Barros da Costa,

– ? ?????????? ??? ???????, ?????????????? ??? ??? M. Afonso ??? N. Gossement ???  
??? ??? ??? W. Roels,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
??? 19?? ??????? 2020,

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1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 18 ??? 63 ??? 65  
????.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ??? MK ??? ???  
Autoridade Tributária e Aduaneira (????????????? ??? ?????????? ?????, ??????????) (???  
????: ??) ?????? ?? ??? ????? ?????? ??? ?????? ??? ?????? ?????? ? ?? ??? ?? ??????????  
??? MK ??? ?? ??? 2017.

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

3 ?? ?????????? «????????» ??? 43 ??? Código do Imposto sobre o Rendimento das  
Pessoas Singulares (????? ?????????? ?????????? ?????? ??????), ??? ?????? ???  
?? ?????? ??? ?????????? ?????????? ??? ?????? ????? (??? ????: CIRS), ??? ?????? ???  
????????? 1 ??? 2 ?? ???:

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

2 ? ?????????? ??? ?????????? ?????? ?????????? ?????????, ?????? ? ?????????, ??????????  
????? ?????? ??? 50 % ??? ??? ?????????? ??? ?????? 10, ?????????? 1, ????????? a,  
c ??? d, ?????????? ??? ?????? ?????????? ?????????? ??????????.

4 ?? ??? 68, ?????????? 1, ?? ?????? ??? ?????? ?????????? ?????????? ??????????  
?????. ?? 2017, ? ?????? ?????????? ?????????? 48 % ?????????? ???  
????????? ?????????? ??? ??? 80 640 ???.

5 ???' ?????????? ??? ?????? 68a ??? ?? ??? ??????, ??? ?????????? ??????????  
????? 80 000 ??? 250 000 ??? ?????????? ?????????? ?????????? ?????????? ??????, ???  
?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????, ? ?? ??? ?????? ?????? ?????????? ??  
5 %.

6 ?? ??? 72 ??? CIRS, ?? ??? «????????? ?????????? ??????????», ??????????,  
????? ????:

«1 – ?????????? ?? ?????? ?????? 28 %:

a) ? ??? ?? ??? 10, ?????????? 1, ?????? a ??? d, ?????? ??? ??????  
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???.

[...].

9 – ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ? ??? ??????????  
????????? ?????? [(??)], ??????, ??? ?????????? ??? ?????? ??????????, ?????? ??????  
????????? ??? ?????? ?????? ???, ?????? ?? ?????? ???, ??? ?????? ?? ?????? ???  
????????? ??? ?????? ?????? 1, ?????? a ??? b, ??? ??? ?????? 2, ?? ?????????? ???  
????????? ??? ?? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???  
????? 68, ?????????? 1, ?? ??? ?????? ??? ?????? ?????? ?????? ??? ??????.

10 – ??? ??? ?????????? ??? ??? ??? ?????????? ?????????? ?????????? ??????????,  
????????? ??? ??? ?????? ??? ?????????? ?????????? ?????????? ?????? ???  
????????? ??? ??? ?????????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ??? ?????? ??????.

[...]»

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

7 ? MK ?????? ?????????? ?????? ??????.

8 ??? 17 ?????????? 2002, ? MK ?????? ?????? ?????? ??? ?????????? ?????? ?????????? 79 807,66 ????.

9 ??? 17 ?????? 2017, ? MK ?????? ?? ?????? ??? ?????? ?????? ?????? 180 000 ????.

10 ??? 31 ????? 2018, ? MK ?????? ??? ?????????? ?????? ?????????? ???, ???  
?????, ??? ???? ?? ?????????? ??? ?????? ?????? 8 800 ???, ?????? ?? ?????????? ???  
?? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???.

11 ? MK ?????? ??? ?????????? ??? ?????? ?????? ??? ?????, ??? ?????? 8B, ??  
????????? 4 («????????? ??????????»), ?? ?????????? 6 («????????? ?????? ???  
????????? ??????») ??? ?? ?????????? 7 (?? ?????? ??? ?????? ?? ?????????? ??  
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??????????) ??? ??  
????? ?????? ??? ?????????? ??? ?????????? 9 (????????? ?????? ?? ?????? ???  
????????? ?????????? ??? ?????? 68 ??? CIRS) ??? ?? ?????? ??? ?????? ???  
10 (????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????????).

12 ??? 5 ?????? 2018, ? ??, ??? ?????? ?????????? ??? ?????? ?????????? ???  
???? 2017, ?????? ??? ?????? ?????? 24 654,22 ???, ?????????? ??? ??  
????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ???  
????? ?????? 28 % ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????? 1, ??? CIRS, ?????? ?? ??? ?????? ??? ?????? ?????? MK ?? ?? ?????? ???  
?? ??????.

13 ??? 30 ?????? 2018, ? MK ?????? ??? ?? ?????? ?????? ?????? ?????? ??????  
?? ?????? ?????? ??????????, ??? Tribunal Arbitral Tributário (Centro de Arbitragem  
Administrativa – CAAD) [????????? ?????? ?????? ?????? ?????? (?????????  
????????? ??? ?????????? ?????? – CAAD), ??????????], ??? ?? ??? ??? ?? ????  
????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??  
????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ???  
????????? (??? ????: ?????? ?????? ??????)) ?? ?????? ?? ???  
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ?????? ??  
??? ?????? ?? ?????????? ?? ??? ?????? ??? 11?? ?????? 2007, Hollmann (C-443/06,  
EU:C:2007:600), ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???  
?? ?????? ??? ?????????? ??? ?????? 63, ?????? 1, ???.

14 ?????? ??? ?????? ?????? ??????????, ? ?? ?????????? ??? ?? ?????????? ???  
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ???  
? ?????? ??? 11?? ?????? 2007, Hollmann (C-443/06, EU:C:2007:600). ??????,  
????????? ???, ?? ??? ?????? ???, ?? ?????? ?????? ?????? ??? ?? ?????? 43, ??????????

2, ??? CIRS, ?? ????? ??????????? ??? ????? ?? ?????????? ??? ??????????????????? ??  
?????????????? ?? ?????? ?????????? ??? ?????????? ??? ?????????????? ??? ?????? ??? 50 %  
??? ?????? ???, ??????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????????  
????????? ??? ??????????, ?? ?? ?????, ?????????? ??? ?????????? ??? ?????????? ??? ??????????, ?  
????? ?????????? ??? ?? ?????? 63 ???.

15 ????????, ? AT ??????????? ???, ??????? ?? ?????????? ??? 11?? ?????????? 2007,  
Hollmann (C-443/06, EU:C:2007:600), ? ?????????? ?????????? ?????????? ?? ??????????  
????????? ?????? ???????????, ??? ?????????? 9 ??? 10 ??? ?????? 72 ??? CIRS, ??  
????????? ??? ?????? ?????? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ???  
????? ??? ?????? ??? ?????? ?????????? ???????????, ??? ?? ???????????, ???????, ???  
????????? ??? 50 % ??? ?????????? ??? ?????? 43, ?????????? 2, ??? CIRS, ??? ???  
?????????????? ???????????, ??? ??? ?????????? ??? ?????????? ?????????????? ?????????? ???  
????????? ??? ?? ?????? ??? ?????????? ?????????? ????. ?? ???????????, ???, ? MK  
?????? ?? ?????? ?????????? ??? ?????? 72, ?????????? 1, ??? CIRS ??? ??? ??????  
??? ?????? 72, ?????????? 9 ??? 10, ??? CIRS.

16 ??????, ? MK ?????????? ??? ?? ?????????? ???????, ?? ??????? ? ?????? ???????  
??? ?????????? ???????????, ??? ? ??????? ?????? ??? ?????????? ?????????? ???  
????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?? ?????? ??? ?? ??? ?????  
????????? (?????? ?? 18?? ?????? 2010, Gielen, C-440/08, EU:C:2010:148, ?????? 50  
??? 51).

17 ?? ?? ??????, ?? ?????? ?????????? ?????????? ?? ?? ?????????????? ??? ???????  
???? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ??? 11?? ?????????? 2007,  
Hollmann (C-443/06, EU:C:2007:600), ???, ?????? ???, ? ?????????? ??? ?????????? ???  
????????? ?????????? ?? ?????????? ?????????? 72, ?????????? 9 ??? 10, ??? CIRS,  
????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???,  
????????? ?? ?????????? ??? ?????? ??? 50 % ??? ?????????? ??? ?????? 43,  
????????? 2, ??? ?????? ???, ?????? ??? ??? ?????? ??? ?????????? ??? ??????????  
??? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ?? ??? ??????.

18 ??? ??? ??????? ????, ?? Tribunal Arbitral Tributário (Centro de Arbitragem  
Administrativa – CAAD) [?????????? ?????????? ?????????? ?????????? (?????? ???????????  
??? ?????????? ?????? – CAAD)] ?????????? ?? ?????????? ??? ?????????? ???  
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????? ???:

«????? ?? ?????????? ??? [?????? 18 ?? 63 ?? 65 ???] ??? ?????? ???  
????????? ?? ?????? ???, ??? ? ?????? ??? ?????? ?????? ?????? (????? 43,  
????????? 2, ??? [CIRS]), ? ????? ?????????? ??? [?? ?????? ??? ?????? ???  
?? 10 ?? 72 ?? ?? ??????] ?????????? ?? ?????????? ??? ?????????? ???, ??????  
????????? ?? ?????????? ?? ?????? ?????? ?????? ??? [...] ?????? (??? ??????) ?? ???  
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???? ?????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??  
????? ??? ?????? ?????? ??? ??????;»

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

19 ?? ?? ??????? ???, ?? ?????? ?????????? ???, ???' ??????, ?? ?????????????? ?? ??  
????? 18 ?? 63 ?? 65 ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????? ? ????, ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??

???????????? ?????????? ?????????? ??? ?? ??? ????? ?????? ??? ?????? ?? ??????? ?????????????? ???  
???? ?? ?????????? ?? ??? ????? ?????? ??? ?? ?????????? ?? ??? ?????????? ?????? ?????????? ??????????  
????????????? ??? ?????? ??? ?? ??????????????, ??? ?????? ??? ?????? ?????? ?????????? ??????????  
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### ??? ??? ?????????????? ??? ?????? ??? ??????????

20 ?????????????? ?? ?????????? ???, ??? ?????? ??????????, ?? ?????? 18 ??? ?????? ???  
????????????? ?????????? ??? ?? ?????????? ?????? ?? ?????????? ??? ?? ?????? ??? ??????, ??? ??  
????? ? ?????? ??? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? (????.  
????????? ??? 11?? ?????????? 2007, Hollmann, C-443/06, EU:C:2007:600, ????? 28 ??? ???  
????????????? ??????????).

21 ??????, ??? ?????? ??? ?????????? ?????????? ??? ??????????, ? ?????? ???  
?????????, ??? ?? ?? 63, ?????? ?????????? ??? ?????????? ?????????? (????.  
????????? ??? 11?? ?????????? 2007, Hollmann, C-443/06, EU:C:2007:600, ????? 29 ??? ???  
????????????? ??????????).

22 ??????, ??? ?? ?????????? ??? ?????????? ?????????? ??? ? ??????????????  
????????? ?? ??????, ??? ?????? ?????? ??? ?????? ??????, ?????? ?????? ?????? ??????????  
(????? ??? 11?? ?????????? 2007, Hollmann, C-443/06, EU:C:2007:600, ????? 31 ??? ???  
????????????? ??????????).

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

24 ??????, ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??????  
????????? ??? ?????? ?? ?????? ?? ?????? ? ? ?????? ??? ?????? ?????? ?????????? ???  
????? 64 ???, ???????, ?? ??????????, ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ???.

### ??? ??? ?????????? ?????????????? ??? ??????????

25 ?????????? ??? ?? 63 ??? ?????? ?????????? ?????????????? ?????????? ???  
????????? ?????????? ?????? ??????, ??? ??? ?????????? ??? ?????????? ?????????????? ???  
??? ?????? 65 ???.

26 ?? ??????????, ??? ??? ?????? ?????????????? ?????????? ?????????? ??? ?? ?????? 43,  
????????? 2, ??? ?? ?????? 72, ?????????? 1, ??? CIRS ??????????, ?? ??????????  
????????? ?????????????? ??? ?? ?????????? ?? ?????????? ?????? ?????????? ?????????? ???  
?????????, ?????????????? ?????? ?????????? ?????????? ??? ?? ?? ?????????? ???  
????? ?????????????? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ?????? ??????.

27 ??????????, ??? ?? 43, ?????????? 2, ??? CIRS, ? ?????????? ??? ??????????  
???? ?????? ?????? ??? ?? ?????????? ?????? ?????? ?????????? ?????????? ??? ??????????  
????????? ??? ?? 50 %. ??????????, ??? ??? ?????????? ?????????? ??? ?????????? ???  
????? 72, ?????????? 1, ??? CIRS ?????????? ?? ?????????? ??? ?????????? ???  
????? ?????? ?????????? ?? ?????????? ?????????? 28 %.

28 ??????, ???' ?????????? ??? ?????????? ?????, ? ??? ?????????? ??? ?????? ???  
?? ??? ?????? ?????????? ??? ?? ??? ? ??? ?????? ?????? ?????????? ??? ?????? ???

?????????? ??????????. ?? ????????, ??????, ?????????????????? ??????????? ??? ????  
????? ??? ????? ?????? ?????? ????? ??????????, ?? ??????? ?????????? ?????????? ?????  
?????????? ?????????? ?????????? ?? ?????? ?? ????? ?????????? ?????????? ???, ?? ??  
?????, ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? (????. ?????? ??? 11??  
????????? 2007, Hollmann, C-443/06, EU:C:2007:600, ??? 37).

29    ???????????, ???, ????? ??? ?????? 72, ?????????? 1, ??? CIRS, ? ???????  
????????? ??????????? ?? ?????????? 28 % ?????????? ??? ?????? ?????????? ??? ???  
??? ?????????? ??? ?????? ??? ?????????? ??? ?????????, ??? ??? ?????? ?????????  
????????? ??? ?????? ??? 50 % ??? ?????????? ??? ?????????? ??? ??????, ?? ???????  
????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????, ??????????  
??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??????????  
???, ?????? ?? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?? ?????????? ???  
????????? ?????????? ??? ?????? ??? ?????????? ?????? 48 %, ??? ?? ??? ?????? ??? ?????????? ??  
????????? ?????????? ??? 2,5 % ??? ?? ?????????? ?????????? ?????????? ??????????  
80 000 ??? 250 000 ??? ??? 5 % ??? ?? ?????????? ?????????? ?????????? ???  
????? ???.

30    ?? ?????????? ??? ?????? ?? ???????, ?? ??? ?????? ??? 11?? ??????????  
2007, Hollmann (C-443/06, EU:C:2007:600, ??? 40), ??? ? ??????????, ?? ?? ??? 43,  
????????? 2, ??? CIRS, ??? ?????? ?????????? ??? ?????? ??? 50 % ??? ?????? ??? ??  
????????? ??? ?????????????? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??  
??' ?????? ??? ?????????????? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ???  
????????????? ??? ?? ?????? 63 ??? ?????????? ??? ?????????? ??? ?????????? ???

31    ? ?????????? ??? ?????? ?? ?????????? ??? ?? ?????? 44 ??? ?????????? ??? 19??  
????????? 2015, Hirvonen (C-632/13, EU:C:2015:765), ?? ??? ?????? ?? ?????????? ???  
??? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ???  
????????????? ?????????? ?????????, ? ?????? ?????????? ??? ??? ?? ?????? ?????????? ???  
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????? ???, ??? ?? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??????????  
????????? ?? ?????????? ?????????? ??? ?????? ?????????, ?????? ?????? ?? ?? ?????? ???  
?????, ?????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ? ??????  
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????? ???, ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
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????? ???, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???  
????????? ??? ?? ?????? 29 ??? ?????? ?????????, ?? ?????? ?????????? ??? ??????  
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????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????????  
????????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????

32    ??? ??? ??????? ????, ? ?????????? ??? ?????? ?????????? ??? ??? 50 % ??? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? 72, ?????????? 1, ??? CIRS  
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ??? 63,  
????????? 1, ???.

33 ????????, ??? ?? ??????????? ?? ??? ????? ?????? ??????????? ?????? ?? ??????? ?? ??????? ??  
??? ??????????????? ???????????????, ??? ?? ?????? ??? ?????? 65, ?????????? 1 ??? 3,  
????.

??? ??? ??????? ?? ?????? ??? ??????????? ?? ??? ??????????? ?????? ?????? ???????  
?????????? ?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? 65, ?????????? 1 ??? 3, ????

34 ??? ??? ??????? 1 ??? ?????? 65 ???, ?? ??????? ?? ?? ??? ??????? 3 ??? ???  
??????, ?????????? ??? ?? ?????? ???, ?? ??? ?????? ??? ???????????, ??????? ??  
????????? ??? ?????? ??? ??????????? ?????? ?????????? ??? ?? ???????????  
????????? ???????, ?????? ? ??????? ??? ?????? ??? ?????? ?????????? ??? ???????????  
????????????? ?????????? ??? ?????? ??? ?????????? ?????? ??????????? ??? ????????????

35 ????????, ??????????? ?? ??? ?????? ??????? ??????? ??????????????? ??? ?? ??? 65,  
?????????? 1, ?????????? ??, ??? ?????? ??????????????? ??? ??????????????? ??? ??  
?????????? 3 ??? ?????? ?????? ??????????? ????????????. ???????, ??? ?????? ??????????? ??  
??????????, ??????????? ?? ??????? ?????? ?????????? ???????????, ??? ?? ??? 43,  
?????????? 2, ??? ?? ?????? 72, ?????????? 1, ??? CIRS, ?? ??????? ?????????? ?? ??? ??  
????????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????????? ?????? ? ???????????  
????????????? ?? ?????? ?????????? ??? ??? ?????? ?????????????? ?????????? ? ??  
????????????? ??? ?????? ?????????? ??? ?????? ?????????? (????. ??????? ?? 11??  
????????? 2007, Hollmann (C-443/06, EU:C:2007:600, ?????? 44 ??? 45 ??? ??  
????????? ?????? ???????).

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

37 ??? ????, ??? ?????, ?? ??????????? ?? ??? ???????????, ??????????????? ??? ??  
????????? ??????? ?? ?????? 50 ??? ?????????? ??? 11?? ?????????? 2007, Hollmann (C-  
443/06, EU:C:2007:600), ??????, ??? ? ?????????? ??? ?????????? ??? ?? ??? ??????????  
????????? ????, ??? ?? ?????? 43, ?????????? 2, ??? ?? ?????? 72, ?????????? 1, ??? CIRS,  
??? ?????? ??????? ?????????? ??? ???????????, ??? ?????????? ??? ?? ??????????  
????????? ??? ?????? ?????????? ???????????, ???????, ??? ? ?????????? ??? ??  
????????? ??? ?????????? ?????????????? ???, ??????, ??? ?? ?????? ??? ?? ??? ??  
????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ??  
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38 ??? ?? ??????????? ???, ???, ??? ?? ?????? 29 ??? ??????? ?????????? ???????????  
??? ?? ?????????? ?????????????? ??? ?????? ??????? ??? ?????????? ??? ?? ???????????  
????????? ??????? ??? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??  
????????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????? 43, ??????????  
2, ??? ?? ?????? 72, ?????????? 1, ??? CIRS ??? ?????? ??? ?? ?????????? ??? ??  
????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??  
????????? ??? ?????????? . ???????, ? ?????????? ??? ?????? ?????? ?????????? ??????????????  
????????? ???????, ??? ? MK, ??? ?????????? ?? ?????? ?????????? ?????????? ??????????  
?????????.

39 ? ?????????? ??? ?? ?????????? ??? ?? ratio legis ??? ?????? 43, ?????????? 2, ???  
CIRS, ?? ?????? ?????????? ?? ?????? ??? 50 % ??? ?????????? ??? ?????????? ??? ??

????????? ????????, ?????, ??? ?????????????? ??????????, ?????????? ??? ?????????? ??  
??? ?????????? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ???  
??????, ?????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ? ?????????? ???  
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40    ??? ??????, ??? ??????, ??? ?????? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ?????? ?????????? ?????? ?????????? ??? ? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? ?????? ?????? 43, ?????????? 2, ??? CIRS ?????????? ???  
?? ? ? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???  
????????? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ???  
????????? ??? ?????? 72, ?????????? 9 ??? 10, ??? CIRS ??? ??? ?????? ?????? ?????? ???  
????????? ?? ??? ??????.

41    ??????, ??? ?????? 58 ??? 60 ??? ?????????? ??? 11?? ?????????? 2007, Hollmann (C-  
443/06, EU:C:2007:600), ?? ?????????? ??? ?????? ??? ? ?????????? ??? ?????????? ???  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
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????????? ??? ?????? ?????? ???, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???  
????? ??? ?????? ?????? ?????? ???, ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
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????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
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??? ?????? ??? ?????? ?????? ??????.

42    ?????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ? ??? ? ?????? ??? ?????? 72, ?????????? 9 ??? 10, ??? CIRS,  
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???  
?? ??????????, ??????????, ??? ?????? ??? 50 % ??? ?????? ?? ?????? 43,  
????????? 2, ??? ?????? ???, ?????? ?? ?????????? ?????? ?????? ?????? ?????? ???  
MK, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? 72, ?????????? 1, ??? CIRS, ??? ??? ?????? ??? ??? ?????? ???  
????? ??????.

43    ??????, ?????? ?? ?????????? ???, ?? ??????????, ? ?????? ??? ?????? ???  
????????? ?? ?????????? ?????? ??? ?? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ???  
?????.

44    ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????? ??? ?????? ???  
????????? ? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ???, ??? ?????? ??? ?????? ??? 63 ???, ??? ??? ?????? ?????? ???  
????????? (???. ??? 18?? ?????? 2010, Gielen, C-440/08, EU:C:2010:148, ???  
52).

45    ??????, ??? ??? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??  
????????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ?? ?????? ?????? ??? ??  
????? ??? ?????? ??? ?????? ??? (???. ??? 2010, Gielen, C-440/08, EU:C:2010:148, ???

18?? ??????? 2010, Gielen, C-440/08, EU:C:2010:148, ???: 53 ??? ???: ?????????????????????????????????).

46      ????? ????????, ? ?????????? ??? ??????????, ????? ?????? ??? ?????? ??????, ???  
????????????? ?????? ?????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ???  
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47 ?????????????? ?????? ??? ??????? ??? ??????????????????, ??? ?????????? ??????????????  
?????? ?????? ?? ?????? ? ??????? ??? ?? ????? 63 ????, ?? ?????????? ?? ?? ????? 65  
????, ???? ??? ?????? ??? ?????????????? ??? ??????? ??????? ?????? ? ?????, ??????????????  
?? ?????? ? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??????????  
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??? ?? ????????????, ??? ?????? ??? ?????? ?????? ?????? ??????????????, ??? ?????????????? ??? ??  
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48      ?????????? ??? ? ??????? ?????????? ??? ?? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????  
??? ??????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ??????????, ?' ????  
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ?????????? ??????  
????? ?????????? ?????????? ??? ??????????, ??? ??? ?? ??? ??????, ??? ??????????.

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

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