

@import url(../../../../css/generic.css); EUR-Lex - 61994J0230 - EL

Avis juridique important

/

61994J0230

?????? ?? ?????????? (?????? ?????) ??? 26?? ?????????? 1996. - Renate Enkler ???
Finanzamt Homburg. - ?????? ??? ??? ????? ?????????????? ??????????: Bundesfinanzhof -
?????????. - ??? ?????? ??? - ?????? ??? ?????????? ?????????????? - ??? ??????
??? ?????.. - ?????? C-230/94.

?????? ?? ?????????? ??? ?????????? 1996 ?????? I-04517

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1. ?????????? ?????? * ?????????? ??? ?????????? * ?????? ?????? ?????? * ?????
?????? ?????? ?????????????? ????? * ?????????? ?????????????? ??? ??? ?????? ???
????? 4 ??? ?????? ?????? * ?????????? ?????????? ?????? * * ?????????? ??? ???
????? ?????????????? * ?????? ??? ?????????????? ??? ??? ?????? ?????????? ??????
????????? ?????????? * ??????

(?????? 77/388 ??? ??????????, ????? 4 PAR 2)

2. ?????????? ?????? * ?????????? ??? ?????????? * ?????? ?????? ?????? * ?????
?????? ?????? ?????????????? ????? * ??? ?????? ??? ????? * ?????????? ?????? ??????
??? ?????????????? ??? ??? ?????? ?????????? ?? ?????? ?????????? ??? ??? ????? * ??????????
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??? ??
????? ?? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
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(?????? 77/388 ??? ??????????, ????? 6 PAR 2 ??? 11 ? PAR 1, ?????. ?')

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1. ? ?????????? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ????
?? ?????????????? ?? "????????? ??????????" ??? ??? ?????? ??? ?????? 4,

? ?????????? 2, ??? ???? ??????? 77/388, ??? ?????????????? ??? ?????????? ??? ??????
?????, ??? ??????? ?? ??? ????? ?????? ??????? ???????, ?????? ??????? ??? ?? ????
????????? ??? ????? ??????? ???????.

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

2. ?? ???? 11, ??? ?, ?????????? 1, ??????? ?' , ??? ???? ?????? ??? ?? ?????? ???
?? ???? ??????? ??? ?????? ?????? ??????? ??? ?? ???????, ??? ?????????????? ???
?????? ??????? ??????? ??? ?????? 6, ?????????? 2, ??????? ?' , ??? ???? ???????,
????? ?? ?????????? ??????? ??? ?????? ?? ?????????? ?? ??????? ??????? ??? ??
?? ????? ??????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??
????????? ?? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???
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???? ?????? C-230/94,

??? ??? ???? ?????????? ??? ?? Bundesfinanzhof ??? ?? ??????????, ???' ??????????
??? ?????? 177 ??? ??????? ?, ?? ??? ?????? ???????, ??? ?????? ??? ?????? ???
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Renate Enkler

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Finanzamt Homburg,

? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 4, ?????????? 1 ???
2, ??? ?????? 6, ?????????? 2, ??????? ?' , ??? ??? ?????? 11, ??? ?, ?????????? 1,
????????? ?' , ??? ?????? ???????, 77/388/??? ??? ??????????, ??? 17?? ??? 1977, ???
????????? ??? ?????????? ??? ?????? ?????? ?????, ??? ?????? ?? ?????? ?????? ??????
????????? * ????? ?????? ?????? ?????? ?????????? ?????: ?????????? ?????????? ??? (??
???. ??? .09/001, ?. 49),

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

?????????? ??? ??? ?. ?. ??????, ?????? ???????, P. J. G. Kapteyn ??? H. Ragnemalm
(??????), ???????,

?????? ??????????: ?. ??????

?????????: H. A. Ruehl, ?????? ?????????? ???????????,

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

* ? Renate Enkler, ?????????????? ??? ?? Hans-Juergen Enkler, ??????? ??? ??????????????
?????? ??? Kirkel,

* ? ?????????? ??????????, ?????????????? ??? ?? Ernst Roeder, Ministerialrat ???
????????? ?????? ?????? ????????????,

* ? ?????????? ??? ??????? ??????????, ?????????????? ??? ?? John E. Collins, Assistant
Treasury Sollicitor,

* ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ?? Juergen Grunwald, ???
?? ?????? ??????????,

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

???? ?????? ??? ?????????? ?????????????? ??? Renate Enkler, ?????????????? ??? ??
Hans-Juergen Enkler, ??? Finanzamt Homburg, ?????????????? ??? ?? Hans-Werner Klein,
Regierungsoberrat, ??? ?? ????????, ?????????????? ??? ?? Juergen Grunwald, ??? ??
????????? ??? 15?? ?????????? 1996,

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?? 28?? ?????? 1996,

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1 ?? ?????? ??? 5?? ??? 1994, ??? ?????? ??? ?????????? ??? 11 ??????? 1994, ??
Bundesfinanzhof ?????? ??? ??????????, ?????? ??? ?????? 177 ??? ??????? ??,
?????? ?????????? ??? ??????? ?? ??? ??? ?????? ??? ?????? 4, ?????????? 1 ??? 2,
??? ?????? 6, ?????????? 2, ??????? ?', ??? ??? ?????? 11, ?????? ?, ?????????? 1,
???????? ?', ??? ?????? ?????? 77/388/??? ??? ??????????, ??? 17?? ?????? 1977, ???
????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ??????
???????? * ????? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (??
???. ??? 09/001, ?. 49, ??? ????: ??? ??????).

2 ?? ?????????? ??? ?????? ??? ?????? ?????? ??? Enkler ??? ?? Finanzamt
Homburg ??? ?????? ??? ?????? ??? Enkler ?? ?????????? ??? ?? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? (camping car) ??? ?????? ???
??????????.

3 ?? ?????? 2, ?????? 1, ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????????? ??? ?????? ???
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4 ???

"1. ?????????? ?? '????????????? ????' ?????????????? ????, ???? ?????? ?????????????? ??
?? ?????????????? ????, ???? ??? ???? ?????????? ?????????????? ??? ???? ?????????? ???
????????? 2, ?????????? ??? ?????????? ?????? ??? ???? ?????????? ??? ???? ?????????? ???
????????? ????.

2. ?????????? ?????????????? ???, ???? ??? ???? ?????? ??? ?????????? 1, ???? ??? ??
????????????? ??? ???? ??????, ??? ?????? ? ??? ?????????? ??????????,
????????????? ??? ???? ?????????? ??????????, ??? ?????????? ??????????????
????? ??? ???? ?????????? ??? ?????????? ?????????? ??? ???? ?????????? ??? ????
????. ?? ?????????? ?????????? ?????????? ?????? ???? ???? ?????????? ?????? ????
?????, ??? ???? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????"

5 ??

"1. ?? ???? ?????? ?????????? ?????? ???, ???? ???? ???? ?????? ?????? ??????
????? ??? ???? 5.

(...)

2. ?????????? ??? ???? ?????? ?????????? ?? ???? ?????? ??????:

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

(...)."

6 ?? ???? ??? ?????????? ??? ???? 6, ?????????? 2, ?? ???? 11 ???? ??? ???? ????
????????? ??? ???? ??? ???? ?? ???? ??? ???? ?????? ??? ?????????? ??? ???? ???? ????
????? ??? ???? ?????? ??? ???? ?????? ??? ???? ??????.

7 ? Enkler ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ??? ??????????
????????? ??? ?????? ????. ??? 15 ?????????? 1984 ?????? ?? ?????? ??????????
????????? ?? ?????????? ?????? ?????? ?????? Finanzamt Homburg. ??? 28 ?????????? 1984 ??????
????????? ?????????? ??? ???? 46 249 ?????????? ?????? (DM), ??? ???? ??? ????
????? ??????, ??? ???? 6 474,89 DM.

8 ??? ???? ?????? ?????? ?????? ?????? ??? ???? 1984 ? Enkler ?????? ?????? ??? 7 270,77
DM, ??? ???? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
?????????.

9 ??? ???? ??? ???? 1985 ? ?????????? ??? ???? ?????????? ??? ???? ?????? ??? ????
????????? ??? 2 535 DM, ?? ???? ?????? ??? 2 205 DM ?????????? ?? ???? ??? ????
????????? ??? ???? ?????? ??? ???? ?????? ??? ???? ???? ???.

10 ??? ???? ??? ???? 1986 ??????, ???, ??? ?????? ?????? ??? ???? 1 728 DM, ?? ????
????? ??? 868 DM ?????????? ??? ???? ??? ???? ?????? ??? ?????????? ??? ???? ????
????????? ??? ???? ??? ???? ???.

11 ??? ??? ?????????? ??? ? Enkler ???????? ??? ?????? ??? ???' ??????? ??? 90 DM
?????????. ??? ???????? ?????????? ??? ?????? ??? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ??? 42 321 DM ?? 1984, 8 270 DM ?? 1985 ??? 8 751 DM
?? 1986.

12 ??? ??? ??? ??? ?????? ?????? ??????????, ? Enkler ???????? ??? ?????? ?? ?????? ??
?????????. ??????? ?? ?? ??????? ??? ??????, ?? ?????????? ?????????? ???:

????????? ????: 250 ??????, ?????????? ??????? 25 781 km,

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

????????? ????: 79 ??????, ?????????? ??????? 13 100 km,

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

?? ????: 40 ??????, ?????????? ??????? 5 239 km,

????????? ?? ????: 18 ??????, ?????????? ??????? 3 236 km,

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

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

?????????: 113 ??????, ?????????? ??????? 4 206 km

13 ??? ?? ?????? ??? ?????????? ?????? ?????????? ?????????? ??? ? ?? ??? ??????????????
????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ???????, ??? ?? ???
????????? ?? ??????, ? Enkler ?????? ?????? ??? ?????????? ?????????????? ??????? ??? ??????????
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????, ? Enkler ?????? ???
????????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????????? ??????????.

14 ?????, ??? ????????, ? Enkler ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ???
?? ??????? ?? ?????????? ??? ?????????? ?? ?????????? ?? ?????, ??? ?? ??? ????? ??????????,
????????? ?????????? ?? ?????????? ??? ?????????? ????? ?????????? ??? ?????? ??? ?????????? ???
?????? Enkler.

15 ?? 1986 ? Enkler ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????????? ???
?????????. ?? ??? ?????? ??? ?????? ?? ?????? ?? 19 000 DM ?? ??????????????
?? ?????????? ?????????? ??? ?????? 80 % ?? ?????? ??????????????.

16 ?? ?????????? ??? ?????? 3?? ?????? 1989, ?? ?? ??? 1984 ?? 1986, ?? Finanzamt
Homburg ?????? ????, ?? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?? ?????????????? ???
????? ?? ??? ??? ?????????? ??? ?????? ?????? ?????????? ?? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??????, ?? Finanzamt ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????, ??? ?? ???
??? ?????? ??? ??????????.

17 ? ?????? ??? ?????? ? Enkler ?????????? ??? ?? Finanzgericht, ?? ?????? ??????,
????? ????, ?? ??? ??? ?????? ?? ?????????? ?? ?????????????? ??? ?? ?????? ??? ??????????
????????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????????????
????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????????
????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
????? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???

Enkler ?????????????? ??? ????? ?????????????? ?????????? ??????, ?????????? ???:
* ???????? ??? ????? ????, ?? ????? ?????????????? ?? ?????? ??? ?????? ?????? ?????? ???
????? ?????????????? ??? ?????????? ?????? ????????,
* ?????? ??? ????? ?????????????? ?????????? ??? ????????,
* ??? ?????????? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ????????,
* ? ?????? ??? ??? ?????? ??? ?? ?????????? ??? ?????????? ?????????? ??? ????????,
* ?? ????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? ?????????? ??? ???????,
* ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ???
????????????????? ??? ?????? ?????????? ????????,

18 ? Enkler ?????? ?????? (Revision) ?????? ??? Bundesfinanzhof. ?????????? ??? ??
????????? ?????????? ??? ?????????? ?????? ?????? ?? ?????????? ??? ?? ?????????? ??? ??
????????? ?????????? ??? ?????? ??????, ?? ?????????? ??? ?????? ?????? ?????? ?? ??????????
??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ??? ?????????? ?????? ?????? ?????????? ???????;

"1) ?????? ?? ?????????? ? ?????????? ?????????? ????????

?) ?? ?????????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 4, ?????????? 2,
????? ????, ??? ?????? ?????? (77/388/???) ?

?) ??????????????, ??? ??? ?????? ??? ?????? 4, ?????????? 2, ??????? ?????, ??? ???
????? (77/388/???), ?? ?????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ??????
??? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ?????; ;

2) ?????? ??? ?????? ?????? ?????? ?????????? ?????????????? ?????? ??????????????
????????? ?????????????? ??? ??? ?????? ??? ?????? 4, ?????????? 2, ??????? ?????,
??? ??? ?????? (77/388/???) ? ?? ?????????? ?????????? ??? ?????? ?????? ??????????
????????????? ?????????? ??? ? ?????????????? ??? ?????? ?????? ?????????? ??????????
????? ??? ?????? ?????????? ?????????? ??????;

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

* ?????? ?????????????? ?????????? (?. ?????? ?? ??? ?????????? ???????, ?? ???????
??? ?????????? ??? ?????????????, ?? ??? ?????? ??????????);

* ??? ?????????? ?? ?????? ?????? ?????? ?????????? ?????????? ?????????????? (????
????? ??????: ???' ?????? ?????? ?????? ?????? ?????????? ??????????);

3) ?????? ? ?????? ?????? ?????????? ?????????? ?????? ?????????? ?????????????? ???
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? 4 300 DM;

4) ?? ?????? ?????? ?????????? ?????????? ??? ?????? ??????: ?????? ?? ?????????? ???
????? ?????? ??? ????? [????? 11, ?????? ?, ?????????? 1, ?????????? ?, ??? ?????? ??????
77/388/???)] ?? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 6, ?????????? 2,

??? ?????? ??????? (77/388/???) ??? ?? ??? ?????? ?????? ??? ?????????? ??? ??????? ?????? ??? ??????? ???????
????? ?? ?????? ?? ??????????? ??? ?????????? ?????? ??? ??????? ??? ??????? ??? ??????? ??? ???????
?????? ??? (????????????? ??? ?????? ??????);"

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

19 ?? ?? ?????? ??????? ???, ?? ?????? ??????????? ?????? ???' ?????? ??? ?? ?????????? ??
????????????? ?? ? ?????????? ?????????? ?????? ?? ?????????????? ?? "?????????"
?????????????" ??? ?? ?????? ??? ?????? 4, ?????????? 2, ?????? ?????, ??? ??
?????? ? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???????.

20 ?????????????? ??????? ??? ?? ??????????? ??? ?????? 4, ?????????? 2, ??? ??
????? 4, ?????????? 3, ??? ?? ?????? ?????? ?????????? ??? ? ?????? ??? ??????????
????????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? 4, ??????????
2, ??? ?? ?????? ?????????????? ??? ?????????? ??????????.

21 ?????????????? ??? ??????? ??? ? ??????? ?????? ?????? ?????? ?????? ?? ??????
?? "?????????????" ??? ?????? ??? ?? ?????? ??? ?????? 4, ?????????? 2, ??????
?????, ??? ?????? ?????? (?. ?????? ??? 14? ?????????? 1985, 268/83, *Rompelman*,
?????? 1985, ?. 655).

22 ??? ???????, ??? ?? ?????? ??????? ?????? ?? ?????? ? ??????? ??? ? ??????????
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ? ?????? ?????? ??
????????????? ?? "????????? ??????????????" ??? ?? ?????? ??? ?????? 4, ??????????
2, ??? ?? ?????? ??????, ??? ?????? ??????? ??? ?? ?????? ?????? ?????? ?????? ??????
?????????.

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

23 ?? ?? ?????? ??? ?? ?????? ??????????? ?????? ?? ?????? ? ?????????? ?????? ???'
?????? ?? ?????? ??????????? ?? ?????????? ?????? ???????, ??? ?? ?????? ??????????
??????????, ??? ?? ?????? ??? ??????? ?????? ??? ?? ?????? ?????? ?????????? ??????
????????? ??????? ??? ?? ?????? ??? ?????? 4, ?????????? 2, ?????? ???, ??? ??
??????.

24 ???????, ??? ?? ?????????? ??? ? ?????? ??? ?????? ??? ? ?????? ??? ? ?????????? ??
????????? ??? ?????????? ??? ?????????? ??? ? ?????? ??? ? ?????? ??? ? ?????????? ???,
????, ??? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????????? ?????? ????.
???? ???????, ?? ?????? 4 ??? ?????? ??????? ??? ?????????? ??? ?????????? ??? ? ?????????? ???.
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? (?.
????????????? ?????? *Rompelman*, ??? 24). ???????, ?? ?????????? ? ??????????
?????? ?? ?????? ?? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?
????????? ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???, ??????
???? ?????? ??? ??????????.

25 ?? ?? ??? ?????? ??? ?????? ?? ??????????? ???, ??? ?????????? ??? ?? ??? 4,
????????? 1, ??? ?????? ??????, ?? ?????? ?? ?????? ?????? ??? ?????????? ??? ??????????
???? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

26 ?? ??? ??????? ??? 11?? ??????? 1991, C-97/90, Lennartz (???????, 1991, ?, ?-3795), ??
?????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????????? ?????? ???
????? ?? ???????? ?? ? ?????????? ?????? ??? ?????? ?????? ?? ?????? ??? ??? ?????? ???
?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

27 ?? ??????? ??? ?????? ?????? ?? ?????? ?? ??????? ?? ?????????? ?? ?????????????? ?? ?
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????????? ?? ???? ?????? ?????????? ?? ???? ?????? ??? ?????? ?? ?????? ?? ?????? ??
????? ?? ???? ?????? ?????????? ?? ???? ?????? ??? ?????? ?? ?????? ?? ???? ??????
????????? ?????? ?????????? ???, ??? ??????, ??? ?? ?????????? ??? ?????? ?????? ???
?????????. ??, ???????, ?? ?????? ???, ?? ?? ??? ?????? ??, ??????? ??,
????????? ??? ?? ?????? ???????, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ??
??? ?? ?????? ?????? ?????? ?? ?????????? ??? ?? ?????? ?????? ?????? ?? ?????? ?????? ??
????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

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

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

30 ?? ??? ??? ?????????? ???, ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??????
????? ?? ?????? ?????? ??? ??? ?? ?????????? ??? ?????? ?? ?????? ?????? ?????? ??????
??? ?? ?????????? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ??????
?????????, ??? ?? ?????? ??? ?????? 4, ?????????? 2, ?????? ???, ??? ?????? ??????,
??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?? ?????? ??????.

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

31 ?? ?? ?????? ???????, ?? ?????? ?????????? ??? ?????? ?? ?? ?????? 11, ?????? ?,
????????? 1, ?????? ?, ?? ?????? ??????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ??
????? ?????? ?????? ??? ?????? ???????, ??? ?????????? ??? ?????? ?? ?????? ??
????????? ?????? ??? ?????? 6, ?????????? 2, ?????? ?, ?? ?????? ??????, ?????? ??
????????????????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?????? ?????? ?? ?????? ??
????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???

32 ????????, ?? ??? 17 ??? ????? ?????? ?????????? ??? ?????????? 1 ??? "?? ????????"
???? ??????? ??????? ?????? ??? ?????? ??? ?????? ? ?????????? ?????? ?????? ??????
?????????" ??? ????????, ??? ?????????? 2, ??? ?????????? ???, ??? ?? ??????
??? ?? ?????? ? ?? ??????? ?????????????????? ??? ?? ?????????????? ???
????????????? ?????? ???, "?? ??????? ??? ??? ?????? ??? ?????? ?????? ?????? ??????
??? ?????????? ? ?????????? ??? ?????????? ?????? ??? ?? ?????? ??? ?? ???
????????? ? ?????????? ?? ??? ?????????? (...) ??? ?????? ?????????? ??? ??".

33 ????????, ??????????? ?? ?????????? ??? ?????????? ??? ?????????? ???, ? ?????? ?????? ???
?????? ??? ??? ??? ??? ?????? ?????? ?????????? ??? ?????????? ???, ?? ????????
??? ??????? ??? ??? ??? ?????? ??? ?? ??? ?????? ??? ??? ?????? ??? ?? ?????????? ???
????????? ??? ??? ?????????? ?????, ??? ?????? ???, ?? ??????????
????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ???, ?? ??? 6, ?????????? 2, ??? ?????? ?????? ?????????? ??? ?????? ?????? ??????????
?? ?????? ?????? "?? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????????? ??? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?, ??????????, ???
????? ?????? ??? ?????? ??? ?????????? ???, ?????? ?? ?????? ??? ?????????? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????" (??., ?????????? ??? ??
????? 5, ?????????? 6, ??? ?????? ??????, ?? ?????? ?????????? ??? ??? ???, ??????
?? 6?? ??? 1992, C-20/91, De Jong, ?????? 1992, ?. ?-2847, ??? 15).

34 ??? ?????? ??? 25?? ??? 1993, C-193/91, Mohsche (?????? 1993, ?. ?-2615, ??????
13 ??? 14), ?? ?????????? ??? ? ?????? ?????? ??? ? ?????????? ?????? ?????????? ?? ??? ???'
????????? ??? ???, ??? ???????, ? ??? "????????????? ??????" ??? ?????? 6,
????????? 2, ??????? ?', ??? ?????? ?????? ?????? ?? ?????????? ??? ?????? ?????? ??????
????????????? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????. ???????, ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ? ??? ?????????? ???
??????, ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ?? ?????????? ?????, ??? ?????? ?????? ??? ?????? ??? ?????? ???.

35 ??? ?????????? ??? ??? 33 ??????, ?????? ??? ?????? 6, ?????????? 2, ???
????? ?????? ??? ?? ?????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????????? ???
????? ??? ??? ?????? ??????????. ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ???, ??? ?? ??????. ???????, ??? ??? ???????, ?????? ??? ?? ?????? ???
11, ??? ?, ??????? 1, ?????? ?', ??? ?????? ?????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? 6,
????????? 2, ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
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????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

37 ??? ????????, ??? ?????????? ?? ?????????? ??? ??? ?????????? ??? ?????? ?? ?????? ??? ??????
??? ??????? ?????? ??? ??????. ?? ?? ??? ?????? ?????????? ?????????????? ??? ?? ?????? ???
?? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ???, ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? . ????????, ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??????, ??? ?????? ?????? ??? ?????? ???
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????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

38 ??? ????????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ??? ?? ?????? 11, ????
?, ?????????? 1, ????????' ?, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ??????????
??? ?????? ?????? ?????? ??? ?? ??????, ??? ?????????????? ??? ?????? ?????? ??????????
????????? ??? ?????? 6, ?????????? 2, ????????' ?, ??? ?????? ??????, ?????? ??
????????????? ??? ?????? ??? ?????????? ?? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
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39 ?? ??? ?????? ?? ?????? ?????????? ?? ?????????? ?????????? ??? ?? ?????????? ??? ??????????
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??? ??????????, ??? ??????????. ?????????? ??? ?? ?????? ?????? ?????????? ??? ?? ?????? ???
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????????? ??????????, ?' ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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Bundesfinanzhof, ??????????:

1) ? ?????????? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
?? ?????????? ?? "????????? ?????? ??????????" ??? ?? ?????? ??? ?????? 4,
????????? 2, ??? ?????? ?????? 77/388/??? ??? ??????????, ??? 17?? ??? 1977, ???
????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ?? ?????? ??? ?????? ????
????????? * ?????? ?????? ?????? ?????????????? ????: ?????????? ?????????? ????,
????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???.

2) ??? ?? ?????????? ?? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ???, ??? ??? ????

??? ?????? 4, ?????????? 2, ??????? ????, ??? ????? ?????? 77/388, ??? ??????
????????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?
????? ??????????.

3) ?? ??? 11, ??? ?, ?????????? 1, ??????? ?', ??? ??? ?????? 77/388 ??? ?
????? ??? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ??? ??????, ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? 6, ?????????? 2, ?????? ?'
??? ??? ??????, ??? ? ? ?????????????? ?????? ??? ?????????? ?? ??????
????? ??? ??? ??? ??? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??? ???
????? ??? ??? ??? ?????? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ??? ??????????
????? ??? ??? ??? ?????? ?????? ??? ?? ?????? ?????????? ?? ?? ??? ?? ?????? ?? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
??????, ??????, ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ??? ??????????, ??????.