

?????? C-298/05

Columbus Container Services BVBA & Co.

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Finanzamt Bielefeld-Innenstadt

(?????? ??? Finanzgericht Münster

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

«????? 43 ?? — ????? ?????????? ??? ?????????? — ?????????????? ??????????????
?? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? — ?????? ??? ??
?????? ??? ?????? ????????? — ?????? ??? ?????????? ? ?? ?????????? ??? ?????»

????????? ??? ?????? ?????????? P. Mengozzi ??? 29?? ?????? 2007

????????? ??? ?????????? (????? ????) ??? 6?? ?????????? 2007

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

1. ?????????? ?????????? ??? ?????? — ?????????? ?????????????? — ?????????? ??
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(????? 43 ??)

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

(????? 234 ??)

3. ?????????? ?????????? ??? ?????? — ?????????? ?????????????? — ??????
????????? ??? ?????? — ?????????? ?????? — ??? ??????????

(????? 43 ?? ??? 56 ??)

1. ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??
????? ????, ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
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(?. ?????? 30-32)

2. ?? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? 234 ??, ?? ??????????
?? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??
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(???. ?????? 46-47)

3. ?? ??? 43 ?? ?? 56 ?? ?????? ?? ?????????? ??? ?? ?????? ??? ?? ????????????

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

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

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

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

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

(???. ?????? 43, 45, 51, 53, 57 ??? ??????).)

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

?? 6?? ?????????? 2007 (*)

«????? 43 ?? ?? 56 ?? – ?????? ?????????? ??? ?????????? – ?????????? ??????????????

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

????? ??? ?????? ?????? – ?????? ??? ?????? ? ??? ?????????? ??? ?????? ??? ??????»

???? ?????? C298/05,

? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,

?? ?????? ?? Finanzgericht Münster (???????) ?? ?????? ??? 5?? ?????? 2005, ? ????

????? ??? ?????? ??? 26 ?????? 2005, ??? ?????? ??? ???

Columbus Container Services BVBA & Co.

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Finanzamt Bielefeld-Innenstadt,

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

?????????? ??? ??? P. Jann, ?????? ????????, K. Lenaerts, J. N. Cunha Rodrigues, M. Illeši?
??? E. Levits (????????), ????????,

?????? ??????????: P. Mengozzi

?????????: B. Fülöp, ??????? ????????????,

?????? ??? ?? ??????? ??????????? ??? ??????? ??? ??' ??????????? ??????????? ???
28?? ?????????? 2006,

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

– ? Columbus Container Services BVBA & Co., ?????????????? ??? ??? A. Cordewener
??? J. Schöpfeld, Rechtsanwälte, ??? ??? ??? ??? T. Rödder, Steuerberater,

– ? ?????????? ????????, ?????????????? ??? ??? M. Lumma ??? U. Forsthoff, ???
??? ??? ??? W. Schön, ??????? ????????,

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

– ? ?????????? ??? ??? ???, ?????????????? ??? ??? H. G. Sevenster ??? C. ten Dam
????? ??? ??? D. J. M. de Grave,

– ? ?????????? ????????, ?????????????? ??? ??? L. Fernandes ??? J. P. Santos,

– ? ?????????? ??? ????????, ?????????????? ??? ??? C. White ??? V.
Jackson, ?????????????? ??? ??? P. Baker, QC, ??? T. Ward, barrister,

– ? ?????????? ??? ????????, ?????????????? ??? ??? R. Lyal ??? W.
Mölls,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ??????? ??? ??? ?? ??????????
??? 29?? ?????? 2007,

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1 ? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 43 ??
??? 56 ??.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ???, ??? Columbus
Container Services BVBA & Co. (??? ????: Columbus) ???, ????????, ??? Finanzamt Bielefeld-
Innenstadt (??? ????: Finanzamt) ??????? ?? ?? ?????????? ??? ?????? ?? ??????
????????????? ? Columbus ??? ?? ??????? ??? 1996.

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

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

3 ??????? ?? ?? ???? 1, ?????????? 1, ??? ????? ?? ?????????????? ??????????????
(Einkommensteuergesetz, *BGBI.* 1990 I, ?. 1902, ??? ?: EStG), ??? ?????????? ??????
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????? ??? «????????? ??????????». ??????? ??? ?????? ???, ? ?????? ???
??? ??? ?????? ??????????, ?????????????? ??? ?????????? ??? ?????????? ??????
(????? 2, ?????????? 1, ?????? 2, ??? EStG) ??? ??? ?????????? ??? ?????? (????? 2,
????????? 1, ?????? 5, ??? EStG), ?? ?????????? ?????????? ??? ?????????? ???
????? ??????????, ??? ?????????????? ??? ?????????? ??? ?????????? ??? ??????????.

4 ??????? ?? ?? ???? 1 ??? EStG, ?????? ??? ?? ?????? 1 ??? ?????? ???
????????? ??? ?????? (Körperschaftssteuergesetz, *BGBI.* 1991 I, ?. 637), ??????? ? ???
????????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ? ???
????? ????. ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ???' ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ???
15, ?????????? 1, ?????? 2, ?????? ???, ??? EStG) ??????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ??????????.

5 ?????? ? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ?????
????? ?? ?? ? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

6 ??? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ?????? ??? ?????????, ? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????, ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
????? ?????????, ??? 11 ????????? 1967, ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? (BGBI. 1969 II, ?. 18, ??? ?: ?????? ?????????? ??????)).

7 ??????? ?? ?????? 7, ?????????? I, ??? ?????? ?????????? ?????????? ??? ???????,
????????? ?????? ? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ??????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? 10 ??? ?? ??? ??????.

8 ??????? ?? ?? ???? 23, ?????????? 1, ?????? 1, ??? ?? ??? ??????????, ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 1 ??? ?? ??? ?????? 23,
????????? 1, ?????? ??????.

9 ??????? ??? ?? ?????????? ??? ?????? ?????????? ???????, ? ?????? ???
????????? ?????? [Gesetz über die Besteuerung bei Auslandsbeziehungen
(Außensteuergesetz)], ??? ?????????? ?? ??? ??? ?????? ?????????? ??? ???
????????? ??? ?????? (Missbrauchsbekämpfungs- und
Steuerbereinigungsgesetz), ??? 21? ?????????? 1993 (BGBI. 1993 I, ?. 2310, ??? ?: AStG),

???? ? ??????? ??? ?????????? ??? ????? ?? ?????? ??? ?????????????? ?????????????? ??? ??????
?????, ?????? ??? ????? 20, ?????????? 2 ??? 3:

«2. ?? ?????????????????? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? 10,
?????????? 6, ??????? ??????, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????????????
????????? ?? ??? ??? ???????, ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
??????????, ?? ? ?????????? ??? ?????????? ?????? ?????????? ???????, ? ?????? ?????????? ???
?????????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ?? ??????????
??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???.

3. ??? ?????????? ??? ?????????? 2, ??? ?????? ??? ?????????? ??? ?????? ??? ??????
?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 10, ?????????? 6,
?????? ??????, ?? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 10,
????????? 6, ?????? ??????, ? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ???
????????? ?????? ??? ?? ??????????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????????? ????. [...]»

10 ?? ????? 10, ?????????? 6, ??????? ??????, ??? AStG ??????????:

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

11 ?? ????? 8, ?????????? 1 ??? 3, ??? AStG ??? ??????:

«1. ?? ?????????? ??????? ?????????? ?????????? ?????????? ??? ?? ?????????? ???
????????? ?? ?????? ?????????? ?????????? [...]

[...]

3. ? ?????????? ?????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? 1
????? ?? ?????????? ??? ???????????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
30 % ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??????????, ?????? ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? [...].»

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

12 ?????? ?? ?? ??????? ??????, ?? ?????????? ?? ?????? ?????????????? ??
«????? ??????» ?????????? ??? ?????????? ?????????? ??? ?????????? ?? ?? ??????????
????????? 187, ??? 30?? ?????????? 1982 (*Moniteur belge* ??? 13?? ?????????? 1983).
????????? ??? ?? ?????? ?????????? ???????????, ? ?????????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ?????????? ?????????? ???' ?????? ?????? ???
?? ?????? ??? ?????????? «cost plus».

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

13 ? Columbus ?????? ??????????? ??????? ??????? ?????, ??? ?? ????
??? ??????????? ??????????? ??? ?????? ???, ??? ?? ??? ?? ??? ?? ????
(?????). ??????? ??? ?????? ??????????? ??? ?? ?????? ??? ?????????? 187.

14 ?? ??????? ??? Columbus ???????, ??????, ??? ?? ??? ?? ????
?????????? ??? ??????? ??? ???????, ?????? ??? ?????? ??? ??????? ?????????? 10
% ???, ???????, ??? ?? ?????? ?? ??????? 20 %, ??? ??????? ?????????? ??????? ???
????? ?? ??????? ???????, ??????, ??? ?? ??? ?? ????? ????????????. ??? ?? ??????
????????? ??? Columbus, ??? ?? ?????? ?????????? ?????????? ?????????????? ??? ??
???? ??????.

15 ? Columbus ?????????? ?? ??? ?????????? ?????????? ?????????? ??????. ? ??????????
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ?? ?????.
??????????, ?????? ???, ?? ?????????? ?????? ?????????? ??? ?????????? ??????????
??? ?? ?????????? ???????, ?? ?????????? ?????? ??? ?????????? ??????????
??????????????, ??? ?????????? ?????? ?????????? ?????????, ??? ?? ??? ??????????????
????????? ??? ??????????.

16 ? ?????????? ?????????? ??? Columbus ?????????????? ?????? ??? ??????????
????????? ??? ??? ?????? ??? ?????? 10, ?????????? 6, ??????? ??????, ??? AStG. ???
?? ?????????? ??? ? Columbus ????????????, ??? ?????? ??? 1996, ???
????????? ??? «????????????? ??????????» ????? 8 044 619 D?M (4 113 148 ???) ???
«????? ??????????» ????? 53 477 D?M (27 342 ???).

17 ??? ?? 1996 ? Columbus ?????????? ??? ?? ?????? ?????????? ??? ?? ???
????????? ??? ?????? ?????????? ??????????, ?? ??? ?????? ?????? ???, ?? ??????????,
????????? ??? ?? 30 % ??? ?????????? ?????????? ??????.

18 ?????? ?? ?? ?????????? ??????, ? Columbus ?????? ?????????? ??????.

19 ???' ??????? ??? ?????????? ?????????? ?????? ???, ??????????, ??? ?????? 20,
????????? 2, ??? AStG, ?? Finanzamt, ?? ??? ?? 8 ?????? 1998 ????, ??????? ??
????????? ?????? ??? Columbus ?? ?????????? ??? ?????? ??? ?????? ??? ???????,
??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ??? ???????, ??
Finanzamt ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?? «?????????????
?????????????» ??? Columbus, ?????????? ?????? ?? ??? ??? ??? ?????? ??? ???
????????? ??? ?? ?????? ?????? ??? ??????.

20 ?? ??? ?? 16?? ?????? 1998, ?? Finanzamt ?????????? ???????, ?????? ?? ??
????? 20, ?????????? 3, ??? AStG, ??? ?????????? ??? ?? ?????????? ??????? ??
??? Columbus ??? ?? 1? ?????????? 1996, ??? ?? ??? ?????? ?????????? ??? ???
????????? ??? ??????.

21 ? Columbus ?????? ?????? ??? ?? ?????? ?????? ?????? ??? Finanzamt, ??
????????? ?? ?????? ?? ?? ?????? ?????????? ???, ???, ?????? ?????????? ??? ?? ???
?????????, ?????? ?????? ?????? ??? Finanzgericht Münster.

22 ?????? ?? ?????????? ???, ? Columbus ??????????, ?????? ???, ???
????????? ?? ?? 20, ?????????? 2 ?? 3, ??? AStG ??? ?? ?????????? ??? ?????? 43
??.. ?????? ?? ?? ??????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? 1, ?????? 1, ??? ?????? ?????????? ?????????? ???, ?? ?? ?????? ???
????????? ?? ?? 20, ?????????? 2 ?? 3, ??? AStG ??? ?? ?????? ?? ??????.

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

23 ? Columbus ???????????, ???????, ???, ??? ????? ?? ?????? ?????????? ????????,
????????? ??? ?????????????????? ?????? ??? ?? ?????? ??? ?????????? ???.

25 ??? ??? ??????? ???, ?? Finanzgericht Münster ??????? ?? ???? ??????? ??
?????????? ?? ???? ??????? ?? ???? ??????? ?? ???? ??????? ?? ???? ??????? ??

«???????????? ????? ????? ????? ??????????? ??? ?????? 52 ??? ??????????? ?, ??? ??????
???????????????, ?????? 43 ??, ??? ??? ?????? 73 ? ??? 73 ? ??? ??????????? ?, ???, ??????
???????????????, ?????? 56 ?? ??? 58 ?? ?? ?????????? ??? ?????? 20, ??????????? 2 ??? 3
??? [l'AStG], ??????? ?? ??? ????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??????
?????????????? ?????????????? ??? ?????????? ?????????? ?????????? ?????????????? ?????????? ?? ??? ???
?????????, ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?? ? ?????
????????????? ?????????? ?????????? ???????, ?????????????? ??? ?? ?????? ??????????, ???
????????? ??? [????????? ??????????] ?????????, ??? ?? ?????????? ??? ??? ??? ?????
?????????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????
?????????;»

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

26 ?? ?? ??????? ?? ?? ?????? ??????????? ??, ???' ??????, ?? ?? ????? 43 ?? ??? 56
?? ?????? ?? ?????????????? ?? ?? ?????? ?? ?????????????? ?????????? ??????????
????????? ??????, ???? ? ??????? ??, ?????? ??, ?????????? ?? ??????? ?? ??????????
????????? ??, ?????????????? ??, ?????????????? ??, ?????????????? ??, ?????? ??, ???
????? ?????? ??????? ??, ?????? ??, ?????????????? ??, ?????? ??, ?????????? ??, ?????
??? ?????? ?????????? ??, ???? ??, ??????? ??, ?????? ??, ???????????, ??????????? ??, ?? ??
????? ??, ??? ?????? ??, ??, ???????????????, ???? ??, ??????????? ??, ??? ?????? ??, ??, ??
????? ?????????????? ??, ??????????? ??, ??? ?????? ??, ??????????? ??

27 ?????? ?? ?????????? ?? ?????????? ???, ??? ?????? ??????????, ??????? ?????
????????? ?????????? ? ???????????, ?? ?????? ??? ?????????????? ?? ?????? ??????
??? ??? ?????????? ??? ?????????? ?????????????? ??? ?????????????? ??? ??? ??????????
????????? ?? ??????????, ?????????? ??? ??? ?????????? ???, ? ??? ??????????
(??., ?????? ????, ?????????? ??? 21?? ?????????? 1999, C-307/97, Saint-Gobain ZN,
?????? 1999, ?. I-6161, ??? 57, ??? 3?? ?????????? 2006, C-290/04, FKP Scorpio
Konzertproduktionen, ??????? 2006, ?. I-9461, ????? 54, ??? ??? 12?? ?????????? 2006, C-
374/04, Test Claimants in Class IV of the ACT Group Litigation, ??????? 2006, ?. I-11673, ???
52).

28 ??????????, ?????? ? ????? ?????????? ?????????? ??? ?????????????? ??? ?????? ??????,

?? ?????? ?? ???? ?????? ?? ??? ?????? ?????????? ?? ?????????? ?? ?????? (???. ?????????? ???

19?? ?????????? 2006, C-265/04, Bouanich, ?????? 2006, ?. I?923, ????? 28, ??? Test

Claimants in Class IV of the ACT Group Litigation, ????????????????, ???? 36).

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

29 ????? ?????? ????????????, ??? ?????????????? ?????? ??????????? ??? ?????????? ??? ?????????? ??? ??????????
????? ??????????? ?????????????? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ??? ??????
????????? ??? ??? ??????????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??? ??????????
????????? ?????????????????? ?????? ?????? ?????????????? ?????????? ??? ?????????????? ??? ??????????
????? ?? ??????????? ?? ?????? ?????????????? ?????????? ??? (??., ??? ??? ?????? ???, ?????????? ??? 18??
????????? 2007, C-231/05, Oy AA, ??? ??? ?????????????? ?????? ??? ??????????, ?????? 20, ???
??? 23?? ?????????? 2007, C-112/05, ?????????? ??? ??????????????, ??? ??? ?????????????? ????
??? ???????, ??? 13).

30 ?????, ??????? ?? ?? ?????????? ?????, ? ?? ?????? ????? ? ?????????????? ??????
????????? ?? ???? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??????
????????? ?? ???? ?????????? ?? ?????? ?????? ?????? ?????, ?????? ? ?????????? ???
????????? ?? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?????????????? ?????? ???
????????? ?? ?? ?????? ?????? ?? ?????????? ???, ?????????? ??? ??
????????? ?? ?? ?????????? ?????????????? ?????????? ??? ?????????? (?)?. ?????????? ???
13?? ??????? 2000, C-251/98, Baars, ??????? 2000, ?. I?2787, ??????? 21 ?? 22, ?????? ???
?? 5?? ??????? 2002, C-208/00, Überseering, ??????? 2002, ?. I?9919, ?????? 77).

31 ?? ???????????, ?? ???? 14 ??? ?????? ??????? ?????????? ?????????? ?? ???? ?? ?
?????? ?? ???? Columbus ???????, ????? ? ??????, ??? ?????? ??? ????? ??????????. ?? ??
???? ?????????? ????? ???????????, ?????????? ??? ??????, ??? ?????? ?????? ?????????? ?? ?
????? ?????????? ??? ???????, ??? ??????? ?? ??? ????? ?????????? ??? ?????????? ?? ?
????????????? ???.

32 ??? ?? ??????? ?????????? ??? ?? ?????????? ?? ?? ??? ?????????? ?????????????? ??????????????

34 ?????? ?? ?????? ?????? ???????????, ?? ?????? ?????????????? ?????? ?? ?????????? ??
????? ?? ???????????, ??????????? ? ?????????? ?????????? ?????????? ?? ?????? ??
????????? ?? (?. ?????????? ?? 30? ?????????? 1995, C-55/94, Gebhard, ??????
1995, ?. I-4165, ??? 37, ??? ?? 5?? ?????????? 2004, C?442/02, CaixaBank France, ??????
2004, ?. I- 8961, ??? 11).

35 ?????????????????? ?? ?? ?????? 7 ??? ?????????? ??????????, ?? ?????????? ??
????????????? ?? ?? ?????? ?????????? ?????????? ? ?????? ?????? ?? ?????????????? ?? ??
????????? ?????????????? ?????????? ?????????? ?????????? ?? ?? ?????? ?????? ??????????

?????????, ??? ?????? ??? ??????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????????? ??? ??????????.
??????????, ????, ???? ???? ?????? ??????? ??? ?????? ??????, ??? ?????????? ???? ??? ??????
??????????????, ??????? ?? ?? ??????? ?????????????? ???????????, ?? ?????????????? ??????????
??? 30 % ??? ??? ?????????????????? ??? ?????? ??????, ?? ?????????? ??? ?????? ????
????????? ??? AStG ?????????? ???, ???? ??? ?????? ??? ?? ???? ?????? ??????????, ??
????????? ???? ??? ?????????????? ??? ??? ?????? ?????????????? ??? ?????????? ???
?????????? ???? ??? ?????? ??? ?????????? ??? ??????????, ???? ?????????????? ??? ??????????
?????????? ???????, ?????? ? ?????????? ??? ?????? ?????? ?????? ?????????????? ?? ???
?????????? ??? ??????.

36 ??????????????, ??? ?????? ??? ?????? 20, ?????????? 2 ??? 3, ??? AStG, ?? ??????????
??? ?????????? ??? ?????? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??????????
????????????? ??? ?? ??? 8, ?????????? 1 ??? 3, ??? AStG ?? «?????» ??? ??????????
??? ?????????? ??? ?? ??? ?????? ?????????? ?????? ?????? ??????, ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 20, ?????????? 2 ??? 3, ???
AStG.

37 ??????? ?? ??? ???????????? ?? ?????? ? Columbus ????. ???' ???????????
???????, ? ?????????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?? ?????? ?? ???????????,
???? ?? ????? 1996, ??????? ?? ?????? ?? ?????????? ?????????????? ?? ?????????? ??
????????? ??? 53 %.

38 ??????????, ??? ?? ??????????? ???, ??? ?? ?? ? ?????????, ??? ??????? ???
????????????? ??? ??????? ??? Columbus, ??? ??????? ??? ????? ??? ????? ?????? ???
????????????? ??? ?????? 20, ?????????? 2 ??? 3, ??? AStG ??????? ??? ?????? ???
????????????? ??? ?? ??? ????? ?????????? ???????? ??' ?,?? ?? ? ?????????? ???
????????????? ??? ?? ??? ?????????? ??? ?? ?????????? ??? ?? ?????? ?????????? ???
????? ??? ???????, ??? ?????? ?????????? ??? ?????????? ???' ?????? ??? ??
????? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??
??? ?????? ??? 43 ??.

39 ??????????????, ??????? ? ?????????? ?????????????? ?????????????? ?????????????? ?????????????
????????? ????? ??? ????? ??? ????? ??? ?????? (??., ??? ??? ?????? ???, ??????????
Saint-Gobain ZN, ??????????????, ????? 35, ??? ?????? ??? 12?? ?????????? 2006, C-
446/04, Test Claimants in the FII Group Litigation, ?????? 2006, ?. I-11753, ????? 40), ???
????????????? ??? ? ??????? ??? ?????? ????? ?????????? ?????????? ?????????? ?, ???
??? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? 14?? ?????????? 2006, C2513/04,
Kerckhaert ??? Morres (?????? 2006, ?. I?10967, ????? 17) ??????? ?????????? ???????????,
??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????? ?? ?????? ?????? ?? ?????????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?? ?????? ?????? ?? ?????????? ??? ?????????? ??? 30 %. ?????????? ???
????????? ??? ?????? ?????? ?? ?????? ??? ?????????? ??? ?????????? ?, ??? ?????? ?????????? ???
????????, ??? ???????, ?? ?????? ??? ?????????????? ?? ?????? ?????? ??? ?????? ?? ??? ???
????????? ?????????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ???

40 ??????? ??????? ???? ? Columbus ??? ?????????? ?????????? ?????????? ?????????? ??
????? ?? ??? ?????????????? ??? ?????? ?????????? ?????????? ??????????, ??? ?? ?????? ??
????????? ?????????? ?????????? ??? ?????????????? ?????????????? ?????????? ??? ?? ??? ?????

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

41 ????? ??? ???? ????????, ??????? ??????? ????????, ??????, ??? ? ??? ???? ??????
?????????? ??? ??????????? ??????????? (??. ??????? ?? 14?? ??????????? 1995,
C?279/93, Schumacker, ??????? 1995, ?. I-225, ??? 30, ??? ?? 29?? ??????? 1999,
C?311/97, Royal Bank of Scotland, ??????? 1999, ?. I-2651, ??? 26).

42 ??????, ??? ?? ?????? ??? ??????????? ??????????? ??? ??????? ??? ??????? ??? ??,
?????????????? ??? ??????????? ????? ?? ??????????? ??????????? ?? ???????????
?????????? ?? ??? ??????????? ??? ????? ?? ??????????? ??? ??????? ??????????????? ??
???? ??????? ???, ?? ???, ??????? ?? ??????????? ??? ???????????, ??????????? ??
????? ??? ?? ??????????? ??????????? ??? ?? 30 % ??? ?????????????????? ?????? (??.,
?? ??? ??????? ???, ??????? Kerckhaert ??? Morres, ???????????, ??? 19).

43 ?? ??????????? ??? ????? ?? ??????? ??? ??????? ??? ??????? ???, ?? ???????
?????????? ??? ?? ??????? ?? ??????? ?? ??????? ??? ??????????? ??????????? ???????,
???? ?? ??????????? ??? ??? AStG, ??????? ??? ?? ??????????? ??????? ???
?????????? ??????????? ??? ??? ????? ?? (??. ??????? Kerckhaert ??? Morres,
??????????, ??? 20).

44 ?????? ?? ??????????? ??? ????? ?? ??????????? ??? ?? ??????????? ??? ?? 293 ?? ???????
?????????? ??? ??????? ??????????? ??????????? ??? ??????? ??? ??????? ???
?????????? ??????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ???????
?????????? ???????????, ??? ??? ????? ?? ??????? ??? ??????? ??? ??????? ??? (??????
Kerckhaert ??? Morres, ???????????, ??? 21).

45 ??????, ?? ??????????? ???, ??? ????? ?? ??????? ??????????? ??? ?? ??? ?? ??? ???????
???? ?? ??? ??????? ???, ??? ??????????? ??????? ??????????? ??? ?? ??? ??????? ???
?????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????????? ??? ??????? ??? ???????
??? ??????????? ??? ??????????? ???????????, ???????????, ??????????? ??? ???????
90/435/?? ?? 23?? 1990, ??????? ?? ?? ??? ??????? ???
?????????? ?? ??? ??????? ??? ??? ??????? ??? ?? ??????????? ??? ??????????? ???????????
?????? ??? (EE L 225, ?. 6), ??? ??????? ??? 23?? 1990, ??? ?? ??? ??????? ???
?????? ??????????? ?? ??? ??????? ??? ??????????? ??? ??????? ??????????? ??????????? (??.
L 225, ?. 10), ??? ?? 2003/48/?? ?? ???????, ??? 3?? 2003, ??? ??
?????????? ?? ??? ??????? ??? ??????????? ??? ??????? ??????????? (??. L 157, ?. 38), ???
???? ??????????? ???, ??? ??????? ??? ??????????? ??? ???????, ????? ??
?????????? ? ??????????? ???????, ??? ??????? ??? ??????????? ??? ??????? ???????????
(?. ??????? Kerckhaert ??? Morres, ???????????, ??? 22).

46 ?????? ?? ???, ??? ??????? ??? ??????????? ??? ?? 27 ?? ???????
?????????? ??????????? ???, ??? ??????? ??????? ??????????? ??????????? ?? ???????
?????????? ??? ??????????? ? ??? ??????? ??? ?? ??? ???????????, ??????? ?? ???????????
?? ??? ???????????, ??? ??????? ??? ??????? 234 ??, ?? ??????????? ??? ??
?????????? ??????????? ?? ??? ??????? ??????????? ??? ??????? ??? ??????????? ???
?????????? ???.

49 ??????????????, ??? ??????? ?? ???? ?????? ?? ?????? ?????????? ? ?????????????? ?????? ?????????? ?????
Eurowings Luftverkehrs, ?? ??? ????? ?? ?????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ???
?????? ?? ?????????????? ?? ?????????? ?????????? ?????????????? ?? ?????????? ?? ?????? ??? ?????? ??????????
????????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?? ?????? ?????? ?? ?????????? ??????????
????????? ?? ??? ????? ???????, ?????????? ?? ?????? ?????????? ?????????? ?????? ??? ?????? ??
????????? ?????????? ?? ?????????? ?? ?????? ?????????????? ?? ?????? ?????? ?????? ?????? ??????????
????????? ?????????? ?????????????? ?????????????? ?? ?????? ?? ?????? ?????????????????? ??
????? ?????? ????. ??????????, ??? ??????? ?? ?????? ?????? ?????, ?? ?????????? ?????? ? Columbus
??? ?? ?????????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ????, ?? ?????????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??????????
?????????.

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

52 ???????, ? Columbus ?????????? ??? ?? ??????? ????? ??? ?????? ????? ?????? ?????? ???
AStG ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .
????, ?? ??? ?????? ?? ?????? ??? ?????????????? ??? ?? ?????? ?????? ??? ?????? ?????? ???
????????????? ??? ?????? ??? ?? ??? ??? ??????????????, ??? ? ?????? ??? ?????? ???, ??
?? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??????.

53 ???????, ?????? ?? ??????????? ??? ? ??????????? ??????????, ??? ??? ??? ????? ??????
????? ?? ?? ?????? 44 ??? 51 ??? ??????? ??????????, ??????????, ??????, ??? ?? ??? ?????
????? ?????? ??????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????? ?????????? ???
????????? ?????? ?????????????? ??? ?????????????????? ??? ?????????? ?????? ?????????? ??????
?????????, ??? ??? ??? ??? ?? ?????????? ??? ?????? ?????????? ??? ?? ??? ??? ??? ?????
????????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??????????.

54 ??? ?? ??????? ??? ?????? ??? ?????????? ?????????????? ??? ?? ??? ?????? ?? ?????? ??????????????
????????????? ?????????? ??? ? Columbus, ??????, ??? ?????????? ??????????
????????????? ??? ?????????, ?????????, ??? ?????? ?????? ?????????? ?? ?? ?????? 40 ???
????????? ?????????, ?????????? ?? ?????????? ??? ?? ?????????? ??? AStG ??? ?????? ??
????????????? ?? ?????????? ??? ?????????? ?????? ?????????????? ??? ?? ?????? ???
????? 43 ??.

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

55 ?? ?? ?????????????? ??? ?????????? ?? ?????? ?????????????? ??????, ??? ?? ?????? 56
?? ?????? ?? ?????????????? ??? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ???
????? ??? ?????? ???.

56 ??????, ??? ? ?????????? ???, ??? ?????????? ??? ?? ??? ?????? ??????????????,
????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?? ?????? ???
????????? ?? ??? ?????? ???, ??? ?????? ?????? ?????????????? ?? ?????? ???.
????????????? ?????????? ?????????? ?????????? ?????????????? ?? ?????? ?????? ??????. ?????????,
?? ?????????? ??? ?????????????? ??? ?????? 54 ??? ?????????? ?????????? ?????????? ??? ??????
????? ??? ?????????? ?? ??? ?????????? ?????????? ??? ?????????? ?????????? (??., ??? ??
????? ???, ?????? Test Claimants in the FII Group Litigation, ??????????????, ??? 60).

57 ??? ????????, ??? ?????????? ??????? ?? ?????? ?? ?????? ? ?????????? ??? ?? ?????? 43
?? ??? 56 ?? ?????? ?? ?????????????? ??? ??? ?????? ??? ?? ?????????? ??????????
????????? ?????? ?????? ?????? ??? ?????? ?? ?????????? ?????????? ??? ??????????
?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
?? ?????????? ??? ??? ?????? ??? ?????? ?????????? ??????????, ??? ??? ??? ?????? ??????????
?? ??? ?????? ??? ?????? ??????????, ?????????????? ?? ?? ?????? ?????? ??? ?????? ??? ??????
????? ??????????????, ??? ?????????????? ??? ?????? ???, ?? ??? ?????? ??????????????
????????? ??? ??? ?????? ?????? ???.

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

58 ??????? ??? ? ??????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?? ?????? ?????????? ??? ??
?? ?????????? ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ?' ???
????????? ?? ?????????? ??? ?????? ?????? ?????????? ??????. ?? ?????? ??? ?????? ??????????
????? ?????????? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????.

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

? ? ??? 43 ?? ??? 56 ?? ?????? ?? ?????????? ??? ?? ??? ?????? ??? ??
????????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? ??
?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? ??
????? ?????????? ??????????, ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ??????
????????? ??????, ??? ?????????? ??? ?????? ?????? ???, ?? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????? ???.

(?????????)

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