

?????? C-412/03

Hotel Scandic Gåsabäck AB

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Riksskatteverket

(?????? ??? Regeringsrätten ??? ??? ?????? ?????????????? ??????????)

«???? ?????? ??? – ??? 2, 5, ?????????? 6, ??? 6, ?????????? 2 – ?????? ?????? ???
????????? ???????? ?? ??? ????? ?????????? ??? ????? – ??? ?????????? ??? ???»

????????? ??? ?????? ?????????? D. Ruiz-Jarabo Colomer ??? 23?? ?????????? 2004

????????? ??? ?????????? (????? ????) ??? 20?? ?????????? 2005

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

????????? ?????????? – ?????????? ??? ?????????? – ?????? ?????? ?????????? – ???
?????? ?????? ?????????????? ??? – ?????????? ??? ?????? ?????? – ??????????
????? ??? ?????? ?????????? ?????????????????? ?? ?????? ?????? ?????? – ?????? – ??????
?? ??? ?????? ??? ?????????? ?????????????? ?????????? ??? ??? ??? ?????? ?????? ??? ??????
?? ?????????? – ?????????? – ?????? ?????????? ?????? ??? ??? ??? ?????? ?????? –
????????? ?????????? ?? ?????? ?????? ? ?????? ?????????? ??? ?????? ?????? ?????? –
?? ??????????

(?????? 77/388 ??? ??????????, ??? 2, 5 § 6, ??? 6 § 2)

??.????? 2, ??????, ??? 5, ?????????? 6, ??? 6, ?????????? 2, ????????, ??, ????????, ???
????? ??????? 77/388, ??? ?????????? ??? ?????????? ??? ?????????? ??? ???????, ??? ????????
?? ??? ?????? ?????? ???????, ?? ??? ?????? ?? ?????????? ?????????????, ??? ????????
????????? ??? ?????? ?????????????? ???, ?????????? ?????? ??? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??????????
????? ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ? ?????? ??????????
????? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??????????
????? ?????? ?????????? ???????, ??? ??? ?????? ??? ?????????? ?????? ?????? ?????? ??????
?? ??? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????????? ???.

??????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????
????????? ? ?????????? ??? ?????? ???????, ??? ?????????? ?? ?????????????? ???
????? ?? «????? ?? ?????? ??????», ??? ??? ?????? ??? ?????? 2, ?????????? ??? ?
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? 5, ??????????
6, ??? 6, ?????????? 2, ?????????? ??, ?????? ?? ?????????? ?????? ?????? ?????? ???
????? ?????????? ??? ??????????.

(???. ??????? 22-24, 30 ??? ???????.)

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

??? 20?? ?????????? 2005 (*)

«???? ??????? ?? – ????? 2, 5, ?????????? 6, ??? 6, ?????????? 2 – ?????? ??????? ??
????????? ??????? ?? ??? ?????????????? ??? ?????? – ??? ?????????? ??? ?????»

???? ?????? C-412/03,

? ? ?????????? ?????? ??? ??? ?????? ?????????????? ????????, ??????? ??? ?????? 234
??, ??? ?????? ??????? ?? Regeringsrätten (??????), ?? ??????? ??? 29?? ?????????? 2003,
? ??? ?????? ??? ?????? ??? ?????????? ??? 3 ?????????? 2003, ??? ?????? ??? ??????

Hotel Scandic Gåsabäck AB

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Riksskatteverket,

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

????????? ??? ??? P. Jann, ??????? ????????, K. Lenaerts (?????????), J. N. Cunha
Rodrigues, E. Juhász ??? M. Ileši?, ????????,

?????? ??????????: D. Ruiz-Jarabo Colomer

?????????: K. Sztranc, ??????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? 21??
????????? 2004,

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

– ? ??????? ????????, ?????????????? ??? ??? A. Kruse ??? ??? K. Wistrand,

– ? ??????? ????????, ?????????????? ??? ??? J. Molde,

– ? ??????? ????????, ?????????????? ??? ??? M. ????? ??? ??? ?. ?????????? ??? ?. ????????,

– ? ??????? ????????, ?????????????? ??? ??? A. Guimaraes-Purokoski,

– ? ??????? ??? ?????????? ??????????, ?????????????? ??? ??? ?. ??????????????
??? ??? L. Ström,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ??????????
?? 23?? ??????? 2004,

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

???????

1 ? ?????? ?????????? ?????????????? ?????????? ?????? ?????????? ??? ?????? 2, 5,
????????? 6, ??? 6, ?????????? 2, ???????? ??, ??? ?????? ?????? 77/388/??? ???
?????????, ??? 17?? ????? 1977, ??? ?????????? ??? ?????????? ??? ?????? ???,
??? ?????? ?? ??? ?????? ?????? ?????? – ??? ?????? ?????? ??? ?????? ??????
?????: ?????????? ?????????? ??? (?? ??? . ??? . 09/001, . 28- ??? ????: ??? ?????).

2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? Hotel Scandic
Gåsabäck AB (??? ????: Scandic) ??? ??? Riksskatteverket (????????????? ????) ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ?????????? ???
?????? ??? ??? ??? ?????????? ??? ??????.

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

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

3 ??? ?? ????? 2, ?????????? 1, ??? ?????? ?????? «?? ?????????? ?????? ??? ??
?????? ????????, ??? ?????????????? ?? ?????? ?????? ??? ?????? ??? ??????? ??? ??
??? ?????????? ????, ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? » ?????????? ?? ???
????????? ??? (??? ????: ???).

4 ?? ????? 11, ??? ?, ?????????? 1, ??????? ??, ??? ?????? ???????, ?????? ???, ???
??????, ? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ???????
????? «????????? ?????? ??? ?????? ??? ????????, ??? ?????? ?????? ? ?????????? ?? ?????? ???
????? ?????? ? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????, ?????????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ????.

5 ?? ????? 5, ?????????? 6, ??? -????? ?????? ?????? ????:

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

6 ?? ?????????? ?????????? ????, ??? ? ?????????? ??? ?????? ??? ?????? 5, ??????????
6, ?? ????? 11, ??? ?, ?????????? 1, ??? ?????? ?????? ?????????? ??? ?????? ??? ??
??? ?????????? ??? ?????? ?????? ??? ??????, ? ?????? ??? ?? ????:

«???? ?????? ??? ?????? ????:

[...]

?) ??? ??? ?????? ??? ?????????? ??? ?????? 5, ?????????? [...] 6 [...], ? ?????????? ???
????? ??? ?????? ??? ? ?????????? ?????? ?, ?????? ?????? ????, ?? ?????? ??? ??
?????, ??? ??? ?????? ?????? ?????????????? ??? ?? ??? ?????? ??????.

[...]»

7 ???? ?????? ??? ?????? ??????????, ?? ????? 6, ?????????? 2, ??? ????? ???????
?????? ???:

«????????????? ??? ?????? ?????????? ?? ?????? ?????? ??????:

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

?) ? ??? ?????????????? ?????? ?????????? ??? ??? ?????????? ?? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?, ??????????, ??? ?????? ?????? ??? ?????? ???
????????? ???.

[...]»

8 ??? ? ?????? 11, ??? ? , ?????????? 1, ??????? ??, ??? ?????? ???????, ? ???
????????? ??? ?????? ???, «??? ??? ?????? ??? ?????????? ??? ?????? 6, ?????????? 2, ??
???? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???, ??? ??? ?????? ???
????????? ??? ??????».

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

9 ??? ? ?????? 2, ??? ? , ?????????? 2, ??? mervärdesskattelagen (?????????
????? ????) (SFS 1994, ????. 200, ??? ????: ?????????? ???), ?? ?????? ??????
???????, ?????? ????, ? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ???
???????, ??? ?????????? ??? ? ?? ?????? ??? ??????, ?? ??? ?????? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?? ?? ?????? 7, ??? 3, ?????????? 2, ??????
??, ??? ????, ????, ??? ? ?????????? ??? ?????? ??? ?????? ?? ?? ?????? ??? ??????
???????. ? ??? ? ? ?????? ??? ?????? ??? ?????? ??? ?????? ? ? ??? ?????? ??? ??????
?, ?? ?????????? ?????????? ????, ? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????? ?????????? ??? ??????.

10 ??? ? ?????? 2, ??? ? 5, ??? ? , ??? ??????, ?? «????? ?????? ???,
????? ??????» ??????, ?????? ???, ? ?? ?????? ??? ?????????? ??? ?????? ???
????? ?????? ??? ? ? ???' ?????????? ??? ?????? ?????? ?????????? ?????????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???
????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? «?????».

11 ?? ?????? 7, ??? ? 2, ??? ? , ??? ??????, ?? ?????????? ??? ?????? ??? ? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
??? ?????????? ??? ?????? 7, ??? ? 3, ?????????? 2, ?????? ??, ??? ???
?????.

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

12 ? Scandic ?????????? ?? ?????????????? ??? ?? ?????? ?????? ?????? ?????? ???
????????????? ??? ?? ??????????. ?????? ??? ?????????? ???, ?? ?????????????? ??? 25
?????? ????, ?????????? ?????? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ??????
????????? ??? ?? ??????????.

13 ?? ??? ?????? ?????????? ?????????? ??? ?? ?????? ??? ?? ?????? ?????? ???
????????? ??? ?????????? ??? ?? Scandic. ????????, ?????????? ??? ?????? ?????? ???
???? ?? ??? ?????? ?????????? ??? ??????. ??? ?????????? ??? ?????????? ??? ??????????
??? ?????? ??? ?????? ?????? ??? ?????????? ???, ? Scandic ?????? ??? ???
Skatterättsnämnden (?????? ?????? ?????????? ?????????????? ?? ??? ?????? ??????????????
????????????? ??? ?????????? ???) ?? ?????????? ?? ? ?????? ?????????? ??? ???
??? ?????????? ??? ?????? ?????????? ?????? (????????????? ?? ?????????? 12 %) ?
????? ?????????? (????????????? ?? ?????????? 25 %) ? ?? ?? ?????? ??? ? ??????
????? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ???.

14 ? Skatterättsnämnden ??????, ?? ?????????????? ?????????? ??? 10?? ?????? 2004,
?? ? ?? ?????? ??? Scandic ?????? ?????????? ??? ??? ?? ?????????? ??? ?????? ??
????????? ?? ?????? ?????????? ?????????? ?? ??? ???' ?????????? ??? ?????????? ???
????????? 2, ????? 5, ?????? ???, ??? ??? ?????? 7, ????? 3, ?????????? 2, ???????
??, ??? ?????????? ???, ??? ?????????? ??? ? ??? ??? ?????? ??? ?????? ?????????? ???
????? ??? ?????????? ??? Scandic.

15 ? Scandic ?????? ?????????? ??? ?? ?????????????? ??? ?????? ?????? ???
Regeringsrätten (????????? ?????????? ??????????). ??????????, ??????, ??? ? ??????
????????? ??? ??? ?????????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ???
????? ??????????, ?????????? ??, ??? ??? ?????? ?????????? ?? ?????????? ??? ?????? ??????????
????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???.

16 ?? Regeringsrätten ?????????? ???, ??? ??? ?????? ???, ? ?????????? ???
????????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
???? ?????????? ?? ?????????? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ???
????????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????????, ??? ?????? ?????? ?????? ??????????. ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????????? ??? ?????? 2, 5, ?????????? 6, ??? 6, ?????????? 2, ?????? ??,
??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??????.

17 ??? ??? ?????????? ???, ?? Regeringsrätten ?????????? ?? ?????????? ??
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????? ??????????:

«1) ??????, ??? ?????? ???, ? Regeringsrätten, ??? ?? ?????? ???
?????????, ?????? ??? ? ?????? ??? ?????? ?????? ?????? ??????, ?? ??????????
?? ?????? 2 ??? 5, ?????????? 6, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ??? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ???, ?? ??? ?????? ??? ?????? ???, ??? ?????? ??? ??????;

2) ??????, ??? ?????????? ??? ???? ?? Regeringsräten, ??? ???? ?????????? ???
?????????, ??? ???? ?? ???? ?????? ??? ?????????? ??????? ?????????? ??????????, ??
????????? ?? ???? 6, ?????????? 2, ?????????? ??, ??? ?????? ?????? ?????? ??? ??
??? ?????? ??? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? , ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ??? ??????;»

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

18 ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ???? ?????????? ???
?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????? ? ???????
????????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??????. ?? ?????????? ??????????, ???, ?? ?????????? ??? ??????
????????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ?????????? ??? ??
??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 5,
????????? 6, ??? 6, ?????????? 2, ??????? ??, ??? ?????? ??????, ?? ?????????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ??????.

19 ? ?????????? ??? ? ?????????? ?????????? ?????????????? ??? ?? ?????????? ??? ?????? 5,
????????? 6, ??? 6, ?????????? 2, ??????? ??, ??? ?????? ?????? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ??????, ??? ?? ?????? ???
????????? ??? ??? ??? ?????? ??? ?????????? ?????? ?????? ? ?????????? ??? ??? ?????? ???
«?? ?????? ??????» ??? ?? ?????? 2 ??? ?? ??? ?????? . ??? ?????????? ??? ??? ???
??? ?????? ???, ?? ?????? ??? ?? ??? 11, ??? ?, ??? ?? ??? ??????, ???
??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
???? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? (?)
????????? ??? 8? ?????? 2001, C-415/98, Bakcsi, ?????? 2001, ?. I-1831, ?????? 42, ?????
??? ??? 17? ?????? 2001, C-322/99 ??? C-323/99, Fischer ??? Brandenstein, ?????? 2001, ?. I-
4049, ?????? 56). ??' ?????? ??? ??????, ? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
???? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???, ??????, ??? ???
????????? ??? ?????? ?????? ??????.

20 ??????????, ? ?????????? ??? ?????????? ?????????? ??? ???? ?????? ??????????
????????? ??? ?? ??? 5, ?????????? 6, ??? 6, ?????????? 2, ??????? ??, ??? ??????
????????? ?????? ?????????? , ??? ?? ?????? ???, ?????????? ??? ?????? ?????? ?????? ???
????????? ??? ?????????? . ??? ?? ??? 11, ??? ?, ??? ?????? 1, ?????????? ??, ???
?? ??? ?????? , ? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? , ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ?????????? ??????.

21 ??????????, ???????, ?? ?????????? ???, ??? ??? ?????? ?????? ??? ?????? ??
????? 11, ??? ?, ?????? 1, ??????? ??, ??? ?????? ??????, ? ??? ?????? ?????? ???
????? ??? ??? ?????? ?????? ?? ??? ??? ?????? ?????? ?????? ??? ?????? ??
????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? . ? ??????????
????????? , ???????, ??? ?????????? ???, ?????? ?????? ?????? ??? ??????
????????? , ??? ??? ??? ?????????? ??? ?????? ?????????? ?????? ?????? (?)
?? 5? ?????????? 1981, 154/80, Coöperatieve Aardappelenbewaarplaats, ?????? 1981, ?.

445, ????? 13- ??? 23?? ?????????? 1988, 230/87, Naturally Yours Cosmetics, ??????? 1988, ?. 6365, ????? 16, ??? 27?? ??????? 1990, C-126/88, Boots Company, ??????? 1990, ?. I-1235, ????? 19- ??? 16?? ?????????? 1997, C-258/95, Fillibeck, ??????? 1997, ?. I-5577, ????? 13, ??? ?? 29?? ??????? 2001, C-404/99, ??????? ??? ???????, ??????? 2001, ?. I-2667, ????? 38). ???????????, ??? ? ?????????? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? (????????????? ??????? Coöperatieve Aardappelenbewaarplaats, ??? 13- Naturally Yours Cosmetics, ??? 16, ??? Fillibeck, ??? 14).

22 ????? ?????? ?????????????? ? ??????? ?????????????? ??? ?????? 36 ??? ?????????? ???,
????????????? ?? ?????????????? ??? ?????? ?? ?????? ?? ?????????? ?????? ??? ?????? ??????
?? ?? ??????? ?????? ?????????? ?????????? ? ?????????? ??? ?????? ?????? ??????. ????????,
? ??????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????????? ?????????? ????????
??? ?????????? ??? ?????? ? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??????????
??? ??? ?????????? ??? ?????? ?????????? (??., ??' ?????? ??? ??????, ??????? ??? 8??
?????? 1988, 102/86, Apple and Pear Development Council, ?????? 1988, ?. 1443, ????? 12).

23 ??? ?????? 5, ??????????? 6, ??? 6, ??????????? 2, ??? ?????? ??????? ???????????
????????? ??????? ??? ?? ?????? ? ??????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??????????? ?????? ? ??????? ?????????? ??? ?????? ??? ?????????? ?? ???????
?????. ?????? ??? ?????????? ?????? ?????? ? ?????????? ?????????? ??? ?????? ?????????????? ???
??? ?????????? ??? ?????? ??? ? ?????? ??????????? ?????? ? ?????? ??? ?????? ?????????? ???
??? ?????? ?????? ??? ? ??????? ??? ?????????? ???, ??????, ??? ??? ?????? ?????? ??????????
? ?????? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ???, ??????, ??? (???. ?????????? ???
26?? ??????????? 1996, C-230/94, Enkler, ??????? 1996, ?. I-4517, ????? 35- ????? ???
Fillibeck, ???????????, ??? 25, ??? Fischer ??? Brandenstein, ???????????, ???
56). ??? ??????? ??? ?????? ??? ???????, ?? ?? ??? ?????? 5, ?????????? 6, ??? 6, ??????????
2, ??????? ?, ??? ?????????? ?????????? ??? ?????? ??? ? ?????? ?????????? ???
????????? ??? ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ???
????????? ?????? ??? ??? ?????? ?????? ??????????? ?? ?????? ??? ??? ?? ??????????? ?????
??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??????????, ?? ??? ??? ???, ??????????? ?????? ?????????? ?????? ??? ?????? ??? ??????
????????? ? ?????? ?????? ?? ?????? ?????????? ??? (???. ?????????? ??? 6?? ???
1992, C-20/91, De Jong, ?????? 1992, ?. I-2847, ????? 15- Enkler, ???????????, ??? 33-
Bakcsi, ???????????, ??? 42- ?????? ??? Fischer ??? Brandenstein, ???????????,
????? 56). ??????, ?? ??? 6, ?????????? 2, ??????? ??, ??? ?????? ?????? ???
????????? ?????????? ??? ??? ??? ? ?????? ??? ?????????? ??? ?? ?????????? ???
????????? ???, ??????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ???.

24 ????? ?????????? ??? ?? ??????? ????? ????????????, ??????????????, ?? ??? ???? ???
?????????? ?? Scandic ?? ??????????? ?? ??????????? ??????????? ??????????? ??????? ??
?????????? ?? ?? ??????? ????????. ??????? ? ??????? ??????? ??????? ?? ??????? ??
??????, ??? ?? ??????? ?? ??????? 2 ?? ????? ????????, ??????????? ? ??????? ??
?????? 5, ??????????? 6, ??? 6, ??????????? 2, ??????? ??, ??????. ???????, ?? ??????? ??
????? ??????? ??????? ?? ??????? ??????? ????? ?????????????? ??? ?? ??????? ??
????????????? ?? ??????? ?? ??????? ???????, ??????????? ??? ?? ??????? ??.

25 ????? ?? ?????????? ??????????, ??? ?? ?????????? ?? ??????????? ? ??????? ?? ??
????????????? ? ??????? ?????????????????? ??? ?????? 5, ?????????? 6, ??? 6,
????????? 2, ??????? ??, ??? ????? ???????, ?? ?????? ? ?????? ??????? ??????
????????? ?????????? ??? ??????? ??? ?????? ?????? ??? ?? ??? ?????? ??????.
???????, ?? ??? ?? ?????? ?????? ?????? ?????? ? ?????? ?????? ?????? ??? ?? ? ?????????? ???

26 ??????????? ??????? ? ?????????? ??? ??? ??? ??????? ??? ?????????? ?????
????????? ???, ??????????, ?? ??? ??? ?????????? ?? ??? ??? ?????????? ??? Scandic
??? ??? ?????? ??????? ??? ??????? ??? ??????? ?? ??????? ????????. ?? ???
?????????, ? ??????? ??? ?????????? ? ??????? ??????? ?? ??????? ??
????????????? ?????, ?????????? ??? ??? 27 ??? ?? ??? ?????, ??? ?? ??? ??
????? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ??? ?????????? ?????
????????? ? ???????????.

28 ????????????, ????????, ?? ?????????? ???, ??? ???? ?????? ?????? ??? ?????? ??
????? 11, ?????? ?, ?????????? 1, ????????, ??, ??? ?????? ???????, ? ??? ?????? ?????? ??? ??
????????? ?????? ? ?? ?????? ?????????? ?????? ? ?????????? ??? ?????????? ?????????? ?
????????????? ??? ???? «??? ??? ????????, ??? ?????? ? ?????? ???????,
????????????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
?????».

29 ?? ?????? ??? ??????? ??? ?????????? ??? ?????????????? ? ?????????? ?????????? ?????????? ??
????????????? ??? ?????? ?????????? ?????????? ???, ????, ?????? ? ?????????? ??? ??????????, ?
????????????? ??? ?????? ? ? ?????? ??? ??????????, ?? ?????? ?????????????? ???
?????????????, ??? ? ?????????? ??? ?????? ? ? ?????????? ??? ?????????? (?. ?????? ???
22?? ?????????? 2001, C-184/00, ?????? 2001, ?. I-9115, ??? 10). ??? ??????????
?????????, ???????? ??? ??? ???, ?????? Scandic, ? ????? ?????????? ?? ?????? ?
??????? ??? ????????, ??????, ??? ?? ??? ??? ??? ?????????? ???, ??????. ????????????,
???? ??? ?????? ????????, ??? ?? ??? 11, ????? ?, ?????????? 1, ??????? ??, ??? ??????
??????, ? ?????????? ?????????? ??????? «???????, ?????? ? ?????? ??????» ???,
???? ???????, ??????? ??? ??? ??? ??? ?????????? ?? ?????? ? ?????????? ???
?????????. ?? ?????? ?? ??? ????? ?????????? ??? ??? ?????? ??? ?????????? ??? ??? ?
????? ??????? ??? ?????????? ??? ?????????? ??? ??? ??????, ??? ??????????, ?? ?????????? ??? ???
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30 ?? ??? ??????? ?????????? ??? ?? ??? 2, 5, ?????????? 6, ??? 6, ?????????? 2,
????????? ??, ??? ??? ????? ??????? ??? ????? ?? ???? ?????????? ?????? ??????????
????????? ??? ?????? ????? ?????????? ??????? ?????? ? ?????? ?????????? ?????? ?????? ?????
????????? ??? ?????? ??? ??? ????? ?????????????? ?????????? ??????????, ??? ??? ?? ??? ???? ?
?????????? ??????????? ??? ????? ??????? ??? ?????? ???? ?????? ? ??? ??????????.

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31 ?????????? ??? ? ??????????? ???, ?? ??? ?????????? ??, ?? ?????? ??, ??, ??

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

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

?? ??? 2, 5 ?????????? 6, ?? 6, ?????????? 2, ?????????? ?, ??? ?????? ??????
77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ??????????
??? ?????? ????, ??? ??????? ?? ??? ?????? ?????? ?????? ?????? – ??? ??????
????? ?????????? ????: ?????????? ?????? ?????? ???, ??? ??? ?????? ????
????????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??????
? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????? ?????? ??????????, ??? ??? ?? ??? ? ?????????? ??????????
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(?????????)

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