

???????? C-124/07

J.C.M. Beheer BV

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Staatssecretaris van Financiën

(?????? ?? Hoge Raad der Nederlanden

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

«???? ?????? ??? – ?????? ?????????? ??????? ?? ?????????????? ??????? – ??????
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???????????? ???? – ?????????? ??? ?????????? – ?????? ?????? ?????? – ?????
????? ????? ?????????????? ????? – ?????????? ?????????????? ??? ??? ??? ?????

(?????? 77/388 ??? ??????????, ????, 13, B, ??????? ??)

?? ?????? 13, ?, ????????, ??, ??? ????? ??????? 77/388 ??? ?????????????? ??, ??? ???????????
??? ?????? ????, ??? ??????? ?? ??? ????? ?????? ?????? ??????? ???????, ????, ?? ??????????
??? ??? ?????? ??? ? ??????? ??? ????? ?????? ?????????? ? ?????????????? ?????????? ???
????? ?????? ?????? ?? ?? ??? ????? ?? ?????????????? ? ?????????????? ?????????? ??? ??????
??? ?????? ???????, ??? ?????? ?????? ??? ?????? ?? ?? ??? ????? ?????? ??? ??????
?????????? ???, ??? ?????? ?????? ??? ?????? ?????? ?????? ?? ?? ??? ????? ?????? ??? ??????
??? ?????? ? ?? ??? ????? ??????? ?????????? ? ?????????? ?????????? ?????????? ???????????,
??? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ????? ????? ??????????????
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(?. ?. ???? 29 ??? ??????)

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

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

«???? ??????? ??? - ??????? ?????????? ?????????? ?? ?????????????? ?????????? - ??????? ?????????? ??? ?????????????? ??????????»

???? ??????? C?124/07,

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

????????????? ?? Hoge Raad der Nederlanden (???? ?????) ?? ??????? ??? 9??
?????????? 2007, ? ????? ??????? ??? ?????????? ??? 2 ??????? 2007, ??? ??????? ???
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J.C.M. Beheer BV

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Staatssecretaris van Financiën,

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

?????????? ??? ??? P. Jann, ??????? ????????, A. Tizzano, A. Borg Barthet, M. Illeši? ??? E. Levits (?????????), ????????,

?????? ??????????: E. Sharpston

?????????: M. Ferreira, ????? ?????????? ????????????,

?????? ??? ?????? ?????? ?????????? ??? ??????? ??? ??' ?????????? ?????????? ??? 10?? ?????????? 2008,

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

- ? ?????????? ????????, ?????????????? ??? ??? C. Wissels ??? M. de Mol,
- ? ?????????? ??? ????????, ?????????????? ??? ?? Z. Bryanston-Cross ??? ??? P. Harris,
- ? ?????????? ??? ?????????? ????????, ?????????????? ??? ??? R. Lyal, A. Weimar ??? W. Roels,

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

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1 ? ?????? ?????? ?????????? ?????????????? ?????? ?????? ??? ??????? ??? ?????? 13, ?,
???????? ??, ??? ????? ?????? 77/388/??? ??? ??????????, ??? 17?? ?????? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ??????
???????? - ??? ?????? ?????? ????? ?????????????? ????: ?????????? ?????????? ??? (??
???. ????. 09/001, ?. 49, ??? ????: ??? ??????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? J.C.M. Beheer
BV, ??????? ?????????? ????, ??? ??? Staatssecretaris van Financiën ??????? ?? ???
????????? ??????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??????? ??? ??? 1? ?????????? 1997 ??? ??? 31 ?????????? 1998 ??? ??? ??
55 561 ?????????? ?????????? (NLG) (25 244 ???).

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

4 ?? ????? 13 ??? ????? ??????, ?? ?????? ?????????? «????????? ??? ?????????? ???
?????», ??????:

«[...]

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?? ??? ?????????? ?????? ?????????? ??????????, ?? ?????? ??? ???????????, ??? ???
????????? ??? ?????? ??? ?????? ?? ?????????? ? ??? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ?????? ?? ?????????? ??? ?????? ?????????? ?????? ???????????,
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) ??? ?????????? ??? ?????????? ?????? ?????????, ?????????????? ??? ???
????? ??? ??? ?????? ?????? ?????? ?????????, ??? ?????????????? ??? ???
[?????] ??? ?????????? ??????.

[...]»

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5 ?? ????? 1 ??? ????? ??? 1968 ??? ?????? ?????? ?????? (Wet op de omzetbelasting
1968, ??? ????: Wet OB 1968), ??? ?????? ?????? ??? ?????? ??? ?????? ???, ????:
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«????? ??? ?????????? “????? ?????? ??????” ?????????? ???:

a. ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???.

[...]»

6 ??? ?? ????? 11, ?????????? 1, ?????? k, ?? Wet OB 1968, ?? ?????? ??????????
????? ?????????? ?????? ?? ?????? 13, B, ??????? ?, ?? ?????? ??????:

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

k. ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ???
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[...]»

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

7 ? ?????????? ??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? VDL Polisassuradeuren BV
(??? ????: VDL), ? ?????? ?????? ?????? ?????????? ?????????? ??? ? ??? ?????
????????????? ?????? ?????? ?????????? ??? ?????????? ???.

8 ? VDL ????????????, ??????, ?? ?????????????? ????? ?? ?????? ??????????????
????????? ???, ???????, ?? «????????????? ??????» ??? ?????????? ??????????
?????????. ??? ?? ?????????? ???, ? VDL ??????? ?????????????? ?????????? ?????????? ??'
????????? ??? ??????????.

9 ?? ?????????????????? ?? ? ? ??????????????? ?? ?????? ?????? ??' ??????? ??' ?? ??
?????????? ?? VDL ??????? ?? ?????? ?????????????? ??????????, ?? ?????????????? ??
?????????? ?? ???????????, ?? ?????? ??????????????, ?? ?????? ?????????? ??' ?? ??
????? ??????????? ?? ?????? ?????????????? ?????????? ?? ?????? ?????????? ??????????????.
??????, ?? ??????? ?? ???????, ?? ?????? ?? ?????? ?????????????? ?? ???????????, ??
?????????.

10 ????? ?? ??????? ?????? ??? VDL ??? ??? ?????????????????? ??? ?????? ??????, ?
????????? ?????????? ??? ?? VDL, ??? ??? ?????? ??? ?????, ??????? ??? ?? ?? 80 % ???
?????????? ??? ?????????????? ??? ?????????????? ??????? ??? ?? ?????? ??????????????
?????????. ?? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ???????????????, ??????? ??
?????????? ?? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?? ??? ??
????????? ?????? ?????? ??????.

11 ???? ?? ??????? ?????????? ??? ???? 1? ?????????????? 1997 ???? ?? 31 ?????????? 1998,
????????? ?? ???? ????? ?? ?????????????????? ??? ?????? ?????? ?????????? ?????????? ??????
????? ??????? ?? ?? 55 561 NLG (25 244 ???).

12 ????? ???. ????????. ???????????. ???????????. ???????????. ???????????. ??? ???. ????. ????. ???????????. ????.
??????????. ??? ???. ??????. ??????. ??? Gerechtshof te 's-Hertogenbosch, ?? ???. ??????. ??? ???.
?????. ???. ??????. ???. ??????. ???. ??????. ???. ??????. ???. ??????. ???. 11, ??????. 1, ??????. k, ??? Wet
OB 1968, ? ??????. ????. ??? ???. ????. ????. ????. ????. ????. ????. ????. ????. ????. ????.
?????. ????.

13 ?????????? ??? ? ??? ????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
???????, ?? Hoge Raad der Nederlanden ??????? ?? ??????????
?? ??????? ?? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????:

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

14 ???' ??????, ??????? ?? ??????????? ??? ?? ??? ????? ?? ?????????????????? ?? ??
?????????? ?? ?????????? ??? ?????? 13 ??? ????? ?????? ??????? ?? ?????????? ?? ??????????????
?????, ??????? ?? ?????????? ?????? ?????????? ?????????????? ??? ?? ?????? ??? ?? ???? ?? ??
????????????? ??? ??? ????? ?????? ?????????? ??? ?????????????????? ?? ?????????? ??? ?? ??
????????? ??? ??? (????????? ??? 20?? ?????????? 2003, C?8/01, Taksatorringen,
?????? 2003, ?. I?13711, ????? 36- ??? 3?? ?????? 2005, C?472/03, Arthur Andersen,
?????? 2005, ?. I?1719, ????? 24, ??? ??? 21?? ?????? 2007, C?453/05, Ludwig, ??????
2007, ?. I?5083, ????? 21).

15 ????? ?????? ??????? ??????????, ?? ?? ??? ????? ?????????? ?????????? ?????????? ?????????
???? ?????????? ???????, ?? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ??????????

????? ??? ?????????? ??? ?????????? ??? ??? ??? ?????? ?????? ??? ??? ??? ???? ???? ???? ???? ????
????? ?? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????????? ??? ??? (?)?????????
??? 8?? ??????? 2001, C?240/99, Skandia, ??????? 2001, ?. I?1951, ????? 23, ???
????????????? ?????? Arthur Andersen, ????? 25, ??? Ludwig, ????? 22).

16 ??? ?? ??? ?????? ??????? ?????????? ??? ?????????????? ???????, ?????? ?? ??????????? ??,
????? ?? ??????? ??? ? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
??? ?? ??? ?????? ?????????????? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ??? ??? ? ?????? ??? ? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ??? ?? ???
????? ? ?? ??? ?????????????? ?????????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ???
????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? 13, B,
????????? ??, ??? ?????? ?????? ?????? ?????? ?? ??? ?????????????? ???
????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
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17 ??????, ?????? ?? ?????????? ??? ??? ?????? ??? ? ?????????? ??? ?? ?????????? ??? ?????????? ???
????? ?????????? ? ??? ?????????? ?????? ?????? ??? ?? ?????????? ??? ?????? ?????? ???
????????? ?????????? (?).., ??? ??? ?????? ?????, ?????????????? ?????? Arthur Andersen,
????? 32).

18 ?? ??????????, ?????? ? ??????????, ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ???
?????????, ? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???, ??? ???
????????????? ??? ?????? 9 ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.
????????????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????.

19 ??????, ??? ??? ?? ??? ?????? ?????? ??? ?????? ?????????? ? ??? ??????????????
????????? ?? ?? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????,,
????????????? ??? ??? ?????? ?????? ?????? ??? ?????? 77/92/?? ?? ?????? ?????? ??? 13??
????????? 1976, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????? (????? ??? 630 ???), ???
????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? (?? ????. ???.
06/001, ?. 243), ?????? ?????? ??? ??????.

20 ??????, ?? ?????????? ??????, ??? ??? 44 ??? ?????????????? ??????????
Taksatorringen, ??? ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????????
??? ? ??? ?? ??? ?????? 13, B, ?????? ??, ??? ?????? ?????? «????? ?????? ??????»
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? [????? ?????? ??????]
??? ?????????? ?????? » ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

21 ?? ??????????, ? ?????? ?????? ?????? ?????? ??? ?????? ??? ? ?????????????? ???
????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ????
??? VDL, ? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 13, B, ?????? ??, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? 44 ??? 33 ??? ??????????????
????????? Taksatorringen ??? Arthur Andersen.

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

23 ???????????, ??????, ??? ?? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ?? ?
????????????? ??? ?????? ?????? ??? ?????????? ?????? ?? ??? ????? ?????????? ???
????????? ??? ?????? ?????????? ? VDL, ??? ??? ??? ?????? ?????? ?? ???
??????????. ???, ??? ?? ?????????? ??? ?? ?????? ?? VDL, ? ?????? ??? ? ???
?????? ??? ?????????? ??? ?? ??? ??????????, ? ?????????????? ??? ??? ?????? ???,
????????? ??' ??????? ??? ?? ?????????? ??? VDL, ?????????? ?????? ?? ??????.

24 ?????, ?????? ?? ?????????????? ??? ?? ?????????? ???, ?? ?? ?????????? ??? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ???, ??? ??? ?????? ??? ??? ??? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ??? ??? ?????????? ???
????????? ???, ??? ??????, ??? ??? ?????? ??? ?? ??? ??? ??? ?????? ??? ???
????????? ???.

25 ???, ??? ?? ?????????? ??? ?????? ???, ?? ?? ??? ?????? ???, ? ??????????????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????????
????????? Taksatorringen ??? Arthur Andersen ??? ?????? ??? ?? ?????? 13, B, ?????????? ?,
??? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??????, ??? ??? ??? ??? ?????? ??? ?????? ???
???? ?????????? ??? ?????? ??? ??? ?????? ?????? ??? ??? ?????? ?????????? (??., ??? ???
?????, ?????????????? ??? ?????? Taksatorringen, ?????? 44 ?? 46, ??? Arthur
Andersen, ????? 36).

26 ??? ???????, ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????????? ???
??? ??????? ??? ?????? 13, B, ????????, ??, ??? ??? ?????? ?????? ??? ?????? ??? ??? ???
???? ??? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????????? ??? ?????? ???
??????, ?? ?????????? ??? VDL, ??? ??? ?????? ???????????.

27 ???????, ?? ?????? ??? ?????? 13, B, ????????, ??, ??? ??? ?????? ???????, ???' ????,
??? ??????? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ???
????????? ??? ?????????? ??? ?????? ?? «?????? ?????? ??? ?????? ??? ?????? ?????? [??
?????????] ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? [??????]
?????????] ??? ?????????? ?????? ??????» (??.. ??? ??? ?????, ??? ??? ??? ?? ?????? 13,
B, ????????, ??, ?????? 3, ??? ?????? ??????, ?????? ??? 5?? ?????? 1997, C?2/95, SDC,
?????? 1997, ?. I?3017, ??? 64- ??? ?????? ?? ?????? 13, B, ????????, ??, ?????? 6, ???
?????? ????, ?????? ??? 4?? ??? 2006, C?169/04, Abbey National, ?????? 2006, ?.
I?4027, ??? 67, ???, ??? ?????? ?? ?????? 13, B, ????????, ??, ?????? 1, ??? ???
??????, ?????????????? ?????? Ludwig, ??? 34).

28 ??? ??? ??????? ????, ??? ??? ??? ??? ?????????? ?????????????? ??????????
??? ?? ?????????????? ??? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?????? ?? ??????,
??? ?????? ?????????? ???, ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ???
?????? ?? ?????????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? 13, ?, ??? ??????
??, ??? ??? ?????? ?????? (??., ??? ??? ?????, ??? ?????? ?? ?????? 13, ?, ??? ?????? ??,
????? 6, ??? ?????? ??????, ?????????????? ?????? Abbey National, ????? 68, ???, ???
????? ?? ?????? 13, B, ????????, ??, ?????? 1, ??? ?????? ??????, ?????????????? ??????
Ludwig, ??? 35).

29 ??????? ??? ???????, ??? ?????? ??? ?????? ?????? ?? ????? ? ?????? ? ??????? ??? ??
????? 13, ?, ??????? ??, ??? ?????? ?????? ?????? ?? ??????????? ??? ?? ?????? ??? ??
?????? ?? ?????? ?????? ?????????? ? ?????????????? ?????????? ??? ?? ?????? ??? ??
?? ??? ?? ?????????? ? ?????????????? ?? ?????????????? ?????????? ??? ?? ?????? ??? ??
???? ?? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ?? ???, ? ??????
???? ? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ??
????????? ? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??????????.

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30 ?????????? ??? ? ??????? ??????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?? ?????? ???
??? ?????????? ?????????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??????????, ?' ???
????????? ?? ?????????? ??? ?? ?????? ??? ?????? ??????. ?? ?????? ??? ?????? ??????????
???? ?????????? ?????????? ??? ?? ??????????, ??? ?? ??? ?? ?????? ??? ??????????, ??? ???????????.
??? ??? ?????? ????, ?? ?????????? (????? ????) ??????????:

? ? ? ? ? 13, ?, ??????? ??, ??? ?????? ?????? 77/388/??? ??? ??????????, ??? 17??
????? 1977, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????????? ??
???? ?????? ?????? ?????? - ????? ?????? ?????? ?????? ?????????????? ?????:
????????? ??? ?????? ?????? ???, ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????? ?? ?? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ??
????? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ??
????????? ??? ??, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?? ?? ??? ??
?? ?? ?? ??? ?????? ?? ?? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?? ?? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?? ?? ??? ??.

(?????????)

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