

?????? C-442/05

Finanzamt Oschatz

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**Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien,
????????????? ????: Bundesministerium der Finanzen**

(?????? ??? Bundesfinanzhof ??? ??? ?????? ?????????????? ??????????)

«???? ?????? ??? – ??? 4, ?????????? 5, ??? 12, ?????????? 3, ???????? ?? – ??????????
? ??? ? – ?????? ??? ??? “????????? ??????” ??? “????????” – ?????????? ?????????? ???»

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

1. ?????????? ?????? – ?????????? ??? ?????????? – ?????? ?????? ?????? –
????? ?????? ??? ?????????????? ??? – ?????????? ??? ???

(?????? 77/388 ??? ??????????, ??? 4 § 5, ??? ??????? ?, ??? 2)

2. ?????????? ?????? – ?????????? ??? ?????????? – ?????? ?????? ?????? –
????? ?????? ??? ?????????????? ??? – ?????????? ??? ?????? ?????? ?? ??????????
????????? ?????????? ?? ??? ?????????? ??? ?????? ??? ??????????

(?????? 77/388 ??? ??????????, ??? 12 § 3, ??????? ?, ??? ??????? H)

1. ?? ??? 4, ?????????? 5, ??? ?? ??????? ?, ?????? 2, ??? ??? ?????? 77/388,
???? ?????????? ??? ?????????? ??? ????????, ??? ????????, ??? ?????????? ?? ??? ?????? ??????
?????????, ?????? ?? ?????????? ??? ????????, ??? ?????? ??? ???? «????????? ??????» ??? ?? ???
????????? ?????????? ??? ????????, ??? ?????? ??? ????????, ??? ?????? ??? ????????, ? ????, ??? ??????????
??? ??????? ?????????? ??? ????????, ??? ?????? ??? ????????, ??? ?????? ??? ????????, ??? ??????
????????? ??? ?????????? ?????????? ??? ????????, ??? ?????? ??? ????????, ??? ?????? ??? ????????,
????????? ???, ????, ????, ??? ?????? ??? ????????, ??? ?????? ??? ????????, ??? ?????? 4, ?????????? 5, ??? ???
????????? ???, ??? ?????????????? ??? ?????? 31 ??? ????????, ????, ??? ????????, ??
????????????? ??? ??? ?????????? ??? ??? ?????? ?????????? ????, ??? ?????? ??? ??
????????? ??? ?????? ?????????? ??? ????????, ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??
????????????? ??? ?????????? ??? ?????????? ??? ????????, ??? ?????? ??? ?????????? ??? ??
???? ?????? ?????????? ? «????????? ??????», ???, ??? ??????, ??? ?????????????? ???
«????????? ??????» ?????? ??? ?????? ??? ?????? ??? ???? ?????? ?????? ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
?????.

(?. ?????? 35, 37, ??????. 1)

2. ?? ??? 12, ?????????? 3, ??????? ?, ??? ?? ??????? H, ?????????? 2, ??? ???
?????? 77/388, ??? ?????????? ??? ????????, ??? ?????? ??? ?????????? ??? ??????, ??? ?????????? ??
???? ?????? ?????? ????????, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ????
«?????????» ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ????????, ? ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??

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?????? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? «?????? ?????» ??? «??????»,
??? ?????????? ??? ??? ?????????? ??? ??? ?????? ?????????????? ??????????????. ? ??????
?????? ?? ?????? ??????, ?? ?????????? ??? ??? ?????? ?????? ??? ???, ??????
?????? ??? ?????? ??? «??????» ??? ?????????? 2 ??? ?????????? ? ??? ???
?????.

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

(??, ??????? 40, 44, ????????. 2)

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

?? 3?? ??????? 2008 (*)

«???? ?????? ?? – ??? 4, ?????????? 5, ?? 12, ?????????? 3, ?????????? ?? – ??????????
? ?? ? – ?????? ?? ??? “?????? ?????” ?? “??????” – ?????????? ?????????? ??»

???? ??????? C?442/05,

?? ?????????? ??? ?????? ?????? ?????????????? ?????????? ??? ?????? 234 ??,
?? ?????? ?? Bundesfinanzhof (???????) ?? ?????? ??? 3? ?????????? 2005 ? ???
????????? ?? ?????????? ??? 14 ?????????? 2005, ??? ?????? ??? ???

Finanzamt Oschatz

????

Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien,

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

Bundesministerium der Finanzen,

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

????????? ??? ??? C. W. A. Timmermans, ?????? ???????, L. Bay Larsen, J. Makarczyk
(???????), ?. K?ris ??? J.-C. Bonichot, ????????,

?????? ??????????: J. Mazák

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

????????? ?????? ??? ??????? ???????????? ??? ??????? ??? ??' ??????????? ??????????? ???
10?? ????, 2007,

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

- ? Finanzamt Oschatz, ?????????????? ??? ?? T. Martin,
- ? Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau?Westelbien,
????????????? ??? ?? F. Schmidt, Steuerberater,
- ? ?????????? ????????, ?????????????? ??? ??? M. Lumma ??? U. Forsthoff,
- ? ?????????? ????????, ?????????????? ??? ??? I. M. Braguglia, ?????????????? ??? ??
G. Fiengo, avvocato dello Stato,
- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? ?. ??????????????,
???? ?????? ??? ?????? ?????????? ??? ??????? ??? ??????? ??? ?????? ??? ??? ?? ??????????
?? 10?? ??????, 2007,

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

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1 ? ??????? ??? ?? ?????? ?????????????? ???????, ???' ??????, ??? ???????
??? ??? «?????? ???» ??? «??????» ??? ?????????? ?, ?????? 2, ??? ?, ??????? 2,
??????????, ??? ??? ?????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???
?????????? ??? ?????????? ??? ?????? ?????, ??? ??????? ?? ??? ?????? ?????? ??????
????????? – ??? ?????? ?????? ?????? ?????????????? ????: ?????????? ?????????? ??? (??
???. ??. 09/001, ?. 49), ??? ?????? ?????????????? ?? ??? ?????? 2001/4/? ?? ??? ????????,
?? 19?? ?????????? 2001 (?? L 22, ?. 17, ??? ????: ??? ??????).

2 ? ??????? ?????????? ??? ?????? ?????? ?????? ??? Finanzamt Oschatz
(??? ????: Finanzamt) ??? ?? Zweckverband zur Trinkwasserversorgung und
Abwasserbeseitigung Torgau Westelbien, (?????????? ??? ?????? ??????? ??? ??????????? ???
????????? Torgau? Westelbien, ??? ????: Zweckverband), ??????? ?? ?? ?? ??????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????? ??? ???????
????????? ?????? ?????????????? ??? (??? ????: ???).

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

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

3 ?? ????? 4, ?????????? 5, ??? ?????? ?????? ??? ?? ???:

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

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

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

[...]»

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

5 ?? ????? 12, ?????????? 3, ??????? ??, ??? ?????? ?????? ?????? ??????:

«? ?????????? ?????????? ??? ????? ?????????????? ?????? ?????????????? ??? ???
????? ?? ??????? ??? ??? ?????? ?????? ?????? ??????, ??? ????? ?? ??? ??? ???
??? ?????????? ?????? ??? ??? ?????? ??????????. [...]】

[...]

?? ?????? ??? ?????? ?? ?????????? ??? ???? ?????????? ?????? ??? ???????????. ?? ??????????????
????? ?????????? ?? ?????? ??? ?????????????? ?????? ?? ?????? ??? ?????? ?? ??????
????????? ??? 5 % ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??????
????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ???????????.

[...]»

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

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

7 ??? ?? ??? 1, ?????????? 1, ??? ?????, ??? ?????? ??? ?? ??? ?????? ??????
????????? ??? 1999 (Umsatzsteuergesetz 1999, ??? ????: UStG), ? ?????? ?????? ??? ??
????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????? ??? ??????
????????? ?????????? ?? ?????????? ?????? ??? ?? ?????? ?????????? ??? ??????
????????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
??? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????.

8 ???' ??????? ??? ?????? 2, ?????????? 3, ????? ?????, ??? UStG, ?? ??????
????????? ??????? ??? ?????? ?????????????? ? ?????????????? ?????????????? ????
??? ??????? ?????????????? ?????????? ??????????. ??????? ??? ?????? 4, ?????????? 3,
??? ?????? ??? ?????? ?????? (Körperschaftsteuergesetz) ??? ?????????? ??????????
????????????? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ??? ??????.

9 ??? ?? ??? 12, ?????????? 1, ??? UStG, ? ?????? ?????? ?????????????? ??
????????? 16 % ??? ??? ?????????? ???.

10 ? ?????????? 2 ??? ?????? ???, ???, ?????????? ?????????? ?????????? 7 % ??? ???
????? ??????? ??? ??? ?????, ?????????? ??? ?????????? ?????????? ??? ?????? ???
????????????? ??? ?????????? 2 ??? ?? ??? ?????, ??? ?????? 34 ??? ??????
????????????? ?????????? ?? ???.

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

11 ???? ?????? ??? Zweckverband ???? ? ?????? ?????? ?????? ??? ? ?????????? ???
????? ?? ?????????? ??? ?????? ?????????? ??? ?????? Torgau?Westelbien. ???
?????, ??? ?????????????? ??? ?? ??? ?????? ?????????? ???, ?????? ????, ? ???????,
? ?????????? ?, ? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ???, ??????
????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?? ?????? ?????????? ??? ??????
????, ? Zweckverband ??????????????, ?????? ?????? ??? ?????? ???, ?? ?????? ???
????? ?? ?? ?????? ?????????, ??? ??? ?????? ?????????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??????????. ? ?????? ?????? ?????? ??? ?????? ?????? ??? Zweckverband.

12 ???? ?????? ??? ? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???, ?
Finanzamt ?????????? ?? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ??? ?? ??? ??????
? ?????? ??????.

13 ???? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ??? Finanzamt,
? Zweckverband ?????????? ??? Finanzgericht Sachsen, ?????????? ??? ? ?????? ???
?? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ??????????
????? ??? ?????? ??????.

14 ?? Finanzgericht Sachsen ?????? ??? ?????? ??? Zweckverband, ?????????? ???
????? ??? ?????? ??? ? ?????? ??? ?????? ?? ?? ?????? ?????? ?????????? ??? ?????? ???
????? ??? «????? ???», ??? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????.

15 ? Finanzamt ????, ????, ??? (Revision) ?????? ??? Bundesfinanzhof ???
?? ?????? ???.

16 ?? ?????? ?????????? ????, ??? ? ?????? ???, ??? ? ?????? ??? ?
Zweckverband, ??? ?????? ??? ?????? ?? ?? ?????? ?????? ???, ?????? ?? ??????????
????? ?? ??? ?????? ???????. ?????????? ???, ???, ??? ?? ?????????? ???
????????? ?? ?????? ??? ?????? ??? ?? ?? ?????? ?????? ??? ?????? ???' ??????????
????????, ?????????? ??? ? Zweckverband ?????? ?? ?????? ?????? ?????? ???
????????? ?? ?????? ?????? ???, ?? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ???
???? ???, ??? ?????? ??? ?????? ??? ?? ?????? 4, ?????? 5, ??? ?????? ???.

17 ??? ?????? ??? ?????????? ???, ?? ?????? ?????????? ?????????? ???,
????? ??? ?????? ??? ?????? ??? 4? 2000 ??? ?? Bundesministerium der
Finanzen (????????????? ?????????? ??????????), ? ?????? ?????? ?? ?????? ??????
????????? ?????????? ??? ?????? ?? ?????? ?? ?????? ??????.

18 ?? ?????? ?????????? ??? ?? ?????? ??? ? ?????? ??? ? ?????? ??? ?
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? 12, ?????? 3, ?????? ??, ??? ??? ??????????
H, ?????? 2, ??? ?????? ???.

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

«????? ??? ?????? ??? “????? ?????” ??? “?????”, ??? ??????
????????????? ??? ?????? [...] (????? ?, ??? 2, ??? ?????? ?,
????? 2, ??????????), ? ?????? ??? ?????????? ??? ?????? ??? ?????? ???

????????? (? ?????????????? “???????? ?? ?? ??????”) ?? ?? ?????? ????????, ???? ????
????????? ??????? ??????? ??????? ??????? ???????;»

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

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

20 H Finanzamt ??? ? ?????????? ?????????? ??????????, ?? ??? ?????????????? ???,
????????? ?? ??? ?? ?????????? ??? ?????????? ?????????? ??????????, ??? ?? ??? ??
???? ?? ?????????? ?, ?????? 2, ??? ????? ??????, ?????????? ??? ?????????? ???
????? ??? ?????? ??? ????? ?? ?? Zweckverband ????? ?????? ?? ???.

21 ??????????????, ???????, ???, ??? ????? ??????????, ?? ?????????? ?????????? ??
?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?????? ?? ??????????
????????? ??? ? ?????????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ??????????
??? ??? ?????? ?????? ?? ?? ?????????? ?? ?????????? ?????????? ??? ?????????? ???
????? ?? ?????????? ?????? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??????????
????????? ??? ?????????? ??? ?????? ?????????? (??., ?????? ?????, ?????????? ??? 19??
????????? 2002, C-35/99, Arduino, ?????? 2002, ?. I?1529, ????? 25, ??? ??? 11??
????????? 2006, C-13/05, Chac?n Navas, ?????? 2006, ?. I?6467, ????? 33).

22 ?? ??????????, ???, ??? ?????????? ?????? ??? ??? ?????? ?????????? ??????????.

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

24 ?? ??????, ??? ?????? ?? ?????????? ?????? ?? ?? ?????????? ??? ??? ??? ??????????
????? ???, ??????????, ?????? ?? ??? ?????? ??? «????????? ?????? ??? «?????????» ???
????????? ??? H, ??????????, ??? ?????? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
«????????? ??????».

25 ?????? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ?????????? ??? ???
????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?? ??? ???, ??? ???
????????? ??? ?????????? ?????????? ?????????? ?????? ??? ?? ?????? ?????????? ?????? ???
?? ? Zweckverband ?????? ?? ???, ?????? ??? ?????? ?????????? ?????????? ??? ??????????
????????? ??? ??? ?????? ???.

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

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

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

28 ??? ?????????? ?????? ?????? ?? ?????? ?????????, ??????, ?????? ?? ?? ?????? 4,
????????? 5, ??? ?? ?????????? ?, ?????? 2, ??? ?????? ?????? ???, ???????, ??????? ??
??? ?????? ??? ?????? ?????????? ??? ??? ?????????? ??? ?????? 12, ??????????
3, ??????? ?, ?? ?????? ?? ?? ?? ?????? H, ?????? 2, ??? ?? ??? ??????.

?????? ?? ?? ??? 4, ?????????? 5, ??? ?? ?????? ?, ?????? 2, ??? ?? ??? ??????

29 ?? ?? ??????? ???, ?? ?????? ??????????? ?????, ?????? ?????, ?? ? ?????? ???????
?? ?????? ??????? ??????? ???. ?????? ???. «?????? ?????» ??? ??????????? ?,
?????? 2, ??? ????? ??????.

30 ?????????? ??? ???? ?????? ??? ?????????? ?????? ??????? ??????, ??????????????
???, ??? ?? ?????? ?????????? ?????????? ??? ????????????, ??? ???????, ??? ?????????????? ?,
?????? 2, ??? ?? ??? ??????????, ??????? ?? ??????????? ?????? ??? ??????? ?? ??????? ???, ???
??? ?? ??????? ??? ????? ??????????? ??? ?? ??????? ??? ?????????????? ?? ?? ??????? ???
?????? ??????? ??? (?. ???????, ?????? ????, ?????????? ??? 19?? ??????????? 2000,
C?156/98, ??????? ??? ???????????, ??????? 2000, ?. I?6857, ????? 50, ??? ??? 6??
?????? 2006, C-53/05, ??????? ??? ???????????, ??????? 2006, ?. I?6215, ????? 20).

31 ??? ?? ?????? 4, ??????????? 5, ??? ???????, ??? ?????? ??????? ?????????? ?????????? ??? ?
?????? ????, ?????????? ??? ?? ?????????? ??????? ??????? ??????? ?????????? ?????????? ??????????
????? ???? ??? ?????? ??????? ??? ?????????? ??? ???????, ??? ?????? ???, ?????? ??? ?? ???
??????????, ??????? ?????????? ??? ??????? ?????? ?? ??????? ?????? ??? ?? ?????? ?????????? ???
????, ??????? ??? ?????????? ??? ??????? ?????? ??? ??? ?????????? ??? ?????? ??? ?? ???
??????, ??????? ?? ?????????? ??? ?????????????? ? ??????? ??? ??????? ?? ?? ???
?????????? ??????? ?? ??????? ???????, ??? ??? ??? ?????????? ??? ??????? ?? ?? ???
?????? ?? ?????????? ??? ?? ??? ??????? ??? ?????? ??? ?? ??????? ?? ?? ???
?????????? ?? ??? ??? ??? ??????????. ???????, ??????? ??? ?????? ??????? ??????? ???
?????????? ??? ??????? ?????????? ?????????? ?????????? ?? ?? ??? ?????????? ??????? ???
?????????? ?????????? ??? ??????? ??? ?????? ??? ??? ?????? ??????? ??????? ???
?????????? ???????, ?? ?????? ??????? ?? ??????? ??????? ??????? ??????? (??, ??????? ??
17?? ??????? 1989, 231/87 ?? 129/88, Comune di Carpaneto Piacentino ??., ???????
1989, ?, 3233, ????? 26).

32 ?? ????????????, ?????????????? ???. ???? ?????????????????? ??? «????????? ??????» ?????? ?
?????? ?????? ??? ?????? ???, ????. ????? ?????????????? ? ??????? ?????????????? ??? ?????? 43 ???
????????? ???, ? ??????? ?????????????????? ??? ????? ?????????? ??? ?????? ?????? ?????????????? ???
??????.

34 ??? ??????????????? ???, ????, ?? ???? ???? ???, ???, ??? ?????? ????, ?? ???? ???? ??, ?? ???? ????
????? ????, ?? ???? ???? ??, ?? ?????. ????, ?? ???? ???? ??, ?? ???? ???? ??, ?? ???? ???? ??, ?? ???? ????
????? ???.

35 ?????????? ???, ??????, ?????? ??? ?????? ?????? ?????? ??? ?????? 4, ?????????? 5, ???
????? ?????? ???, ??? ?????????????? ??? ?????? 31 ??? ?????? ????????, ??
????????????? ??? ??? ?????????? ???, ??? ??? ???, ??? ??? ??? ? ?????? ??????
????????? ???, ??????, ?????????? ?????????? ?????????? ?? ?? ??? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ? ??? ??? ??? ???
????????? ? «?????? ???», ??????, ?????????? ??? «?????? ???» ????? ?
????? ??? ??? ??? ??? ???, ??????, ? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ??? ?????? ???, ?????? ??? ? ?????? ?????? ?????? ??? ?????? ???
«?????? ???» ??? ?????? 2 ??? ?? ?????? ??????????.

36 ????, ????????, ? Zweckverband, ????? ?? ???? ??????? ???, ????

? ?????????????? ??????? ???? ?????? ?? ?????? ???????, ??????? ?? ?????? ???????, ???
??? ?????? ??? ?????? 4, ?????????? 5, ????? ??????, ??? ????? ???????, ??? ???
????????? ??? ?????????????? ??? ?????, ??? ????? ?? ???????, ??????? ??? ?????? ??????
??? ?? ??? ?????.

37 ??????? ??? ??????????????, ??? ?????????????? ??????? ?? ?????? ?? ?????? ? ???????
??? ?? ?????? 4, ?????????? 5, ??? ?? ?????????? ?, ?????? 2, ??? ????? ??????? ??????? ??
????????? ??? ??? ?????? ??? ? ??? «?????? ?????» ??? ?? ????? ??????????
????????? ??? ?????? ??????? ?? ?????? ???????, ? ????, ??? ??????????? ???
????????? ?????????? ??? ?????? ?????, ?????????? ??? ????? ?????????? ?????? ??? ??
????????? ??? ?????????? ?????????? ??????? ?? ?????? ?????? ?????? ???????, ???,
?????????, ??? ?????????? ?????? ??????? ?? ?????? ??? ?????? ?? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ???.

?????? ?? ?? ??? 12, ?????????? 3, ??????? ??, ??? ?? ??????? H, ?????????? 2, ???
????? ???????

38 ?? ?? ?????????? ??? ?????? ???, ?? ?????? ?????????? ?????? ?????? ?? ? ???????
?????? ?? ?????? ?????? ??????? ??????? ??? ?????? ??? «??????» ???
????????? H, ?????????? 2, ??? ????? ??????.

39 ??? ?????????? ??? ?? ?????? 12, ?????????? 3, ??????? ??, ??? ?????? ???????, ???
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ???????, ?? ?????? ??? ?????
?? ?????????? ?? ?????????? ??? ? ??? ?????????? ???????, ???????, ??????? ?? ??
?????? ???, ?????????? ?????????? ??? ??????? ?? ?????????? ?????????? ?????????? ???
????????? ?????? ?????????? ??? ?????? ??????? ?????????? ??? ?????????? ??? ?.

40 ??????? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? «?????? ?????» ???
«??????», ??? ?????????? ??? ??? ?????????? ??? ??? ?????????? ?????? ?????????????? ???????????.
???? ?????????? ??? ?? ?????? 34 ??? ??????? ???????, ? ?????? ?????? ?? ??????
????????? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ???, ???????, ???????
????????? ?????? ?????? «??????» ??? ?????????? 2 ??? ?????????? ???? ?????? ??? ??
??????.

41 ??????, ?????? ?????? ?? ??????? ?? ??????? ?? ?????? 12, ?????????? 3, ??????? ??, ???
????? ?????? ??? ??????? ?? ??????? ?? ??????? ?? ?????? ?? ?????????? ??? ???????
????????? ??????? ?? ??? ??? ?????? ??????? ?? ?????????? ??? ?????? ??? ?????
«??????» ??? ?????????? H ??? ?????? ?????? ???, ???????, ??? ?????????? ?
????????? ?????? ??? ??????? ???????, ?????? ??? ?????????? ???????
????????? ??? ?????????? (??., ???' ???????, ??????? ?? 8?? ????? 2003, C?384/01,
????????? ??? ???????, ??????? 2003, ?. I?4395, ????? 27).

42 ???????????, ?????????????? ??? ?????????? ?? ?????? ??????? ? ?????? ??? ?????????? ?? ???
????????? ??? ?????????? ??? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? 12, ?????????? 3,
????????? ??, ??? ?????? ??????, ??? ?? ??? ?????????? ?? ?????? ??? ?????? ??? ??????
??? ??? ??? ?????????? ???????????, ? ?????? ?????????? ?? ?????????? ??? ??????????
??????????, ?? ?????? ???, ?????????? ???, ???????, ???????, ?????????? ?????? ??? ???
????????? ? ?????? (??., ?????? ???, ??????? ?? 3?? ?????? 2001, C?481/98,
????????? ??? ???????, ??????? 2001, ?. I?3369, ??????? 21 ?? 22, ?????? ??? ??? 23??
????????? 2003, C?109/02, ??????? ??? ?????????? ??? 2003, ?. I?12691, ????? 20).

43 ??? ???????, ?????????? ??? ??????? ?? ?????? ??? ?????? ??????? ?? ??? ?????? ???
????????? ???????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???

? ?????????? ??? ?? ?????????????? ??? ?????? ?????????????? ??? ?????????? ?????? ?????? ?
??? ??? «??????» ??? ?????????? H, ?????????? 2, ??? ?????? ??????, ??? ?????? ?
?????? ?????? ?? ?????? ???????.

44 ??? ??? ??????? ??????, ??? ?????????????? ??????? ??????? ?????? ?? ?????? ?
????????? ??? ?? ?????? 12, ?????????? 3, ????????, ??? ?? ?????????? H, ?????????? 2,
??? ?????? ?????? ?????? ?? ?????????? ??? ?????? ??????? ??? ?? ????? «??????»
????????? ?? ?????? ?????? ?????? ?? ?????????? ??? ?????? ???????, ? ?????, ??? ?????????? ???
????????? ?????????? ??? ?????? ??????, ?????????? ??? ?????????????? ?????? ??? ??
????????? ??? ?????????? ?????????? ?????? ??? ?????? ??????? ??? ?????? ?????? ??????.
??????, ?? ?????? ??? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ??? ??
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? «??????»,
???? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????????? ??????????????.

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

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

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

1) ?? ?????? 4, ?????????? 5, ??? ?? ?????????? ?, ?????? 2, ??? ?????? ??????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ??????????
??? ?????? ??????, ??? ?????????? ?? ?????? ?????? ?????? ?????? – ?????? ??????
????? ?????????? ?????: ?????????? ?????????? ?????? ?????? ?????? ?????? ??
????????????? ??? ?????? ?????? ??? ? ??? «??????? ??????» ??? ?? ??? ?????? ??????????
????????????? ?? ?????? ?????? ?? ?????? ?????? ??????, ??? ?????? ?????? ?????? ??????????
??? ?????????? ?????????? ??? ?????? ??????, ?????????? ??? ?????? ?????? ?????? ??????
??? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??????
????? ??? ??????, ???, ??????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

2) ?? ?????? 12, ?????????? 3, ????????, ??? ?? ?????????? H, ?????????? 2, ???
????? ?????? 77/388 ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ? ??? «??????»
??? ?????????? ?? ?????? ?????? ?? ?????? ?????? ??????, ? ?????, ??? ??????????
??? ?????? ?????? ?????? ??? ?????? ??????, ?????????? ??? ?????? ?????????? ??????
??? ?? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????
??????. ??????, ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????????
????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ????
????? ?????? ??? ?????? ??? ???? «??????», ??? ?????? ??? ?????? ?????? ??? ?????? ????
????? ?????? ??? ?????? ??????, ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??????.

(?????????)

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