

?????? C-280/04

Jyske Finans A/S

????

Skatteministeriet

(?????? ??? Vestre Landsret

??? ??? ?????? ?????????????? ??????????)

«????? ?????? ?? — ???? 13, ??? B, ??????? ?? — ?????????? — ?????????? ??
????????? ?????? ?? ?????? ?? ?????? ?????????????? ?????????? ?? — ??????????,
?? ?????? ?????????????? ??????????, ?????????? ?? ?????????? ?? ?????????? —
????? 26? — ?????? ?????? ?? ?????? ?????????? ?????????????? ??????????»

????????? ??? ?????? ?????????? L. A. Geelhoed ??? 22?? ?????????? 2005

????????? ??? ?????????? (????? ???) ??? 8?? ?????????? 2005

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

1. ?????????? ?????? — ?????????? ?? ?????????? — ?????? ?????? ?????? —
????? ?????? ?????? ?????? ?????????????? ?????? — ?????????? ?????????????? ?? ?? ????
????? — ?????????? ?? ?????????? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????? ??
????? — ?????? ?????????? ?????? ?????????? ?????? ?? ?????? ?? ?????? ??????????????
????? ?????? ?? ?????????? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????? ?? ?????? ??????????
?????, ?????????? ?????? ?????????? ???, ? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?? ?????? ?????? — ??????????

(?????? 77/388 ??? ??????????, ????? 13, ??? B, ??????. ??, ??? 17 § 6)

2. ?????????? ?????? — ?????????? ?? ?????????? — ?????? ?????? ?????? —
????? ?????? ?????? ?????? ?????????????? ?????? — ?????? ?????? ??????????????
????????????? — ?????? ?? ?????????? ?????? ?? ?????? ?????? — ?????????? ??
????????? ?????? ?? ?????? ?????? ?????????? ?????? ?? ?????? ?? ?? ?????? ?? ??
????? ?? ?????????????? ?????????? — ??????????????

(?????? 77/388 ??? ??????????, ????? 26?, ????? A, ??????. ??)

1. ?? ?????????? ?? ?????? 13, ??? B, ??????? ??, ??? ?????? ?????? 77/388, ???
????????????? ?? ??? ?????? 94/5, ?? ?????? ?????? ?????????? ??? ?????????? ??
?? ?? ?????? ?? ?????????? ?????????? ??? ?????? ?????? ?? ?? ?????? 17, ??????????
6, ??? ??????, ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ??????
????????? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??????????
?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? 17, ?????????? 6, ??? ?????? 77/388, ??? ??
?????????, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

2. ???????? ??? ?? ???????? ?????? ??? ?????????????? ??? ?? ???????? ?????? ?????
????? ???? ???? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?? ?????????? ?????? ??????
????? ???? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ??????
????????? ??????????. ????????, ? ???????? ??? ?????????? ??? ?????? 13, ????? B, ????????
??, ??? ?????? ???????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ? ?????? ???
????? ????????????, ???????? ?????????? ??? ?????? ?????????? ????????????, ??? ?? ??????????
?????????. ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ?????????? ?????? ??? ??????
??? ????????????, ???????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??
????????? ?? ????????????, ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ????????????, ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???.

(?? . ??????? 23-24, 26, ??????. 1)

3. ?? ????? 26?, ????? A, ????????, ??? ?????? 77/388, ??? ??????????????? ??
?? ?????? 94/5, ?? ?????? ??? ?????? ?? ?????? ?????????? ?????????????? ??? ????????????
??????? ??? ?????????????? ? ?????????????? ??? ?????? ?????????????? ??? ?????? ??? ??????????
????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ?????????????? ???
????????????? ??? ??????, ???????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ????
?? ?????? ?????? ??? ?????????????? ???, ?????????? ?????? ??? ?????? ??? ??????????
????????????? ?? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ???
????????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????????
??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ?? ??? ?????????? ???, ?????? ?? ?????????? «????????????? ??? ?????? ???
?????????» ??? ?????? ??? ?????? ??? ??????????.

4. ? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?? ????????????
????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?? ??????????? ??????
??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 26? ??? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

(?? . ??????? 28, 40-41, 44, ??????. 2)

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

??? 8?? ?????????? 2005(*)

«????? ??????? ??? – ??? 13, ???? B, ??????? ?? – ??????? – ??????? ???
????????? ?????? ??? ?? ?????? ??? ?????????? ?????? ??? ?????? – ???????, ???
?????? ?????????????? ???????, ??????? ??? ?????????? ?????????? – ???
26? – ?????? ??????? ??? ??? ?????? ?????????? ?????????? ??????????»

????? ??????? C-280/04,

?? ?????????? ?????? ??????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ?????? ?????? ?? Vestre Landsret (?????) ?? ?????? ??? 25? ?????? 2004, ???
????????? ??? ?????????? ??? 29 ?????? 2004, ??? ?????? ??? ??????

Jyske Finans A/S

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Skatteministeriet

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

Nordania Finans A/S,

BG Factoring A/S,

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

????????? ??? ??? A. Rosas, ??????? ????????, J. Malenovský (????????), J.-P.
Puissochet, S. von Bahr ??? U. Löhmus, ????????,

?????? ??????????: L.A. Geelhoed

?????????: H. von Holstein, ?????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
?? ??????? 2005,

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

- ? Jyske Finans A/S, ?????????????? ??? ??? E. Malberg, advokat,
- ?? Nordania Finans A/S ??? BG Factoring A/S, ?????????????? ??? ??? H. Severin
Hansen ??? T. K. Kristjansson Plesner, advokaterne,
- ? ?????? ????????, ?????????????? ??? ??? J. Molde, ?????????????? ??? ??? P.
Biering, advokat,
- ? ?????? ????????, ?????????????? ??? ??? I. ?????? ??? ??? ?. ????????????,
- ? ?????? ????????, ?????????????? ??? ??? J. Pietras,
- ? ?????? ??? ?????????? ?????????? ??? ??? L. Ström van Lier ???
?? T. Fich,

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

??? 22?? ?????????????? 2005,

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1 ? ?????? ??????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 13,
????? B, ??????? ??, ??? 26?, ??? A, ??????? ??, ??? ?????? ?????? 77/388/??? ???
??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ??? ?????????? ???
??? ??????? ?? ??? ?????? ?????? ?????? – ??? ?????? ?????? ??? ??????????????
?????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49), ??? ?????????????? ?? ???
????? 94/5/?? ??? ??????????, ??? 14?? ?????????? 1994 (?? L 60, ?. 16, ??? ????: ???
?????).

2 ? ?????? ??? ??????????? ??? ?????? ?????????? ?????????? ?????? ??? ??????
Jyske Finans A/S (??? ????: Jyske Finans) ??? ?? Skatteministeriet (?????o? ??????????
?????????) ??????? ?? ??? ?????????? ????? ?????????????? ????? (??? ????: ???) ???
????? ??????? ?? Skatteministeriet ??? ?? ??? ?????? ??? ??? ?? ?????? ??? ??????
????????? ?????????????? ??????????.

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

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

3 ????? ?? ?????? 2, ??????????? 1, ??? ????? ??????, ??? ??????????? ?????? ???
?????????????????? ?? ??????? ?????? ?? ??????????? ????? ?? ?????? ?????? ?????? ??
????? ?? ?? ??????? ??????????? ?????? ??????????? ?????? ??????????????? ?????.

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

5 ?? ?????? 13, ?????? B, ??? ?????? ??????? ??????:

«?? ??? ?????????? ?????? ??????????? ??????????, ?? ?????? ??? ??????????????, ??? ??
????????????? ??? ???????, ??? ?? ?????????????? ? ???? ??? ?????? ?????? ?????? ???
????????????? ??????? ?????????? ??? ?? ??????????? ?????????????? ?????????????? ??????????????,
????????????? ??? ??????????:

[...]

?) [...] ?????????????? ??????? ?? ??????? ? ?????????? ? ? ??????? ?????????????? ???
????????????? ?????????? ??????? ?? ?????? 17, ?????????? 6.

[...]».

6 ????? ?? ?????? 17, ??????????? 6, ??? ????? ??????:

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

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

7 To ?????? 26? ??? ?????? ????????, ?? ?????? ????????????, ?? ?? ?????? 1, ??????????? 3,
??? ??????? 94/5, ??????????? ?? ?????? ??????? ??????? ?? ?????? ??????????? ??
?????????????? ??????????? ?? ?????? ??????????? ???????????, ??????????? ?
?????????????? ???. ??? ?? ?????? ???, ?? ??????????? ?? ?? ?? ?????? ?????? ??
?????????????? ?? ?? ??????????? ?? ?????? ??????????? ??????????? ?? ?????? ?????? ??????
?????????????? ?? ?? ??????????? ?? ??????, ??? ?? ??????????? ??????? ?? ?? ?????? ?????? ??
????? ?? ??????????? ?? ?? ??????????? ???.

8 ????? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????? 94/5, ??
?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?? ?????? ??????
??? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?? ??????.

9 ????? ?? ?????? 26?, ?????? ?, ?????????? ??, ??? ?????? ????????, ?? ?????????????? ???
????? ?????????????? ?????????? «? ?????????????? ??? ???? ? ??????, ??? ?????? ???
????????????? ??? ??????????????????, ?????????? ? ?????????? ??? ??? ?????? ?????????? ??? ??????????????
??? ? ???????, ?? ?????? ??? ?????????? ???, ?????????? ?????? ?????????? [...]».

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

10 ?? ?????? 8, ??????????? 1, ??? ?????? ???? ??? (momslov), ????? ?????????????? ?? ??
????? 375, ??? 18?? ????? 1994, ??? ??? ?????????????? ??? 1114, ??? 21?? ??????????
1994 (??? ????: ?????? ???? ???), ??????:

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

11 ????? ?? ?????? 13, ??????????? 2, ??? ?????? ????:

«? ??????? ?????? ??? ?????????????????? ?????????????? ??? ??? ?????? ?????????? ?????????? ?
????? ?????????????? ??? ??? ?????? ??? ?????? 1 ??? ?????????? ??????, ? ?????? ?
????? ? ?????? ??? ?????? ?????????? ??? ?? ?????? ?????? ?????? ??????, ???' ?????????? ???
????????? 9, ?????????? ??? ???».

12 ??? ?????? ?????????? ??? ?? ??? ?????? ??? ?????, ?? ?????? 42, ??????????? 1, ??????? 7, ??????
??? ?? ?????????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? «??
????? ??? ?????????????? ?????????????? ?????????? ??? ?????????????? ??? ?? ?????????? ??? ??????
????? ??????? ??????, ??????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? 4, 6 ???
7».

13 ?? ?????? 42, ??????????? 6, ??????? ?? ????:

«?? ?????????????? ??? ?????????????? ? ?????????????? ?????????????? ?????????? ? ??????????
?????? ?????????? ???????, ?????????? ??? ?? ?????????? ??? ?????????? 1, ?????? 7, ??
????????? ??? ??? ?????? [...] ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????????? ??? ».

14 ?? ?? ??????? 17 ??? ????? ?????? ?????????????? ??? ?????????? ?????? ?????? ??
????????? ??? ??????? 94/5 ??? ??????? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??

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

15 ?? ?????? 69, ?????????? 1, ??? ?????????? 17 ?????? ?? ????:

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

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

16 ? Jyske Finans ????? ?????????????? ?????????????? ?????????? ??????????????
?????????. ??? ??? ?????? ??? ?????????????? ?????? ?????????? ?????????????? ???
????????????? ??? ??????. ? ?????? ??? ?????????????? ?????? ?????????????????? ???
?? ?????????? ?????????? ??? ?????? ??? ?????????????? ?????? ???, ?????????? ???
?? ?????????? ??? ?????, ???? ??? ?????? ?????????, ?? ?????????? ?? ?????????? ??? ???
????? ??? ??????.

17 ??? ?? ?????????? ??? 1 ?????????? 1999 ??? 31 ??? 2001, ? Jyske Finans
?????????, ??? ?????? ??? ?????????????? ?????????, 145 ?????? ?? ?????? ???
????????? ??????????????. ??? ??? ?? 2001 ?? ?????? ?????????????? ?????? ?????????? ???
?? ?? ??? ?????? ?????? ?? ?????????? ??? ?????? 2 236 413 ?????? ?????? (????? ??? ?? 299
500 ???), ??? ?????? ??????, ???? ??? ?????? ???, ??? ??? ?????????????? ????.

18 ? Jyske Finans ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??????
??? Vestre Landsret, ?????????????? ??? ? ?????? ??? ?? ??? ?????? ?? ??? ?? ??????
?? ?????? ?????? ???, ???? ? ???? ??? ?????? ?? ?????????? ?? ?????? ?? ??????
????????? ??? ??? ?????? ?????????? ?????????????? ??? ?????? ??? ?????? ?? ??????????????
????????? ??? ??? ?????? ??????. ? ?????? ?????????? ??? ? ?????? ??? ?????? ?? ??????????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????. ?? ?????? Nordania Finans A/S ?? BG Factoring A/S ?????? ?????????? ???
?????? ??? ?????? ??? ?????? ??? ?????? ??? Jyske Finans.

19 ?? Vestre Landsret ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????
?? ?????????? ???, ??????, ?? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? 13, ??? B, ??????? ??, ??? ?????? ?????? ???, ???????, ?? ? Jyske Finans
????????? ?? ?????????? ?? ?????????????? ??? ?? ?????? 26? ??? ?????? ?????? ?????? ??????
????????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??????. ?? ??
???? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????, ?? Vestre Landsret ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
?????? ??? ?????????? ?? ?????????? ??? ?????????? :

«1) ??? ?? ?????????? ??? ?????? 13, ??? B, ?????? ?? [...] , ?? ?????????? ?? ??
????? 2, ?????????? 1, ??? ??? ?????? 11, ??? A, ?????????? 1, ?????? ??, ??? ??????
????????? ??? ?????? ??? ?????????? ?? ?????? ?????? ?? ?????? ??? ?????? ??????????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ? ?????????? ??? ??????
????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
????????, ?? ?????????? ??? ?????? ?????? ?????????? ?????????????? ?????? ??? ??????
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

??????;

2) ?????? ?? ??? 26?, ??? A, ??????? ??, ??? ??? ?????? [...] ?? ?????????? ??
??? ?????? ??? ???? «????????????? ??? ?????? ?????? ??????» ??? ?????????????? ??
????? ??? ?????? ???? ?????? ?????????????? ?????? ?????? ?????? ???
????? ?????????????? ??????, ??? ?? ???? ?????????????? ?????? ?????? ?????? ??
-????????? ????- ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ???, ??? ?? ???? ?????? ??? ?????? ???, ??????????
????? ?????? ?? ?????????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;»

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

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

20 ?? ?? ?????? ?? ??????? ?? ?????? ?????????? ?????? ???' ?????? ?? ?? ??????????
??? ?????? 13, ??? B, ??????? ??, ??? ?????? ?????? ?????? ?? ?????????? ?? ?? ??
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?? ??
??? ?????? ?????????? ??? ?? ?????? ?????????? ???????, ??? ?? ?????? 17, ?????????? 6, ??? ??
????? ??????, ?????????? ?????? ?????????? ?????? ?????? ?????????? ?????? ??? ??
????? ??? ?????????? ?? ?????????? ?? ?????? ??? ?????????? ?????? ??? ??, ???
????????????? ?? ?????? ??? ?????????? ???, ?????? ?? ?????? ?? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ???.

21 ?????????? ?? ?????????? ? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??
????????? ??? ?????? 13 ??? ?????? ?????? ?????? ?? ?????????? ??? ??????????,
????????? ??? ?? ?????????? ?????? ?????????? ?????????? ??? ?? ?????? ??? ?? ??????
?? ??? ?????, ??? ?? ?????? 2 ??? ?? ?????? ??????, ?? ??? ?????????? ?? ?? ??????
????? ? ?????? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ??????????
????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ?????? (??., ?????? ???, ?????????? ???
20?? ???????? 2003, C--8/01, Taksatorringen, ?????? 2003, ?. I-13711, ????? 36, ??? ??
3?? ?????? 2005, C-428/02, Fonden Marselisborg Lystbådehavn, ?????? 2005, ?. ?-1527,
????? 29).

22 ??????, ?????, ?? ?????????? ???, ??? ?? ??? 17, ?????????? 6, ??? ??
??????, ?? ?????? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ??????????
?? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??????, ?? ??? ?? ?????????? ?????????? ??? ??????????????
??? ?? ?????? ??? ?????? (???. ?????? ???, ?????????? ???
??????, ?????? 2001, ?. I-4493, ????? 19).

23 ?????????? ??? ?? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ??????????
??? ?????? ? ?????? ??? ?????? ??? ?????? 17, ?????????? 6, ??? ?????? ???, ??? ??
??????, ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ??? ??????
?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ??? (?????????????????
????????? ?????? ??? ??????, ??? 20). ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ??? ???.

24 ???????, ? ??????? ?? ?????? 13, ??? B, ??????? ?, ??? ????? ??????? ??
????? ??? ?????? ?????? ??? ?????????? ?????? ???? ?????? ??? ?????? ??????????, ??????
????????? ??? ?????? ?????????? ??????????, ??? ???? ?????????? ??????????. ?????? ??? ?????? ???
????? ?????? ??? ???? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???.

25 ?????? ??? ?????? ??????????, ??? ?????? ??? ?????????? ??? ?????? ???, ??????????
??? ???? ?????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ???, ?????????? ??? ???? ?????? ?????? ?? ?????? ?????????? ???
????? ??? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 13, ??? B, ??????? ?, ??????. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????????? ???, ?? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 13.

26 ??? ??? ??????? ????, ??? ??? ?????? ??????? ??? ?????? ?? ?????? ? ??????? ??? ??
????????? ??? ?????? 13, ??? B, ??????? ?, ??? ?????? ?????? ?????? ?? ?????????? ???
??? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?? ?????? 17, ?????????? 6, ??? ?? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ???.

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

27 ?? ?? ?????? ????, ?? ?????? ?????????? ???' ?????? ?? ?
????????? ??? ?????? ???, ??? ?? ?????? ?????? ??? ?????????????? ???, ??????????
????? ?? ?????? ?????? ?????????????? ?? ?????? ?? ?? ?????? ??? ?????? ???
????????????? ?????????????? ?????????? ?? ?????? ?? ?????? «????????? ??? ?????? ???
?????????» ??? ??? ?????? ??? ?????? 26? ??? ?????? ??????.

28 ?? ???? ???, ?? ?????? ?????????? ?? ??? ?????? 94/5, ?????????? ??? ??????
????????? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ??????????
????????????? ??? ?????? ??? ?????? ?????? ???.

29 ?????? ?? ?????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? 26?, ??? A, ??????? ??,
??? ?????? ??????, ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????? ? ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ???.

30 ?? ??????? ????????, ?????????????????????? ??? ??????????, ? ??????????? ??? ????????
??? ??????? ??? ?????? ??? ??????? ??? ???? «?? ?????? ?? ?????????? ???» ????
????????????? ?? ?????? ??????????? ??? «??????». ?? ????????, ?? ?? ??????, ?? ???
????? ???, ??? ??? ??????? ???????, ??? ?????? ??????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ???????, ?? ??????? ??? ?????? ??????? ??? ?????? ???, ???????????
?? ??????? ??? ?????? ??? ??????????? ??? ?????? ??? ???????????, ? ??????????????
?????? ?? ???, ??? ??? ?????? ??????? ??? ??????????????? ????, ?????? ?? ??
?????????. ??? ??? ??????? ????, ??? ?????????? ?????? ??? ?????????? ???, ??? ?????? ???
?? ?????????? ??? ??????? ??? ?????? ??????????? ?????????????? ?????????? ? ????, ??? ?
Jyske Finans, ????????, ??? ??????? ??? ??????????? ??? ???????????????,
?????????????? ???.

31 ???????, ??????????? ? ??????? ???, ??? ????? ??????????, ?? ??????????
????????? ?????? ?? ??????????? ??? ?? ?????????? ??? ?????? ??????????,
????????????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? (??., ???
?? ?????? ???, ??????? ?? 5?? ???????? 1967, 19/67, Van der Vecht, ?????? ???
1965-1968, ?. 617-?? 17?? ?????? 1997, C?219/95 P, Ferriere Nord ??? ???????,
?????? 1997, ?. I?4411, ??? 15, ??? ?? 29?? ?????? 2004, C?371/02, Björnekulla
Fruktindustrier, ?????? 2004, ?. I?5791, ??? 16). ?? ??????? ?????????? ?????? ??
????????? ??? ?????????? ??? ?????????? ????? ?????? ?????? ?????????? ???????, ? ???????
????? ?? ?????????? ?? ?????????? ?? ?????? ?????? ?????????? (????????? ?? 9?? ?????? 2000,
C?437/97, EKW ??? Wein & Co, ?????? 2000, ?. I?1157, ??? 42, ??? ?? 1?? ??????
2004, C?1/02, Borgmann, ?????? 2004, ?. I?3219, ??? 25).

32 ?????? ??????????, ?????? ??? ??????? ?????????????? ?????? ??? ??????? 94/5 ?????????? ???
????????? ??? ?????????? ?????????? ?????? ?? ?????????????? ??? ?????? ??? ?????? ??? ????
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????? ??? ?????? ??? ?????????????? ?????????????????? ?????????????? ??? ??????????????
?????????????, ?????????????? ? ?????????????? ??????, ?????????????? ?? ?????????????? ? ????
????????????? ??? ? ?????????? ??? ??????????????, ??? ?????? ??? ?????????? ??? ?????? ??? ????
??? ??? ?????? ??? ?????? . ??? ??? ?????????? ??????, ??? ?????????? ? ?????? ??? ?????? ??? ????
?? ?????? «?? ?????? ??? ?????????????? ???» ?????????????? ?? ??? ?????? ?????? ?????????? ?? ????
????????? ??? ?????? ?????? ?????? ??? ?????????? ??????, ??? ?????? ??? ?????????? ??????
????????? ??? ?????? ??? ?????? ?????????????? ?????????????? ??? ?????? ??? ??????????????
?????????????, ?????????????? ? ?????????????? ??????. ??????, ??????, ??? ?????? ?? ?????? ?????? ???
? ? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ?????? ? ?????????? ??? ?????? ?????? ???
?????????????.

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

34 ??????????? ? ?????????? ???, ??? ??? ?????????????? ??? ?????????????? ???
????????? ??? ?????????? ???????, ?????? ?? ?????????????? ?? ?????? ???, ?? ???????
??? ?????? ?????????? ??? ?? ?????? ??? (????????? ??? 15?? ?????????? 1992, C-162/91,
Tenuta il Bosco, ??????? 1992, ?. I-5279, ????? 11, ??? 16?? ?????????? 2003, C?315/00,
Maierhofer, ??????? 2003, ?. I-563, ????? 27, ??? ??? 15?? ?????? 2004, C-321/02, Harbs,
?????? 2004, ?. ?-7101, ????? 28).

35 ?????? ?????? ??? ?? ?????????? ?????????????? ??? ?????????? ??????? ???
????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????????????? ???
????????????? ??? ?????????? ?????????? ?????????? ?????? ?????????? ? ?????????????? ???
????????? ?????? ?????? ???, ?? ?????? ?????? ?????????? ??? ?????? ??? ?? ?????? ?????? ???
??? ?????? ?????? ???, ??? ?? ?????? ?????? ?????????? ??? ?????? 24, 25 ?? 26 ??? ??
???? ???????, ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ???
??? ?????? (??., ??????????, ??? ??? ?????? ??? ?????????? ??? ?????? 26 ??? ??
?????????? ??? ?????? 25, ?????????? ??? 22?? ?????????? 1998, C?308/96 ??? C?94/97,
Madgett ??? Baldwin, ??????? 1998, ?. I?6229, ????? 34, ??? ?????????????? ???
Harbs, ????? 27).

36 ? ??????? ??? ?????? 26? ??? ?????? ?????? ??????, ??????, ?? ??????? ?? ???
?????? ??? ??????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????????????? ???
?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ???
?????? ???.

37 ??????, ?????? ?? ?????????? ??? ???? ?????? ?????? ?????????? ??? ?????? ???
?????? 94/5 ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? (?. ?????? ??? 1?? ??????? 2004,
C?320/02, Stenholmen, ??????? 2004, ?. I?3509, ????? 25).

38 ? ??????????, ???, ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????????? ???,
??????, ??? ??? ?????, ? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ???, ?
????? ?????????? ??? ?????????? ??? ?????? ?????? ??????, ?????? ??? ?????? ???
?????????????.

39 ??????, ? ??? ??? ?????????? ?????????????? ??? ??? ?????? ?????????? ?? ???
?????? ??? ??? ?????????? ? ??? ??? ?????? ?????????? ?? ?????????? ?????????? ???,
????? ??? ?????? ??? ???, ?????????????? ??? ?????????? ??? ?????? ?????? (?.
?????? ??? 16?? ?????????? 2004, C?382/02, Cimber Air, ??????? 2004, ?. I?8379, ??????
23 ??? 24).

40 ? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ???
????????????? ??? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ???
??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??????, ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

41 ?? ??????????, ?????????? ??? ?????????? ??? ?????? 26? ?? ?????? ?????? ?????? ???
????????????? ?????????????? ?????????? ??? ?????? ?????? ?????????????? ??? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????????? ?????????? ?????? ??? ??
????????? ??? ?????? ??? ???????????, ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ??????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ??
????????? ??? ??????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ??.

42 ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ?? ?????? 26? ???
????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ??? ??????????.

43 ??????, ??????, ?? ?????????? ???, ??? ?????? ??' ?????????? ?????? ?, ??????????
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? «????? ???» ??? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ?????????? ?????? ???, ?? ?????? ?????? ???, ?????? ??? ?????? ??? ?????? ???
????? ?????? ???, ?????????? ???, ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???, de lege ferenda, ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 26? ?? ?????? ???,
?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

44 ?????? ??? ??????, ??? ?????? ?????? ??? ?????? ?? ?????? ? ?????? ??? ?? ??????
26?, ??? A, ?????? ??, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?? ?????? ???
????????? ???, ??? ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ???, ?????? ??? ??????
??? ?????? ?????????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?? ??? ?????? ???, ??? «????????? ??? ?????? ???

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

45 ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

1) ?? ?????? ??? 13, ??? B, ?????? ?? , ??? ?????? ??????
77/388/?? ?? ?????? ???, ?? 17?? ?? 1977, ??? ?????? ??? - ??? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? - ??? ??????
????? ?????????? ????: ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
?? ?????? 94/5/?? ?? ?????? ???, ?? 14?? ?? 1994, ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

? ?????? ???? ??????????? ???, ?????? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??????? ??? ?? ????? 17, ?????????? 6, ??? ?????? 77/388, ??? ??
???????????, ??? ?? ??? ????? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ???
????? ??? ?????????? ?????? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
????? ??? ?????? ?????????? ?????? ?????? ??? ?? ?????????? ??? ??.

2) ?? ?????? 26?, ??? A, ??????? ??, ??? ?????? ?????? 77/388, ???
?????????? ?? ?? ?????? 94/5, ?????? ?? ?????????? ??? ?? ?????? ??? ??
????????? ? ?????, ??? ?? ?????? ?????? ??? ?????????????? ???, ??????????
????? ??? ?????? ?????????? ??? ?????? ?? ?????? ?? ?? ?????? ??? ?? ?????? ??? ??
????????????? ?????????? ?????? ??? ?????? ?? ?????? ??? ?? ?????? ? ?????????? ???
?????????, ??? ?? ?????? ??? ?????? ??? ?????? ?????????????? ??????????????, ???
????? ????, ??? ?? ?????? ??? ?????? ?? ?????? ?? ?? ?????? ??? ?? ?????? ???, ??? ??
????? «????????? ??? ?????? ?????? ?????? ??????» ??? ?? ?????? ??? ??

(?????????)

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