

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

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

??? 17?? ??????? 2021 (\*)

«????????????? ?????????? – ?????????? ??? ?????????????? ?????????????? – ?????  
????????????? ??? (???) – ?????? 2006/112/?? – ?????? 43 ??? 44 – ?????? ??????  
????????? ?? ?????????? ??? ?????? ? ?????? ?????????? ??? ??? ?????????? ??? – ?????  
????????? ?????????? ?????????????? ?????????????? ??? ?????? ?????????? ??????????????  
????????? ??? ?? ?????????? ?????????????? ?????????????? ??? ?????????? ??? ??????????  
????????? ?????? ??? ??????»

???? ??????? C?459/19,

? ? ?????????? ?????? ?????????????? ?????????? ??????? 267 ????, ???  
?????? ?? Upper Tribunal (Tax and Chancery Chamber) [????????? ?????????????? ??????????  
(????? ??????????? ??? ??????????????), ??????? ??????????] ?? ??????? ??? 13?? ???????  
2019, ? ?????? ??????? ??? ?????????? ??? 17 ??????? 2019, ??? ??????? ??? ??????

### **The Commissioners for Her Majesty's Revenue & Customs**

????

**Wellcome Trust Ltd,**

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

????????? ??? ??? E. Regan, ??????? ???????, M. Illeši?, E. Juhász (?????????), ?.  
????????? ??? I. Jarukaitis, ???????,

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

?????????: A. Calot Escobar

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

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

– ? Wellcome Trust Ltd, ?????????????? ??? ??? F. Mitchell, barrister, ????? ??? ??? ???  
P. Nathwani ??? ??? C. Millard ??? H. Grantham, solicitors,

– ? ?????????? ??? ??????? ??????????, ?????????????? ??? ??? Z. Lavery,  
????????????? ??? ??? E. M?????????, barrister,

– ? ???????, ?????????????? ??? ??? M. Browne ??? J. Quaney ????? ??? ??? A.  
Joyce, ?????????????? ??? ??? N. Travers, SC,

– ? ???????, ??????????, ?????????????? ??? ??? S. Jiménez García,

– ? ???????, ???????, ?????????????? ??? ??? R. Lyal ??? ??? A. Armenia,

???? ?????? ??? ?????? ??????????? ??? ??????? ??? ?????? ??? ?????? ?? ???????????  
??? 25?? ??????? 2020,

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

???????

1 ? ?????? ?????????????? ?????????? ??? ?????? ??? ??????? ??? ?????? 44 ??? ??????  
2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ?????? ??????? ???  
????????????? ??? (?? 2006, L 347, ?. 1), ??? ?????????????? ?? ??? ?????? 2008/8/E?  
??? ??????????, ??? 12?? ?????????? 2008 (?? 2008, L 44, ?. 11) (??? ????: ?????? ??? ??  
???).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? The  
Commissioners for Her Majesty's Revenue & Customs (????????????? ??? ?????????????? ???,  
????????? ??????????) ??? ??? Wellcome Trust Ltd (??? ????: WTL) ??????? ?? ??? ??????????  
??? ?????????????? ??? ????? ?????????????? ??? (???) ??? ?????????? ?? ??????  
????????????? ??? ?????????????? ?????????????? ?????????????? ?????? ??? ??????.

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

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

H ?????? 2008/8

3 ? ?????????? ??? 4 ??? ?????? 2008/8 ???????? ?? ???:

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

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

4 ?? ?????? 2, ?????????? 1, ??? ?????? ??? ??? ?????? ?? ???:

«????? ??? ?????????? ?? ?????? ???:

[...]

) ?? ?????? ??????????, ??? ?????????????????? ?? ?????? ?????? ??? ?????? ??? ??????  
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????,

[...]».

5 ?? ?????? 9 ??? ??? ?????? ???, ?? ?????? ?????????????? ??? ?????? ??? III ??????, ?

????????? ?????????????? «????????????? ?????? ?????», ?????????????? ?????? ?????????????? 1 ??? ?????:

«????????? ?? “?????????????? ???? ????” ?????????????? ?????, ??? ?????? ?????????????? ??? ??  
????????????? ???, ?????????? ??????????????, ?????????? ??? ??? ?????????????? ????  
?? ? ?????????????? ??? ?????????????? ???.

?? “???????????? ??????????????” ?????????? ??? ?????????????????? ??? ??????????, ???  
???????? ? ??? ?????????? ??????????, ?????????????????? ??? ??? ??????????????  
?????????, ??? ?????????? ?????????????????? ??? ??? ??? ?????????????????? ??? ??????????  
?????????????. ?? ?????????? ?????????????? ??????????, ??????, ? ??????????????  
????????? ? ????? ??????, ?? ????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????»

6 ? ?????? V ??? ?????? ??? ??? ??, ? ?????? ?????? ??? ??? ??? ??????????????  
???????, ?????????????? ?? ??????? 3 ?? ????? «????? ?????? ??????», ?? ?????  
????????????? ?? ??? ?????.

7      ?? ?????? 1, ?? ????? «????????», ?????????????? ??? ??? ??? ??? ???, ?? ????? 43 ???  
????????? ??? ??? ???, ?? ????? ?????????? ?? ???:

<???? ????? ?????????? ??? ?????????????? ??? ?????????????? ?? ??? ????? ????? ?????????? ?????????????? ??????????????;

1) ?????????? ?? ???? ? ?????? ?????? ?????? ?????????????????? ? ??????????????  
?????????? ?? ???? ???? ?????????? ?????????????? ?????????? ?????? ? ?????? ??????????  
????????? ?? ?? ?????? 2 ?????????? 1 ?????????? ?? ?????????? ??? ?????? ?????? ?????? ??????  
?? ?????????? ?? ?????????? ?? ??????

2) ?? ??????????? ?? ?????? ?????? ??????? ?? ?????? ??????? ?? ?????? ??????? ?? ?????? ??  
?????????? ?? ??????????? ?? ??? ????»

8      ?? ?????? 2 ??? ?????????? ??????, ?? ????? «????????? ???????», ?????????????? ?? ?????  
44 ??? 45 ??? ??????? ???????.

9      ?? ?????? 44 ??? ? ? ????? ?????????? ?????????? ?? ????:

10    ?? ?????? 45 ??? ?????? ?????????? ??????????? ?? ????:

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

11 ?? ?????? 3, ?? ????? «?????? ??????????», ?????????????? ?? ?????? 46 ??? 59? ???  
????????? ??? ??? ???, ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??????.

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

12 ? ?????????????? ??? 19 ??? ?????????????? ?????????? (??) 282/2011 ??? ??????????,  
??? 15?? ??????? 2011, ??? ?? ?????? ?????? ?????????? ??? ?????? 2006/112 (?? 2011, L  
77, ?. 1, ??? ????: ?????????????? ??????????), ?????????? ?? ???:

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

13 ?? ??????? V ??? ?????????????? ??????????, ?? ????? «????? ??????????????  
??????», ???????????, ?????? ???, ?? ?????? 4, ?? ????? «????? ?????? ??????????  
(????? 43 ??? 59 ??? ?????? [?? ??? ???])», ?? ????? ?????????????? ?? ??????  
?????????.

14 ?? ??????? 2, ?? ????? «????????? ??? ?????», ?????????????? ??? ??? ?????? ???, ??  
????? 19 ??? ?????????????? ??????????, ?? ?????? ?????????? ?? ???:

«?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????????????? ??? ?????? 44 ??? 45 ??? ?????? [?? ??? ???], ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???,  
????????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ???  
?????.

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

????? ??? ? ?? ?????? ?????????? ?????????? ?????? ?????? ?????? ??????,  
????????????????????? ??? ?????? ??? ?????????? ??? ?????, ??? ??? ?????? ?????? ???  
????????????? ???????????????, ? ?????? ??? ?? ?????? ?????????? ?????????? ?????????????? ???  
?? ????? 44 ??? ?????? [??? ??? ???], ?????? ??? ?????????? ?????????????? ??????????..»

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

15 ?? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????????? ?????????????? ??? ??????????  
????? ??? ?????? ?????? ??? ?? ?????? 7? ??? Value Added Tax Act 1994 (????? ???  
1994 ??? ??? ??? ?????????????? ???), ?? ?????? ?????????? ?? ????:

«????? ?????? ??????????

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

(2) ? ?????? ?????????? ?????????? ??? ?????????????? –

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

(b) ??? ?????? ??? ?????? ?????? ?????? ?????????????? ?? ??????, ?? ??? ?????? ??? ??????????.

[...]

(4) ??? ??? ?????? ??? ?????? ???, ?????? ?????????? ??? ?????? ??? ?????? ??????????  
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ??? –

(a) ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 9 ??? [????? ??? ??? ??? ???],

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

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

(d) ?????? ?????? ?????? ?????????? ?????? ??? Act of Tynwald [????? ??? ??? ???  
??] ??? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?? ??? [??],

?? ? ?????????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ????.»

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

16 ? WTL ??? ?????? trustee [?????????????????] ??? ?????????????? trust  
[?????????????], ??? Wellcome Trust, ?? ?????? ?????????? ??? ?????? ??? ??????  
?????. ? WTL ??? ?????? ??? ??????????, ??? ?????? ??? ?????????? ?????o?  
????????? ??????????????, ?????? ??? ?????? ?????????? ??????, ?????? ??????????  
????????? ??? ??????????, ??? ?????? ??? ?????????, ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ??????????, ?? ??? ?? ??????, ?? ?????? ??? ?????? ?????? ?????? ? WTL,  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? WTL  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

17 ??? ?????? ??? 20?? ?????? 1996, Wellcome Trust (C?155/94, EU:C:1996:243), ??  
????????? ??? ?????? ??? ?????? ??? «????????? ??? ??????????» ??? ?? ??? 4,

?????????? 2, ??? ????? ??????? 77/388/???, ??? ????? ???????????, ??? 17?? ????? 1977, ???  
????????????? ??? ??????????? ??? ?????????? ??? ?????, ??? ?????????? ?? ??? ????? ?????? ??????  
????????? – ??? ????? ??????? ??? ????? ?????????????? ????: ?????????? ?????????? ??? (?)  
???. ???.. 09/001, ?. 49), ?????????? ??? 9, ?????????? 1, ??? ?????? ??? ???, ???  
????????? ?? ?????????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ???  
?????? ??? ??? trustee ??? ??????? ??? ?????????? ??? ?????????? ?????? ?????????? ???  
????????????? trust. ??? ???????, ?????????? ?? ?????? ??? WTL ??? ?????????? ???  
????? ??? ??? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ???  
?? ???? ?????????? ??? ?????? ??????.

18 ??? ?? ?????? ???????????, ??? ?? Upper Tribunal (Tax and Chancery Chamber)  
[???????, ???????????, ??????? (????? ???????????, ??? ???????????), ???????  
????????], ??? ???????????, ???????, ??? ? WTL ??? ????? ?????????? ??? ?????? ???  
????? ??? ?????? 2 ??? 9 ??? ??????? ??? ???, ?? ???????, ??? ? ?????????????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? WTL ??? ??????  
??? ??????????? ??? ?????????? ?????? Wellcome Trust ?????????? ??????????  
?? ??? ?? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ???, ???, ??? ? ??  
????? ?? ?????????? ?????????? ?????? ?????? ?????????? ?????????? ??? ??? ??????  
?????????????.

19 ??????, ?? ?????? ?????????? ?????????????? ??? ? WTL ??? ????? ?????? ??? ??????????  
?? ??? ?????????? ??? ??????? ?????????????? ??? ?????? ??? ?????? ??????????????  
?? ??? ?????????? ??? ??????? ??? ?????????? ??? ??? ??? ?????????? ??? ?????? ???  
????? ??? ?????? ??? ?????? 2, ?????????? 1, ??? ?????? ??? ??? ????. ???????, ? WTL  
?????? ?? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? trust ??? ?? ?????????? ??  
????? ??????? ??????????.

20 ??? ?? 2010 ??? ???????, ? WTL ?????????? ??? ??? ??? ??? ?????????? ??? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????  
?? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? 196 ???  
?????? ??? ??? ???, ?????????? ??? ?? ??? ?????? ??? ??? ?????? ??? ?????? ??? ??????  
?????????.

21 ?????? ??????? 2016 ??? ?????? 2017, ? WTL ?????? ?????????? ?????????? ???  
?????, ??? ??? ??? ???, ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ???  
?? ??? ?? ??? ?????? ???'. ??? ? WTL ?????? ???, ?????? ??? ??????????  
????? ??? ?????? ??? ?????? 2 ??? 9 ??? ?????? ??? ???, ?????????? ??? ???  
«????????? ??? ???, ? ?????? ?????? ??? ??? ?????? ??? », ??? ??? ?????? ???  
?????? 44 ??? ?????? ??????.

22 ?? ??? ?????? ??? ?? 10?? ??????? 2018, ?? First-tier Tribunal (Tax Chamber)  
[??????????, ?????????? ??????? (??????????, ???), ?????? ??????] ?????? ???  
?? ?????????? ??? WTL. ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ??? 44 ??? ??? ?????? 45 ??? ?????? ??? ??? ???, ?? ?? ???  
????????? ?????????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????????? ???  
????????? ?????? ?? ??? 44 ??? ?????? ??? ?? ??? ?????? ?????????? ?? ???  
????????? ?????????? ?? ?????? ?????? ??? ??? ?????? ?????????? ??? ??? ??? ??????  
?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??? 44.

23 ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
?????????.

24 ?? ??? ?????? ??? ?????????? ???, ??????, ??? ?? ??? ?????? 44 ??? ?????? ??? ??? ??? ???

????????? ??? ????? ???? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
??? ?????????? ?? ??? ?????? ?????????? ???, ????????, ???, ??? ?????? ?????????? ??? ???????,  
?????? ?? ?????? ?? ?????????????? ?????????????? ?????? ?????? ?????????? ??????????. ??? ?? ?? ??  
???? ??, ?????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?? ?????????? ?????????? ??????????  
????????? ??? ?????? 45 ??? ?????? ??? ??? ???? ???? ?????? ?????????? ?????????? ???  
???? ?????????? ?????? ??? ?????? 46 ??? 59? ??? ?????? ???????, ?????? ??? ?????? ??  
????????? ?? ?????? 44.

25 ? WTL ?????????? ???, ?????? ??? ????? «????????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ???» ??? ?? ?????? ??? ?????? 2, ?????????? 1, ??? ?????? ??? ??? ??? ??,  
??? ?????? ??? «????????????? ??? ?????? ?????? ??? ??? ?????? ???» ??? ?? ?????? ???  
??? ?????? 44 ??? ?????? ???.

26 ?? ?????? ?????????? ?????????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????? ??? ???? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ???  
????? ? WTL ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???.  
??????????, ???, ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????, ?????? ???  
?? ?????????? ??? ? WTL ?????? ?? ?????? ?? «????????? ??? ?????? ??? ?????? ???  
????? ??? ??? ??? ?????? ???», ??? ?? ?????? ??? ?????? 44 ??? ?????? ??? ??? ??? ??.

27 ??? ??? ??????? ????, ?? Upper Tribunal (Tax and Chancery Chamber) [??????]  
?????????? ??? (????? ?????????? ??? ??????????)] ?????????? ?? ??????????  
??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ??? ??????????  
?????????:

«1) ??? ??? 44 ??? ?????? [?? ??? ???] ?? ?????????? ??? ??? ?????? ???,  
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????????? ??? ?????? ??? ?????? trust ???????, ?????????? ??? ??????  
????? ??? ?????????? ???, ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ??? [??????], ?????? ?? ?????? “????????? ??? ??? ??? ?  
????? ?????? ??? ??? ?????? ???”;

2) ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ??? 46 ??? 49 ??? ??????  
[?? ??? ???] ??? ?? ?????? ???, ??? ?? ??? 45 ??? ?????? [?? ??? ???] ??????? ??  
??? ?? ??? ?????? ??? ?? 44 ??? ?? ??? 45 ??? [?? ???] ??????? ??  
????????? ??? ??? ?????? ???;»

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

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

28 ?? ?? ?????? ?????????? ???, ?? ?????? ?????????? ???, ???' ??????, ??  
????????????? ?? ?? ??? 44 ??? ?????? ??? ??? ??? ??? ?????? ???, ?? ??????????  
??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
????? ??? «? ?????? ??? ?????? ??? ??? ?????? ???», ??? ?? ?????? ??? ?????? ???  
????? ???.

29 ??? ?????????? ??? ?? ?????? ?????????? ?????????? ??? ?????????? ???  
????????? ?? ?????? ?????????? ?????????? ?? ?????? ?? ?????? ??? ?????? ???  
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?? 44 ??? ?????? ???

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

30 ???? ?????????? ??? ? ?????????? ??? ??????? ??? ?????? 44 ??? ?????? ??? ??? ???,  
???? ??? ?????? ? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ??? ?????? ??? ???,  
????????????? ??? ?????? 2, ?????????? 1, ??? ?????? ??????.

31 ?????, ??? ?? ?????????? ??? ?????????? ?????????? ???, ??? ??? ?????? ??????  
????????? ??? ?????????? ?? ??? ?????????, ?? ?????????? ??? ??? ?????? ??? ?????? ??????  
??? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????????? ???  
????????????? ???, ??? ??? ?????? ??? ?????? 9, ?????????? 1, ?????? ??? ??????, ???  
????? ??? ??? ??? (???. ?????????? ??? 8?? ?????? 2001, Bakcsi, C?415/98,  
EU:C:2001:136, ?????? 24 ??? 29, ?????? ??? 22?? ?????? 2012, Klub, C?153/11,  
EU:C:2012:163, ??? 40).

32 ??? ?????, ???, ??? ?????? ??? ?????? ??? ?????? ??? ??????????????, ? ??? ?????? ??????????  
???? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?? WTL ??? ??? ?????? ??? trustee,  
??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? trust ???,  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?? ???  
9, ?????????? 1, ??????, ??? ?????? ??? ??? ??? ??? ??? ??????????  
????????????? ??? (??., ???' ???????, ?????? ??? 20?? ?????? 1996,  
Wellcome Trust, C?155/94, EU:C:1996:243, ??? 41).

33 ?????, ??? ?????? ??? ?????? ?????? ??? ?????? ??????????????, ? WTL ???  
???? «????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???», ??? ??? ??????  
??? ?????? 2, ?????????? 1, ?????? ???, ??? ?????? ??? ??? ???.

34 ?????, ?????????? ??? ?????? ??? ?????????? ? WTL, ?????? ??? ?????? ???' ??????  
??? ??? ?????? ?? ?????? ??? «????????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
????????? ???», ??? ??? ?????? ?????? ??? ?????? 44 ??? ?? ??? ??????,  
????????? ???, ??? ?????????? ??? 29 ??? ?????? ?????? ???, ?? ?????????? ???  
????? ?????? ?????? ??? ? ?????? ??? ?????? ?????? ?? ?????? ??? ????  
????? ??? ?????? ??? ???? ?????? ??? ?????? ?????? ???, ?????? ???, ?? ??? ??? ???  
????????? ?????????? ??? ???? ?????? ???.

35 ?????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??????, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?? ?????????? ??? ?????? ??????, ??? ??? ?????? ??? ?????? ???  
????????? ?????????? ??? (???. ?????? ??? 15?? ?????????? 2016, Landkreis  
Potsdam-Mittelmark, C?400/15, EU:C:2016:687, ??? 37 ??? ?????? ?????????? ???).

36 ??? ???? 43 ??? ?????? ??? ??? ??? ???????, ???, ??? ? ?????????? ???  
????? ?????? ?? ?????? ??? ?????? «????????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ???», ??? ???? 44 ??? ?? ??? ?????? ??? ?????? ?????????? ???  
????? ??? ???? ?????? ??? ??? ?????? ??? ?????? ??? 2, ?????????? 1, ??? ???  
?????.

37 ?????, ?????????? ??? ???? 43, ?????? 1, ??? ?????? ??? ??? ???  
????????? ???, ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ???, ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ?????? ???, ??? ??? ?????? ??? ?????? 2, ?????????? 1, ??? ?????? ???  
??? ???? ?????? ?????????? «??? ??? ?????? ??? ?????? [...] ?????? ???

? ?????? ?? ?? [????? ??????] ??????????? ?? ?????????????? ??? ?????? ?????? ?????? ?????? ???  
?????????? ??? ??????????? ?? ??????». ????????, ? ?????????? ??? ?????? ?????????? ???  
????? 43, ?????? 1, ???? ??? ????? ?????????? ?????? ??? ?????? ??? «????????????? ???  
?????», ?? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?? ??? ?????? ?????? ???  
?????????.

38 ?? ?? ??????, ??? ?? ?????? ??? ?????? 43, ?????? 1, ??? ?????? ??? ?? ?, ?  
????????? ??? ?????? ?????? ?????? ?? ??????, ??? ??? ?????? ???, ??? ?? ?????? ???  
????? 44 ??? ?????? ??????, ??? ?? ?????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ???  
????????????? ???.

39 ?????? ????????, ??? ?????? ?? ?????? ??? ?????? 43 ??? 44  
?? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ?? ?????? ???  
????????? ???, ??? ?? ?????? ??? ?????? 43, ?????? 1, ??? ?? ?????? ???, ???  
????? ?????? ?????????? ??????????, ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???  
????? ???.

40 ????????, ?????????????? ??? ?????????????? ??? ?????? ??? ? ?????? ?????????? ??? ??  
?? ????????, ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???  
????? 2, ?????????? 1, ??? ?????? ??? ??? (?????. ?????? ??? 9?? ?????? 2015,  
Trgovina Prizma, C?331/14, EU:C:2015:456, ??? 18 ??? ?????? ?????????? ???).  
??????, ??? ?????? ??? ?????? ?????????? ??? ??? ? ?????? ?????? ?????? ?????????? ???  
?? ?????????? ?????????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? (????? ??? 15?? ?????????? 2016,  
Landkreis Potsdam-Mittelmark, C?400/15, EU:C:2016:687, ??? 32).

41 ????????, ??? ? ?????? ??? «????????? ??? ?????? ??? ? ?????? ?????? ??? ??  
????????? ???» ??? ?????????? ??? ?????? 44 ??? ?????? ??? ?? ???, ??  
?????? ???, ??? ?? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ??  
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
??? ?? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ?????? ???, ???, ?????????? ???, ??? ?? ?????????? ???  
????????? ???, ??? ?? ??? ?????????? ???.

42 ??? ????????, ??? ?? ?????? ??? ?????????? ??? ?????? 44 ??? ?????? ??? ?? ?,  
????? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???  
????? ??? ?? ?????????? ???, ??? ?? ?????? ??? ?????? ??? ??

43 ?? ????????, ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??  
?????????, ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? WTL, ? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?? ?????? ??? trustee, ??? ?????????? ??? ?????? ??? Wellcome  
Trust, ?????? ?????????? ??? ?? ?????? ?????????? ???, ??? ?? ?? ??????????  
????????? ?????? ??? WTL ?????????? ??? ?????? ??? ?????? ??? ??  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

44 ? ????????, ??? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ???  
?? ??? 44 ??? ?????? ??? ?? ??? ?? . ???, ? ?????????? ??? 4 ??? ?????? 2008/8  
??????, ?????????? ???, ???, ??? ?? ?????? ??? ?????? ??? ?? ?????????? ??? ??

????, ? ??????? ??????? ??????? ?? ??? ??? ?????? ?????? ??? ??????????? ?? ??????? ??  
?????????? ??? ????? ?????????????? ??? ????? ??? ?? ?????? ??? ?????? ???????????  
???? ??? ?? ????? ?????? ?????? ?? ??????????? ??? ?????? ?????????????? ?? ?????? ??  
?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??????????.  
??????, ??? ??? ?????????? ??????? ??? ?????????? ?????? 4 ?????????? ??? ??  
????????? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????? ?? ?????????????? ???  
????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???  
????? ? ??? ??????? ??? ?????? ??? ?????????? ???.

45    ???????, ??? ??? ?????????? ??? 19 ??? ?????????? ???????????, «[?]?? ??????  
?? ?????????? ??? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ???, ?????????????? ??? ?????? ??? ?????? ?? ?????? ???  
????????? ???, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ». ??? ??? ??????, ?? ?????? 19, ?????? ??????, ??? ?????????? ???  
????????? ?????? ???, «[?]?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??  
????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? 44 ??? 45 ???  
????? [??? ??? ???], ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?? ??????????  
????? ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???,  
????????? ?? ?? ?????????? ??? ?????? »..

46    ??? ???????, ??? ??? ?? ?????? ???, ??? ?????????? ??? ?????? ??? ?????  
????????? ??? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ??????????  
?? ??? ?????? ??? ?? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???  
????????? ??? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????? ??? ?????? 44 ??? ?????? ??? ??? ???, ?? ?????????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???.

47    ???????, ?? ?????????? ??? WTL ?????? ?? ??? ??? ??? ??? ??????????????, ??  
????? ?????????? ??? ?????????????? ??? ?????????? ???, ?????? ?? ??????????.

48    ???????, ???????, ??? ?? ?????????? ??? ?????? ?????? ??? ????? trustee ??????????? ??  
????????? ??? WTL ??????, ??? ?? ?????? ??? ?????? 9 ??? ?????? ??? ???  
??, ?? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????????? ??? ???  
????????? ?????? (??., ???' ???????, ?????? ??? 20?? ?????? 1996, Wellcome Trust,  
C155/94, EU:C:1996:243, ??? 36).

49    ???????, ?? ?????? ??? WTL, ?????????????? ??? ?????????????? ???????????,  
????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???  
????????? ??? WTL ?????? ??? ?? ?????? ?????????????? ??? ??????.

50    ???????, ??? ?????????? ??? ?? ?????? 43 ??? ?????? ?????????? ?????????? ???  
????? ?? ?????????? ??? ?????????? ??? WTL ??? ?????? ?????????? , ? ?????????? ??? ???  
????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???  
????? ?????? ?? ??? ?????? ??? ?????? ??? ?????????? ????. ?? ?????????? ?? ?? ?????? ???,  
WTL ??????, ?? ?????????? ??? ???, ??? ?????? ?????? ???.

51    ??????? ??? ??????? ??? ?????????????? ??? ?????? ?????????????? ?????????? ???  
????? ? ??????? ??? ?? ?????? 44 ??? ?????? ??? ??? ??? ?????? ??? ?????? ???, ??  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????????? ???  
????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???  
????????? ?????????????? ???, ?????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???  
????????? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???

????», ??? ? ?? ?????? ?? ???? ?????? ??????.

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

52    ?????????????? ??? ???? ?????????? ??? ?????? ??? ???? ?????????????? ??????????,  
????????? ? ?????????? ??? ?????? ?????????????? ??????????.

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

53    ?????????? ??? ? ?????? ?????????? ??? ???? ???? ?????????? ??? ???? ?????? ???  
??? ?????????? ?????????????? ??? ?????? ?????????? ??? ?????????? ?????????????? , ?? ???  
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????  
???? ?????????? ?????????????? ??? ?????????? , ??? ??? ???? ?????????? , ??? ??????????.

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

? ? ????? 44 ??? ?????? 2006/112/? ? ???? ?????????? , ??? 28? ?????????? 2006,  
????????? ?? ? ???? ?????? ?????? ?????? ?????????????? ?????? , ??? ?????????????? ??  
??? ?????? 2008/8/E? ??? ?????????? , ??? 12? ?????????? 2008, ??? ? ???? ??????  
??, ?? ?????????? ??? ???? ?????? ?????????? ?????? ?????? ? ???? ?????? ??????  
????????????? ?? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ?????? ???  
??? ?????? ??? ? ???? ? ? ?????????? ?????????????? , ?????? ? ? ?????????? ???  
??? ? ? ?????? ??? ?????? ??? ?????????? ?????????????? ?????? ??? ?????????? ???  
???? «? ?????? ?????? ??? ??? ?????????? ???» , ??? ? ???? ?????? ??? ??????.

(?????????)

\*    ?????? ??????????: ? ??????.