

?????? C-460/07

Sandra Puffer

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Unabhängiger Finanzsenat, Außenstelle Linz

[?????? ??? Verwaltungsgerichtshof (???????)
??? ??? ?????? ?????????????? ??????????]

«???? ?????? ??? – ????? 17, ?????????? 2 ??? 6 – ?????????? ?????????? ??? ?????? ??? ???
????????? – ?????????? ?????????? ?????? ?? ?????? ?????????????? ??? ??? ?????????? ???
????????????? ??? ??? – ????? 6, ?????????? 2 – ?????????????? ?????? ??? ?????? ???
????? ?????? – ?????????? ?????????? ?????? ??? ?? ?????????? ?????? ??? – ???
????????? – ?????? ?????? ?????? ??? ?????? 87 ?? – ?????????? ??? ?? ??????????
?????????»

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

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

(?????? ??? ?????????? 77/388, ??? 17)

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

(?????? ??? ?????????? 77/388, ??? 6 § 2, ?????? ?? ?? 17 § 2, ?????? ??)

3. ?????????? ?????????? ??? ?? ?????? – ??????

(????? 87 § 1 ??)

4. ?????????? ?????? – ?????????? ??? ?????????? – ?????? ?????? ?????? –
????? ?????? ?????? ?????????????? ?????? – ?????? ??? ?????? ??? ??? ?????? –
????????? ??? ?? ?????? ?????? ?????? – ?????????? ??? ?????? ?????? ??? ?????? ?? ?????????? ??
????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????

(?????? ??? ?????????? 77/388, ??? 17 § 6)

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

???????, ?? ?? ??????? ?? ?????????? ??? ?????????? ?????????? ??? ? ?? ?? ??????? ?? ?????
?? ?????? ??? ?????????????????? ?????????????????? ???, ??? ?????????? ?????? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??????????. ??? ?????????? ???, ?
????????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? 17, ?????????? 1, ??? ?????? ?????? 77/388, ??? ?????????????? ??? ?????? ??????
??? ?????? ????, ??? ?????????? ?? ?????? ?????? ?????? ??????, ?????????? ?? ?????? ???
????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
?????????. ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ??????.

(??, ?????? 42-44)

2. ?? ??? 6, ?????????? 2, ????????, ??, ?? 17, ?????????? 2, ????????, ??, ?? ???
????? 77/388, ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????????? ??
????? ?????? ?????? ??????, ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??????
????? ??? ??????????????, ??? ??? ??? ??? ?? ?????????? ?????? ?????? ?????? ?? ??????
????? ?????????? ???, ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
????? ?????? ?????? ?????? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ??? ?????? ?????? ??? ?????? ???, ??? ?????????? ?????? ?????? ??? ??????
????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???

???????, ??? ?????????? ??? ?? ???????? ??? ?????? ??? ?????????? ?????? ??????
???????, ?? ??? 6, ?????????? 2, ???, ???, ???, ??, ?? ?????? ??????
????????? ?? ?? ??????????, ??? ??? ??? ??, ??? ??? ?????????? ?????? ???
????????? ??? ?? ?? ?????????? ??? ?????? ??? ? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ??, ??? ??????, ??, ?? ??? ?????? ???, ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
?? ?????????? ??? ? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???, ???
??? ?????????? ??? ?????? 17, ?????????? 1 ?? 2, ?? 6, ?????????? 2, ???, ???,
????????? ??, ??? ??? ??? ??????, ??? ?? ?????? ??? ?????? ?????????? ?????? ???
????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??????
????????????? ???, ?????????????????? ??? ?????? ?????????? ?????????? ??? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????
????????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???, ??? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ???, ??????, ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ???, ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? 4, ?????????? 2, ???
????? ??????. ????, ? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
?????, ?????? ?? ?? 21 ?? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????
????????? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????

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

(??, ??????? 55-59, 62, ??????. 1)

3. ?? ????? 87, ?????????? 1, ?? ?????? ?? ?????????? ??? ???? ?????? ??? ??
????????? ?????? ??? ?? ?????? ?? ?????? ?? ?????? 17, ?????????? 2, ?????????? ??, ??
????? ?????? 77/388, ??? ?????????? ??? ?????????? ??? ?????? ?????, ??? ??????????
?? ??? ?????? ?????? ??????, ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????? ?????????????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????????? ?????? ?????????????? ?????? ?????, ??? ?????? ???
????????????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ??????.

? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ?????? ??? ???? ?????? ???
???? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????, ?? ?????? ?????? ??
????????? ??? ?????? ??? ?????? ?????? ?? ?? ??? ?????, ??? ?????????? ? ??????????
??? ?????????? ??? ??????, ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ???? 87,
????????? 1, ??.

(??, ??????? 70-71, ??????. 2)

4. ?? ????? 17, ?????????? 6, ??? ?????? ?????? 77/388, ??? ?????????? ???
????????? ??? ?????? ???, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??? ?????? ??? ? ?????????? ?????? ?????? ??? ?????? ?????? ??? ????
????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ??? ?????? 17, ?????????? 6, ?????? ???, ??? ?????? ?????? 77/388, ??? ?????? ???
??????, ?????????? ??? ??? ?????????? ? ?????? ?????? ?????? ??? ???? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ???? ?????? ???.

(??, ????? 98, ??????. 3)

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

??? 23?? ??????? 2009 (*)

«???? ?????? ??? – ??? 17, ?????????? 2 ??? 6 – ?????????? ?????????? ??? ?????? ??? ??
????? – ?????? ?????????? ?????? ?? ?????? ?????????? ??? ??? ??????????
????????? ??? – ??? 6, ?????????? 2 – ?????????? ?????? ??? ?????? ??? ?????? ???
????? ?????? – ?????????? ?????????? ?????? ??? ?? ?????????? ??? ?????? ??? – ???
????????? – ?????? ?????? ?????? ??? ?????? 87 ?? – ?????????? ??? ?? ?????? ???
?????????»

???? ?????? C?460/07,

? ? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ?????? ?? Verwaltungsgerichtshof (???????) ?? ?????? ??? 24?? ?????????? 2007, ?
????? ?????? ??? ?????????? ??? 11 ?????? 2007, ??? ?????? ??? ???

Sandra Puffer

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Unabhängiger Finanzsenat, Außenstelle Linz,

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

????????? ??? ??? A. Rosas, ?????? ??????, J. N. Cunha Rodrigues, J. Klu?ka, P. Lindh
?? A. Arabadjiev (???????), ????????,

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

?????????: B. Fülop, ?????????? ??????????,

????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
16?? ??????? 2008,

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

– ? S. Puffer, ?????????? ??? ??? F. Schubert ??? W.-D. Arnold, Rechtsanwälte,
????? ??? ??? C. Prodinger, Steuerberater,

– ? Unabhängiger Finanzsenat, Außenstelle Linz, ?????????? ??? ??? T. Krumenacker,

– ? ?????????? ????????, ?????????? ??? ??? J. Bauer,

– ? ?????????? ??? ?????????? ??????????, ?????????? ??? ??? K. Gross ??? ?.
???????????,

????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ??? ?? ??????????
?? 11?? ??????? 2008,

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

???????

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

2 ? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? S. Puffer
??? ??? Unabhängiger Finanzsenat, Außenstelle Linz (????????????? ??? Linz, ??? ???:
Unabhängiger Finanzsenat), ?? ?????????? ?? ?????? ?????????? ??? ??????
????????????? ??? (??? ????: ???), ? ?????? ?????????? ??? ??? ?????? ??? ??
????????? ??? ??? 2002 ??? 2003 ??? ??? ?????? ?????????? ?????? ?????????????? ???
????? ??? ??? ??? ?????????? ??? S. Puffer, ??? ?????????????? ??? ?? ?????? ???
????????? ????

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

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

3 ??????? ?? ?? ?????? 2 ??? ?????? ?????? «[?]?? [??] ?????????? [...] ?? ??????????
?????? ?? ?? ??????? ??????????, ??? ?????????????? ?? ?????????? ??????? ??
????????? ?? ?????? ??? ?????????? ??? ?, ??? ?????? ??? ?? ?????????? ??? ?? ?????? ???».

4 ?? ?????? 4, ?????????? 1 ??? 2, ??? ?????? ?????? ?????? ?? ????:

«1. ?????????? ?? “????????????? ????” ?????????? ????, ??? ?????? ??????????
??? ?? ?????????? ????, ??? ??? ??? ?????????? ?????????????? ??? ??????????
???? ?????? 2, ?????????? ??? ?????????? ?????? ??? ?????????? ??? ??????????
????????????? ????.

2. ?????????? ?????????? ????, ??? ??? ?????? ??? ?????????? 1, ??? ?????? ??
????????? ????, ??? ?????? ??? ?????? ??? ?????????? ????, ??? ?????? ??? ??????????
????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????.»

5 ?? ?????? 6, ?????????? 2, ??? ??????, ??????? ??, ??? ?????? ?????? ??????????
????? ?????? ?????????? ?? ?????? ?????? «[?]?? ?????????? ????, ?? ?????? ?????? ??
?????????, ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ? ??? ?????????? ??? ?,
?????????, ??? ?????? ?????? ??? ?????? ??? ?????????? ???', ??? ?????? ??? ?????? ????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [??]».

6 ?????? ??? ?????? 11, ?, ?????????? 1, ??????? ??, ??? ?????? ??????, ???
????????? ??? ?????? «??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 6[,] ?????????? 2,
?? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??? ?????? ???
????????? ??? ??????»..

7 ?????? ?? ?? ?????? 13, ?, ??????? ??, ?????? ??????, ??? ?????? ??????, ?? ??????
????? ?????????? «??? ?????? ?????? ???», ??? ??? ?????? ?????? ?????????? ?????????? ???
??? ?????? ?? ??????.

8 ?? ?????? 17 ??? ?????? ??????, ??? ?????????? ?? ??? ?????? 95/7/?? ???

???????????, ??? 10?? ???????? 1995 (EE L 102, ? 18), ?????? ?? ????:

«1. ? ? ??????? ? ?? ? ?????? ? ?????? ? ?? ? ??, ? ?? ? ?? ? ?????? ? ??????????
????? ? ?????? ? ???????.

2. ????? ?? ?????? ??? ?? ?????? ? ?? ??????????? ?????????????????????? ??? ??
????????????????? ??? ?????????????????? ??????? ???, ? ?????????????? ??? ??? ??? ?????????????? ??
????????? ??? ??? ???, ??? ??? ?????? ?????? ?????? ??????:

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

[...]

[...]

6. ?????????? ??? ?? ??????? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
???????, ?? ?????????? ??????? ?? ?????????? ?????????? ?????????? ?????????? ?? ???????, ??
?????? ?? ??????? ?????????? ?????????? ?? [??]. ?????????? ?? ?????????????? ??
????????????? ?? ?? ??????? ?? ???????, ?? ??????? ?? ?????? ?????????? ??????????
?????????????, ??? ?? ??????? ???????????, ?????????? ?? ?????????? ???????????.

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

[...]»

9 ?? ?????? 20 ??? ????? ????????, ????. ?????????????????? ?? ??? ?????? 95/7/?? ???.
???????????, ??? 10?? ??????? 1995 (?? L 102, ?. 18), ?????????? ?? ????:

«1. ? ??????? ???????????? ??????? ?????????? ?? ?????????????? ??? ?????? ?????? ?????????????? ??? ???? ?????? ???, ????:

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

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

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

2. ??????? ?? ?? ?????? ????????????, ? ?????????????? ?????????????? ?????? ?????????? ??????
????? ?????????????????? ??? ?? ??? ?????, ???? ?? ?????????? ??? ?????? ?????? ?????????? ?
????????????? ?? ??????. ???' ???? ? ?????????????? ?????? ??? ?? ??? ?????? ??? ?????, ??
?? ?????? ?????????????? ?? ??????. ? ?????????????? ?????? ?????????????????? ?????? ??

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

???? ?????????? ??? ?? [?????] ?????[.] ?? ?????? ??? ?????? ??? ??????? ?? ?????????????? ??
???? ?? ?? ?? ?????????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ?? ???
????????????? ??? ??????.

???? ??? ?? ?????? ??? ?????? ?????? ??? ???????, ? ?????? ??? ?????? ??? ??????? ?? ??? ?????????? ?? ???
????????? ??? ?????????? ?????? ?? ?????????? ?????? ??? 20 ???..»

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

10 ?? ??? 12, ??????? 2, ?????? 1 ?? 2, ??????? a, ??? ??? 1994 ???
????? ?????? ?????? (Umsatzsteuergesetz ??? 1994, *BGBI.* 663/1994, ??? ????: UStG ???
1994), ??? ??? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ????, ??? ?? 1? ?????? 1995, ??? ?? ???:

«1. ?? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????????? ?? ??? ?????????? ???
????????? ?? ?? ?????? ?????? ?????? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????? ???
?? ?????? ?????? ?????????? ???, ??? ?? ?????? ?????????? ?????????? ??? ?????? ??????????
????????? ???, ?????? ?????????? ??? ?????????? ??? ?????????? ???.

2. ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ? ? ?????? ??????????

a) ??? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ???
??? ??? ?????? ??? ?? 20, ?????????? 1, ??? 5, ??? ??? 1988 ???
????????? ?????? (Einkommensteuergesetz [??? 1988], *BGBI.* 400/1988) ? ??? ???
8, ?????????? 2, ??? ?? 12, ?????????? 1, ??? 5, ??? ??? 1988 ???
????????? ?????? (Körperschaftsteuergesetz [??? 1988], *BGBI.* 401/1988)».

11 ??? ??? ?????? ??? ?????????? ???, ?????? ?? ??? 20, ?????????? 1,
????? 1 ?? 5, ??? ??? 1988 ??? ?????? ?????? ?????????? ??? ?????? ???
?? ?? ?????????? ??? ?????? ??? ?????? ?????????? ???, ??? ?? ?????? ?????????? ???, ?? ???
12, ?????????? 2, ?????? 1 ?? 2, ?????? a, ??? UStG ??? 1994 ??? ?? ?????????? ??
????????? ?????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ???.

12 ?? ??? ?????????? ??? ?????? ??? 1997 (Abgabenänderungsgesetz ??? 1997,
BGBI. I, 9/1998, ??? ????: AbgÄG ??? 1997), ??????, ?? ??? 12, ??????? 2, ?????? 1,
??? UStG ??? 1994 ?????????? ??? ?? ??? ?????? ??? ?? ?????? ?????? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ?????? 6, ?????????? 1,
????? 16, ?? ?????? ?? ?? 6, ?????????? 2, ?? 12, ?????????? 3, ??? UStG ???
1994, ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????? ??? «????????? ???» ??? ?? ?????? ??? ?????? 13, B, ??????? ?,
????? ????, ??? ?????? ????, ?? ?????????? ??? ?????????? ??? ??????????.

13 ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????????? ??? ?????????? ???
?????? ?? ??????????, ?? ??? ?????????? ???, ??? ?????????? ??? ?? ??? ??????????
??? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
??????, ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ???, ? ??? ?????? ??? ?????? ??? ?????? ??? 8?? ??? 2003, C-269/00,

Seeling (???????, 2003, ? I 4101).

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

14 ? S. Puffer ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? 2002 ??? ?????? 2004 ??? ??????????? ?? ??????. ??? ?? 2003 ?????????????? ?? ?????? ?????? ?????? ?????????? ?????????? ??????, ????? ?? ?????, ?? ?????? ?????? ?????? 11 % ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??????.

15 ? S. Puffer ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????.

16 ?? ?????????? ?? ?????? ?? ?????? ?? ???? ?? 2002 ??? 2003, ? Finanzamt (????????? ???), ??????, ??????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ??????, ?????? ??? ?????? ?????? ?????????? ??????, ?????? ??? ?????? ??? ?????????????? ??? ?????? 11 % ??? ?????? ??? ??????.

17 ? S. Puffer ??????? ?? ?????? ?? ???? ?? ?????? ?????? ?????? ?????, ? ?????? ?????????? ??? ?? Unabhängiger Finanzsenat ?? ?? ???????, ?????? ?????, ??? ? ?????? ?????? ?????? ??????, ??? ?? ??????.

18 ??? ???????, ? S. Puffer ??????? ?? ?????? ?? ???? ?? ?????????? ?????? ?????? ?????? ??? Verwaltungsgerichtshof. ? ?????????? ?????? ?????????? ??????, ??????, ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?????? 17, ?????????? 6, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

19 ??? ??????? ??, ??????? ?? ?????? ?? ???? ?? ?????? 17, ?????????? 2, ??? ?????? ???????, ? ??????? ?????? ??????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

20 ???????, ?? ?????? ?????????? ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ??????.

21 ?? ?? ??????, ?? ?????? ?????????? ?????????? ?? ???? ?? ?????? ?????? ?????????? ?????????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?? ??????.

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

22 ????, ?? ?????? ?????????? ?????????? ?? ??? ?????? ??? ?????????? ??????????????, ??
????? ?????????? ?????? ?????????????? ??? ?????? ??? ?????????? ?????????????? ??????????????
?????? ??? ??? ?? ?????? ?????????????? ?????????????? ????????, ?????? ?? ??????
?????? ?????????? ??? ?????? ??? ?????? 87 ??, ??? ?????????? ??? ?????? ??? ?????? ??? ??
?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ?????????? ?????????? ???
????? ??? ?????????? ?? ?????????????? ???.

23 ???, ?? ?????? ?????????? ?????????? ??, ??? ?????? ??? ?????????? ?????? ??? ??????? ?
AbgÄG ??? 1997, ? ?????? ?????????? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ??? ??? ??
????????? ??? ??? ?????? ?????????? , ??? ?????????? ? Unabhängiger Finanzsenat,
??? ?? ????? 17, ?????????? 6, ??? ?????? ??????.

24 ??? ?? ?????????? ????, ?? Verwaltungsgerichtshof ?????????? ?? ?????????? ??
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????? ?????????? ??????????:

«1) ?????????? ? ??? ?????? [...] ??? ?????? ?? ?????????? ??? ?????? ??? 17, ??
????????? ?????????? ??? ?????????? ??? ?????????? (????? ??? ?????? ??? ?????????? ??? ??????????
?????), ?? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???
(?????????) ??????? ??? 5 % ?????????? ??' ?,?? ?? ?????? ?????????? ??? ??????????
-??????, ?? ?? ???, ?? ?????? ???, ?????? ??? ?????????? ?????????? ??? ?????????? ???
?? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????; ?????????? ???
????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???,
????? ??? 5 % ?????????? ??' ?,?? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ??? ?????????? ???;

2) ?????????? ??? ?????? 87 ?? ?????? ??? ?? ?????????? ??? ?????? ??? ??????????, ??
????????? ??? ?????????? ??? ?????? 17 ??? ?????? ???, ?? ??? ?????? ??? ??????????
??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
?? ?????? ?????????? ?? ?????????????? ??? ??????, ?????? ?? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???;

3) ?????????? ?? ?????? 17, ?????????? 6, ??? ?????? ?????? ?? ?????? ??? ??????????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ??? ?????? ?????? (?? ?????????? ?? ?????? 12, ?????????? 2,
????? 1, ??? UstG ??? 1994), [...] ? ?????? ?????????? ?????????? ??? ?????? 17,
????????? 6, ??? ?????? ??????, ?? ?? ?????? ?????? ?? ?????????? ??? ?????? ??? ??????????
??? ?? ??? ?????? UstG ?????????? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? [????? ??? ?????? 13, ?, ?????? ??, ??? ?????? ??????], ? ?????? ?????? ??????
?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? [????? ??? ??
????????? ??? ?????? ?? ?????????? ??? ?????? 13, ?, ?????? ??, ??? ?????? ?????? ??? ???

????????????????? ??????? Seeling];

4) ?? ?????????? ?????????? ?????????? ??? ????? ??????:

?????? ?? ??? ?????????? ??? ?? ?????????? ??? ????? standstill ??? ?????? 17,
????????? 6, ??? ??? ????? ?????? ?????????? ??? ?????????? ??? ?????????? [...] (???
????????? ?? ?????????? ?? ?????? 12, ?????????? 2, ?????? 2, ?????? a, ??? UStG ???
1994) ?? ?????? ??? ? ?????? ?????????? ?????????? ??? ?? ??? ??? ??
????????????????????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? (????? ??? ?????? 12, ?????????? 2, ?????? 2, ?????? a, ???
UStG ??? 1994 ??? ??? ?????? 12, ?????????? 2, ?????? 1, ??? UStG ??? 1994) ??? ???
????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;»

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

??? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????? 17, ?????????? 2,
????????? ??, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ???
?????????????

25 ?? ?? ??? ?????? ??????? ??, ?? ?????? ?????????? ???, ???' ??????, ?? ?? ??? 17,
????????? 2, ?????????? ??, ??? 6, ?????????? 2, ?????????? ??, ??? ?????? ??????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????????, ??????
?? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????
?? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ???
????????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

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

26 ? S. Puffer ?????????? ??? ??? ?????????????? ??? ?????? ?? ?????????? ?? ?????????? ??
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ??
????????? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

27 ?????????? ???, ?????? ?? ??? S. Puffer, ??? ?????????? ???, ??? ??? ??????
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ?????????? ??? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????????.

28 ? Unabhängiger Finanzsenat ?????????? ??? ?? ??? 17, ?????????? 2, ?????????? ??,
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ???, ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

29 ????????????, ??? ???? ??? ?????? ??? ??????? ??????, ?????? ??????? ?? ????????,
?????? ?? ? ???? ??????? ??? ?????? 17, ?????????? 2, ??????? ?, ?? ????
??????, ? ?????? ??????? ??? ?????????? ?????? ??????? ????? ??????? ??????? ???
?????? ??? ???? ?????? ?????????? ??????. ??? ???? ???? ?????????? ??????? ???
?????? ?? ?????????? ?? ???? ??? ?????????? ?????? ?????? ??? ??????, ?? ????
?????? ?????????? ?? ?????????? ?????? ?????????? ?????? ???????, ??????? ??
????????? ??? ?????? ?????? ?????????? ?? ?????????? ???????, ??????? ??? ?????? 6,
????????? 2, ??????? ?, ?? ???? ??????.

30 ?? ?? ??????, ??????? ?? ??? Unabhängiger Finanzsenat, ??? ? ?????? ??? ??????
???? ?????????? ??? ? ??????? ??? ?????????????? ??????? ?? ?????????? ???
???? ??????? ?????? ??? ?????????? ??? ??? ??? ???? ??????. ??????????, ????????
???? ??? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?? ??????? ??? ?????????? ??
?????????.

31 ????????, ?? ??????? ??? ?????? ?? ??? ????????????, ?????? ?? ??????????
????????? ?????????? ??? ????????????. ??????, ? Unabhängiger Finanzsenat ??????????
??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????????? ??????? ???, ???????,
??? ??????? ?? ???????, ???????, ??? ??? ??? ??? ??????, ?? ???????, ???????, ??
???????, ??? ?????? ??? ?????????? ?????????? ???????, ??????? ??? ??????????
??? ??????? ??? ??????? ??? ???????, ??? ???????.

32 ? Unabhängiger Finanzsenat ?????????? ??? ?????? ?? ??? ?????????????? ???
????????????? ?? ??? ?????? ?????????????? ??? ?????? ?? ??? ?????? ?????????????? ???
?????? ?? ??????? ??? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????? ???, ??????? ?? ?? ?????? 17, ?????????? 5, ??? ??? ???
??????, ? ??????? ??? ?????? ?? ?????? ??? ?????????? ??? ?? ??? ?????? ?????????? ???
????????????? ???.

33 ? ?????????? ?????????? ????????????, ??? ??? ??' ?????????? ????????, ?? ???
????????? ??? ?????? 17, ?????????? 2, ??????? ?, ??? ?????? ??????? ??? ?????????? ???
Unabhängiger Finanzsenat. ??????????, ? ?????????? ??? ?????? ??? ? ?????????? ???
????????? ??? ?????????? ?????????? ??? ??? ?? ?????? ??? ?????????? ?? ??????
????????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ??? ?? ??? ???
????????? ??? ?????????? ??? ?????????? ??????. ?? ?????? ???????, ??? ??????
?????????, ??????? ?? ??? ?????? ??? ?? ?????? ????????????, ?? ?????? ?????????? ???
????????, ???????, ???' ?????????? ??? ?????????? ?????, ??? ?????? ??????? ??????? ???
?????? ?? ??? ??? ???????????.

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

35 ?? ?????? ?????????? ?????????? ??? ?? ?????????? ?? ?????????? ?? ??????????
????? ??? ?????? ??? ?????????? ???, ???, ?? ?????????? ??? ?? ??? ??????????
????????????? ??? ?? ?????? ?????????? ???, ??? ?????? ?????????? ?? ?????????? ???
?????? ??? ??? ??? ?????????? ???, ???, ???????, ?? ??? ?????? ?????????? ???

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

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

37 ???????, ? ?????????? ?????? ??? ???? ??? ?????? ?????????????? ??? ??????????????
??? ?? ??????? ??? ? ?????????? ???, ? ?????? ??? ?????? ?? ?????? ?????????? ??????????
????? ???? ?????????? ???, ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ??? ??? ???????,
????????? ???? ?? ?????????? ???? ??? ???? ?????? ?????? ?????.. ??????, ? ?????????????? ???
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ???.

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

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

39 ???' ????, ?????????????? ???, ??? ?????? ??????????, ?? ?????????? ??? ??????????
????? ?????????????? ??? ???? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ??????, ?
????????????? ???, ??? ??? ?????? ?????????? ??? ???, ??? ?? ?????? ?? ??????? ?? ??????
????? ?????????? ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ?? ??????????
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??
????????? ??? ???, ??? ?? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ?????????????? ??? ?????????? ??? ?????????? ??? (????????? ??? 14??
????????? 2005, C-434/03, Charles ??? Charles-Tijmens, ?????? 2005, ?. I?7037, ?????? 23 ???
????? ?????????????? ??????????, ?????? ??? 14?? ?????????? 2006, C-72/05, Wollny,
????????? 2006, ?. I?8297, ?????? 21).

40 ?? ? ?????????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
??? ??? ?????? ???????, ?????? ?????????? ?????? ? ?????? ??? ?????? ?????? ??? ??? ??? ???
????????? ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? (????????????? ???
????????? Charles ??? Charles-Tijmens, ?????? 24, ?????? ??? Wollny, ?????? 22).

41 ????????, ??? ???? 6, ?????????? 2, ?????? ??????, ?????????? ??, ??? ???
????????? ?????????? ???, ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ???
??? ??????, ? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?? ?????? ?????? ?????? . ??? ?????? ???, ? ?????? ?????? ?????? ??? «????????????? ???
?????», ??? ??? ?????? ??? ?????? 17, ?????????? 2, ??? ?????? ??????, ??????????????,
????? ???? 11, ?, ?????????? 1, ?????????? ??, ??? ?????? ?????? ???, ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? (?. ???
????????????? ?????? Charles ??? Charles-Tijmens, ?????? 25, ?????? ??? Wollny, ??????
23).

42 ??? ???????, ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ??????

????????????? ??? ????? ?????? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ?????? ???
?????? ?????? ??? ????? ?????? ?????? ?????? ??????????, ??????, ?? ?????? ??? ?????? ??? ???? ???? ?
?????? ?????????????? ??? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????????????? ??? ?? ??? ???? ?
?????? ???, ???????, ?????????? ?????????????? ??? ?????????? ??? ?????????? ??? ??? ??? ??? ??? ???? ?
?????? ??? ?????????????? ??? ??? ?????????????? ??? ?? ?????? ?????? (?????????????????)
?????? Wollny, ??? 24).

43 ??????????, ?? ? ??????????? ????. ????. ??????????, ????. ????. ?????????? ????.
?????????? ??????, ?? ?? ??????? ?? ?????????? ????. ?????????? ?????????? ????. ?? ?? ??
?????? ????? ?? ????? ????. ?????????????? ?????????????? ????. ????. ????. ?????????? ????.
????????? ????. ?????? ????. ????. ????. ????. ????. ?????????? ????. ?????????? ????. (?)..,
??????, ?????????? ????. 11?. ?????? 1991, C-97/90, Lennartz, ?????? 1991, ?. I?3795,
?????? 8 ??? 9, ????? ??? ?? 21?. ?????? 2005, C-25/03, HE, ?????? 2005, ?. I?3123,
????? 43).

44 ???????, ??? ??????????? ?????, ? ?????????????? ?????? ??? ?????????????????? ??????
?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ??????? ??????????, ??????? ?? ?????? 17, ?????????? 1, ??? ?????? ??????
????????? ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ?????????? ??????. ??? ??? ?????? ??? ??? ?????????? ?????? ??????
????????? ?????????????? ??? ?????????? ?????? ?????????? ?????? ??????, ??? ??????
????? ?????????? ??? ?????? 50 ??? ?????? ???.

45 ????? ?????????? ??????????? ?????? ?????? ?????? ? ?????? ?????????? ???
?????????, ? ??????? ?? ?????? 17, ?????????? 1 ??? 2, ??? ????? ??????, ??? ??
????????? ? Unabhängiger Finanzsenat ??? ? ?????????? ??????????, ?? ?????????? ?? ???
?? ??????? ?? ?????? ?????????? ??? ?????????? ??? ??? ??? ??? ?????? ???
????????????? ?????????????? ?????????????? ?????????????? ???????, ??? ???? ?????? ?????? ???
????????? ??? ??? ?? ?????? ?? ?????? ????? ?? ?????? ??? ?????????? ??? ?????????? ???,
????? ?????????? ?????.

46 ???????, ?? ??? ?????? ??????????, ? ??????????? ????? ?? ???? ?? ??????????? ??
?? ?????? ?? ???? ?? ?????? ?? ?????? ?? ???? ?? ?????? ??????????? ?? ???? ?? ?????? ??
????????????? ?? ???? ?? ??????????? ?? ???? ?? ??????????? ?? ???? ?? ?????? ?? ???? ??
????????? ?? ???? ?? ???????????, ? ????? ?? ?????? ?????? ?? ???? ?? ???? ?? ???? ??
????????????? ?? ???? ?? ??????????? ?? ???? ?? ?????? ?????? ?? ???? ?? ???? ?? ???? ??
????? (??., ???????, ??????? ?? ???? 8?? ??????? 2001, C-415/98, Bakcsi, ??????? 2001, ?.
I?1831, ????? 46, ??? ?????????????? HE, ????? 71).

47 ???????, ??? ?? ?? ?????????? ??, ?????? ?? ?????????? ?????????????
????????????? ??, ??? ??????? ?? ?????? ?? ?????????????? ?????? ??, ??? ??????????
???????, ??????????? ??, ??? ??????? ?? ?????????? ??, ??? ??, ??? ??????? ??, ??? ??,
?????????????? ??, ?? ?????? ?? ??????? ?? ?????????? ??, ??? ??, ??? ??????? ??, ??? ??,
?????? ???????????, ??? ?????? ??, ??? ??????? ?? ?????????? ??, ??? ??, ??? ??????????
??????????????, ??????????????. ???????, ? ????? ??, ?????????????? ??, ??? ??, ??? ??, ??? ??,
?????????? ??, ??? ??????????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??,
?????????? ??, ??? ??????????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??,
?? ??????????? ??, ??? ??????????? ??, ??? ??, ??? ???????, ?? ?????????? ??, ??? ??????? ??, ??? ??,
?? ??????????? ??, ??? ??, ??? ??????. ???????????, ?? ??????? ??, ??? ??????? ??, ??? ??????? ??, ??? ??,
?? ??????????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??????? ??, ??? ??,
?????????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? ??????? ??, ??? ??, ??? (??,
??????, ??? ??????? ??, ??? 14?? ?????????? 1985, 268/83, Rompelman, ??????? 1985, ?.

655, ??????? 19 ??? 23).

48 ?????, ?????????? ??? ???? ?????????? ? Unabhängiger Finanzsenat ??? ?
????????? ??????????, ? ?????????? ??? ???? ?????????? ?????????? ??? ?????? 17, ??????????
2, ??? ????? ?????? ??? ?????? ?? ?????? ?????? ?????????? ??????????, ??? ?????????? ? ??????
????????? ??? ?????? 46 ??? ?????????? ???, ??? ?????????????? ??????????????.

49 ???????????, ?? ?????????? ??? ?????? ??? ?????????????? ?????? ??????????????????
????????? ??? ??????? ?? ???????, ??????? ?? ??? ???? ???????, ?????? ??? ?? ???
?????? ???, ???????, ??????? ?? ??????? ?????????? ??? ?? ?????? ?????? ??????
?????? ??? ??????????? ??? ?????????? ??????.

50 ?????, ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????????? ???
????????????? ??? ??? ?????????????? ?????, ??? ?????? ?????????? ?????? ???
????????? ??? ?????????? ??? ?????????????? ?????? ??? ??? ?????????? ??? ?????????? ???
????????? ?? ?????? 17, ?????????? 5, ??? ?????? ??????.

51 ???????????, ??? ??? ?????????? ??? ?????? 17 ??? ?? ??? ?????? ?????????? ???,
?? ??????????? ??? ??? ?????????, ??? ??? ?????????? ??? ?????? ?????????? ???, ??
?????? ?? ??? ??? ?? ?????????? ??? ?????? ?????????? ???, ? ?????? ?????????? ???
?????????? ??? ??? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ??? ??? ?????????? ???
???? ?? ?????? ?????? ?????????????? ?????? ???.. ??? ?????? ??? ?? ?????????? ???
??????, ???????, ?? ??????? ??? ???????, ?? ?????? 20 ??? ?????? ??????? ??????????
?? ?????????? ?????????????? .. ???????, ??? ? ?????????? ??? ?????? 17 ??? 20 ??? ?? ???
?????? ??? ?? ?????????? ?? ?????? ?????? ??? ???, ? ?????????? ??? ??? ??????? ???
?????? ?? ???????, ??? ??? ?????????? ??? ?????? ??? ??? ?????????????? ???
????????????? ???, ??? ?????? ?????????? ??? ?????? ??? ??? ?????????? ??? ??? ??
????? ????.

52 ??????, ?????? ?? ?????????? ???, ??? ?????? ??????????, ? ?????????? ???
?????? ??? ?????? ?????????? ?????? ??? ?????? ?????????????? ?????????? ???
????????? ?????????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ?????????? ??? ??????
????? ?? ?????????? ?????? (?. ??? ?????? ??? 7?? ?????? 1998, C-390/96,
Lease Plan, ?????? 1998, ?. ?-2553, ?????? 34 ??? ??? 19?? ?????????? 2000, C-156/98,
????????? ??? ???????, ?????? 2000, ?. I?6857, ?????? 84).

53 ?????? ?????? ?? ?????????? ??? ???? ??? ?????????? ?????????????? ??????????,
????? ?????? ??? ???, ??? ?????? ??? ?????? ??? ?????? ?????????????? (?. ??? ?????? ???
8?? ?????? 2006, C-106/05, L.u.P., ?????? 2006, ?. I-5123, ?????? 48 ??? ??? ???
????????????? ?????????? ??? ??? ?????? ??? 10?? ?????????? 2008, C-309/06, Marks &
Spencer, ?? ?????????? ??? ??? ??????, ?????? 49).

54 ???????, ?? ?????????? ??? ?????????? ???, ?????????? ?? ?????? ?????????? ??
????????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ????
????????? ???, ??? ?????? ?????? ???, ?????, ??? ?????????? ??? ?????? ??? ?????? ??????????
????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ? ??? ?????????? ???
?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
??, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
?? ??? ??????, ???, ???????, ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????, ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ??? ?????? ??? ?????? (??., ??????, ??? ?????????? ??? ?????? Wollny,
?????? 30 ??? 33).

55 ??????, ??? ?????????? ?? ?????? ??????????, ??? ?????????? ?? ?????? ??? ??????????
????? ??? ?????????? ??? ?????? ??????, ?? ???? ?????? ?????????? ??? ?????????? ?? ????
????????? ??? ?????? ???, ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ???, ???????, ?? ??? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?????????? ??? ?????? 47 ???
????????? ???????, ? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???, ???
??? ?????????? ??? ?????? 17, ?????????? 1 ??? 2, ??? 6, ?????????? 2, ?????? ???,
????????? ??, ??? ?????? ???????, ??? ?? ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ?????????????? ?????????? ??? ?????????? ???, ???
????????????????? ??? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??., ???
??????, ??? ?????????? ??? ?????? Wollny, ??? 38).

56 ???????, ? ?????????? ?????????? ?????????? ?????? ??? ?????????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??????, ??? ??????, ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? . ?????? ?????????? ?????????? ?????????? ??? ??????, ??? ??????,
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? 4, ?????????? 2, ??? ?????? ??????. ????, ?
????????? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????????? ???, ?? ?????? ??????, ??? ?????? ???, ??? ?????? ???, ??? ?????? ?? ?? ???
21 ??? ?????? ???, ??? ?????????? ??? ??? ??? ??? ?????? ??? ?????? ??? ??????????.

57 ??? ?????? ?? ?????????????? ??? ?????? ?????????? ?? ??? ??? ?????????? ??? ?????? ???
????? ??? ?? ?????????? ???, ?? ?????? ??? ?????? ?????? ?????? ??????????
????????????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??????????.

58 ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ???? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ???, ?????? ??? ?????? ???
????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?? ?????????? ??? ?????? ?????? ??????.

59 ? ?????????? ??? ?????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???
????? ? ?????? ?????????? ??? ?????? ?????? ?????? ???, ?????? ??? ?????? ???
????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??

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

60 ???? , ??? ?? ?????????????? ??? ?????????????? ??? ?????? 50 ??? ?????????? ?????????? ?????????????? ??? ?? ?????????????? ??? ?????? ?????????????? ??? ?????? ?????????????? ?????????????? , ??? ??? ?????????????? ??? ?????? ?????????????? ?????????????? ?????????????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .

61 ??? ?? ??????? ?????????? ??? ?? ?????? 17, ?????????? 2, ????????? ??, ??? 6, ?????????? 2, ????????? ??, ??? ?????? ?????? ??? ?????????? ?? ?????? ?????? ??? ?????????? ?????? .

62 ?????? ??? ??????? ????????, ??? ?????? ??????? ??????? ?? ?????? ? ?????? ? ?????? ??????? ?? ?? ?????? 17, ?????????? 2, ????????? ??, ??? 6, ?????????? 2, ????????? ??, ??? ?????? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? .

??? ??? ??????? ?????????? ?? ?????? ?????? ??? ?????????????? ?? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 17, ?????????? 2, ????????? ??, ??? ?????? ?????? .

63 ?? ?? ??????? ??????? ???, ?? ?????? ?????????? ?????, ???' ??????, ?? ?? ?????? 87 ?? ?????????? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? 17, ?????????? 2, ????????? ??, ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? , ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?? ?????? .

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

64 ? S. Puffer ?????? ??? ?? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ???' ??????, ??? ?????? ?????? ?????? . ?????? ?????? , ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? . ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .

65 ? Unabhängiger Finanzsenat ?????????? ??? ??? ?????? ?????????? ??? ?????? 87 ??, ?????? ? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .

66 ? ?????????? ??????????? ??? ? ?????????????? «??????? ??????» ??? ??? ?????? ???
?????? 87, ?????????? 1, ?? ??????, ?????? ???, ?????????? ??? ?????? ??? ??????
????????? ?????????????? ?????? ?????.. ??????, ?? ?????????? ??? ?????????? ???
??? ?????????????? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????????? ???
????????? ?????? ??? ??? ?????? ?????? ??? ?? ?????????? ??? ?????????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.
????????? ??? ??????????

67 ?????? ?? ?? ?????? 87, ?????????? 1, ??, «[?]????????? ??? ?????????? ???
????????? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????? ??? ??? ?????? ???
????????? ??? ?????????? ??? ??? ?????? ?????????? ?????????? ?????????? ???
????????? ?????? ?????? ?????? ?????? ?????????? ??? ??? ?????? ?????, ??? ?? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ???.

68 ??? ?????? ??????????, ? ?????????????? ??? «?????????», ??? ??? ?????? ???
?????? 87, ?????????? 1, ??, ?????? ?? ?????? ??? ?????? ??? ?????????? ???
???? ??????????.. ???, ?????, ?????? ?? ?????????? ??? ?????? ??? ?????? ???
???? ?????? ?????? ?????? ?????? ?????? ???, ?????, ?????? ?? ?????? ?????????? ???
????????? ???, ??????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(????????? ??? 1?? ?????? 2008, C-341/06 P ??? C-342/06, Chronopost ??? La Poste ???
UFEX ??., ?? ?????????????? ???, ??? ??????, ?????? 121 ??? 122 ??? ???
????????? ??? ??????)).

69 ?? ?????????? ?????????? ??? ?????????? ??? ??? ??? ?????? ??? ?????? ??? ??
????????? ?????? ?????????? ??? ?????????? ??? ??? ?????? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? 17, ??????????
2, ?????? ??, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ????.

70 ??? ?????????? ? ?????? ?????????? ??? ?????? 70 ??? ?????????? ???, ?
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ??????, ?? ?????? ?????? ?? ?????????? ??? ?????????? ???
????. ?? ?? ??????, ??? ?????? ? ?????? ??? ?????? ??? ?????? ??? ??????, ??
????????? ?? ?? ?????? ?? ?????????? ?? ?????? 87, ?????????? 1, ??.

71 ??? ??? ?????????? ???? ??? ?????? ?? ?????? ??? ?????? ?????? ? ?????? ???
??????????, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?? ?????? 87,
????????? 1, ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ?????? ??? ?????? 17, ?????????? 2, ?????? ??, ??? ?????? ?????? ?? ??????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

72 ?? ?? ?????? ??? ?? ?????? ??? ?????? ???, ?? ?????? ?????? ?? ?????????? ???
??????,

?? ??????? ??????????? ???, ???' ??????, ?? ? ??????????? ??, ??????? 17, ?????????? 6,
?? ????? ??????? ??, ??????????? ??, ?????? ??????? ??, ??????????? ??, ??????????? ??, ??
????????? ??????? ??, ??????????? ??, ??????????? ??, ?????? ??????? ??, ??????????? ??,
????????? ??????? ??, ?????? ??????? ??, ??????????? ??, ??????????? ??, ??????????? ??,
????????? ??????? ??, ??????????? ??, ??????????? ??, ??????????? ??, ??????????? ??,
????????? ??????? ??, ??????????? ??, ??????????? ??, ??????????? ??, ??????????? ??,
????????? ??????? ??, ??????????? ??, ??????????? ??.

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

73 ? S. Puffer ?????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ? AbgÄG ?? 1997 ??????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
?? ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, 17,
????????? ??, 6, ??? ????? ???????.

74 ???????, ?? ??????? ??, ??????? 12, ?????????? 2, ??????? 2, ??????? a, ??? UStG
?? 1994 ??, ??????????? ??, ??????? ??, ? AbgÄG ?? 1997 ??, ??????? ??, ???????,
?????? ? ??????? ??, ??????? ??, ??????? ??, ??????? ??, ??????? ??, ??????? ??, ??
?????? ??, ??????? ??, ??????? ??, ??????? ??, ??????? ??, ??????? ??, ??????? ??.

75 ? Unabhängiger Finanzsenat ?????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
?? ??????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??.

76 ? ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ??????? 17, ?????????? 6, ??? ????? ??????? ??, ?????????? ??, ?????????? ??,
12, ?????????? 2, ??????? 1, ??? ??? ??, ????? 12, ?????????? 2, ??????? 2, ??????? a, ???
UStG ?? 1994.

77 ???????, ?????????? ??, ??????? ??, ?????????? ??, ?????????? ??, ? ???????
????????? ??, ??? ?????, ??? ?????????? ??, ?????????? ??, ?????????? ??, ??? ??????? ??,
????????? ??, ??? ??, ??? ?????? ??, ?????????? ??, ?????????? ??, ??? ??????? ??.

78 ???????, ? ??????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ??, ??? ??????? ??,
????????? ??, ??? ?????? ??, ?????????? ??, ?????????? ??, ??????? 12, ?????????? 2, ??????? 2,
????????? a, ??? UStG ?? 1994.

79 ???, ?????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ? AbgÄG ?? 1997 ??, ??? ??,
????????? ??, ??????? 1, ??? UStG ?? 1994 ??, ??? ?????? ??, ?????????? ??, ??????? ??,
????????? ??, ??????? ??, ??????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ??????? ??,
????????? ??, ??????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??,
????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??.

80 ? ??????? ??, ?????????? ??, ???, ?? ????? ??, ??? ?????????? ??, ?????????? ??,
????????? ??, ??? ??????? ??, ? AbgÄG ?? 1997 ??, ?????????? ??, ??? ?????????? ??,
????????? ??, ??? ?????????? ??, ??? ?????????? ??, ???, ??? ?????????? ??, ??? ??????
????????? ??, ??? ?????????? ??, ??? ?????????? ??, ??? ?????????? ??, ??? ?????????? ??.

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

81 ????????, ? ??????? ??? ? ??? ?????????? ?????????? ??? ?????????? ??? ???? ?????????? ???
????????? ??? ????? ?????????????? ??????????. ??????, ??????? ? ?????? ??? ???
????????? ??? ?????? ??? ? ?????? ??? ??????, ??? ?????? ?? ?????????? ? ??????????
??? «????????? ??? ??????» ??? ???? ?????? ??? ?????? 17, ?????????? 6, ??? ???
??????. ??????, ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ???? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????.

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

82 ?????????? ? ??????? ??? ???? 17, ?????????? 2, ??? ?????? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?? ??????
????????????? ?? ??? ??? ?????? ??? ?????????? ? ?????????? ??? ?????????? ???
????????? ??? ??? ?, ??? ???? ?????? ??? ???? ?????? ?????? ? ?????????? ??????????????
??? ??? ?????? ??? ?????????? ?????? ???.

83 ? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ???? ???????, ??????????, ??? ??????????
????????? ??? ?????? ??? ?????? 17, ?????????? 6, ??? ?????? ??????, ??? ?????????? ???
????????? ??? ?????? ?. ??????, ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? 17, ?????????? 6, ?????? ??????, ??? ??????
????????? ??? ?????????? ??? ???? ?????????, ?? ?????? ??? ?????? ?????? ??? ??????????
????????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????
? ?????? ??? ??? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? (?. ??????????
??? 14?? ?????? 2001, C-345/99, ??????? ??? ??????, ?????? 2001, ?. I-4493, ????? 19
??? ??? 8?? ?????????? 2002, C-409/99, Metropol ??? Stadler, ?????? 2002, ?. I-81, ?????
44).

84 ?? ??? ??????????, ???????, ??? ?????? ?????????? ?? ?????????? ?? ?????????? ??
??? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???,
????????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? (????????? ??? 24??
????? 2007, C-157/05, Holböck, ?????? 2007, ?. I-4051, ????? 40).

85 ??? ?????? ???, ?? ?????????? ??? ?????? ?????????? ??? ??? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
?????????, ?? ??? ?????? ??? ?????? ??? ??????, ??? ?? ?????? ?????????? ??? ??????
????????? ??? ?????? ?????????? ??? (????????? ??? Holböck, ????? 41).
???????????, ???' ? ??? ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??????????
???????????, ??? ?????? ?????? ??? ?????? ??? ?????? ??????, ?? ?????? ??? ??????????
???????????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????????? ? ??? ?????? ?????????? ??? ?????? 17, ?????????? 6, ?????? ???, ???
????? ?????? ??? ??? ?????????? ??? ?????? ?? ?????? 17, ?????????? 2, ??? ?????? ???
(????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 22, ??? ?????? ??? Metropol ???
Stadler, ??? 45).

86 ???????, ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?? ???
17, ?????????? 6, ?????? ??????, ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (?. ?????????? ???

14?? ??????? 2001, C-40/00, ??????? ??? ???????, ??????? 2001, ?. ?-3549, ????? 17
????? ??? ?????????????? Metropol ??? Stadler, ????? 46).

87 ????????, ??????? ?? ??????? ????? ??????? ? ?????, ???' ??????, ??????????? ?? ???
?????????? ???? ????? ??????? ???? ?????????? ????? ?????? ??? ??????????
?????????? ??? ?????????? ??? ?????????? ????? ?????????????? ????? ?????????? ??
????? ??? ?????????? ??? ?????????? ?? ?????? 17, ?????????? 6, ??? ????? ??????
?????????, ?????????? ?????????? ?? ?????????? ?????? ???' ??? ? ??????????, ? ????
????? ?? ??????? ??? ??????????, ??? ?????? ?? ?????????? ?? ??? ?????????? ???
??? ?????????? ??? ?????? ?? ?????? ?????????? ????? (??., ??????, ??? ?????? ???
11?? ?????????? 2003, C-155/01, Cookies World, ?????? 2003, ?. I 8785, ????? 63 ???, ???
???????, ??? ?????????????? ?????? Holböck, ????? 41).

88 ? ??? ?????? ?????? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
?????????? ??? ????? ?????????? ???, ??? ??? 1? ?????????? 1995. ???????, ???
????? ?? ??????? ?????????? ??? ??? ?????????? ??? ?????? 17, ?????????? 6, ??????
??????, ??? ????? ?????? ??? ?????? ??? ?????? ?? ?????? ?????.

89 ?? ?????? ?????????? ?????????? ???, ??? ??? ?????????? ?????????? ?????? ???
????? ??????? ??? ?????????? ??? ?????????, ?? ??? 12, ?????????? 2, ?????? 1 ??? 2,
???????? a, ??? UStG ??? 1994 ??? ?? ?????????? ??? ?????????? ??? ??? ??? ??? ??
??? ?????? ??? ?????????????? ??? ?????????????? ?????? ??? ??? ??? ??? ??
??? ?????? ??? ?????????????? ??? ?????????? ?????????? ?????? ??? ??? ??? ??
????????? ??? ?????????????? ??? ?????????? ?????????? ?????????? ??????.

90 ??????????, ??????? ?? ?? ??? ???????, ??? ?? ?????? 12, ?????????? 2, ?????
1, ??? UStG ??? 1994 ????????, ???, ??? ?????? ?? ??? ? ?????????? ???, ?? ??????
??? ?????????? ?? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ???
????????? ??? ??? ?????? ??? ?? ?????????? ?????? ??? ?????????? ?????????? ???
????????????? ??? ?????????????? ??????.

91 ?? ?? ?????, ??????? ???, ??? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ?????? ??????????, ???' ??????, ?? ?????????? ?????? ??? ?????????? ???
????? ?????? ?????? ??? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????????? ??? ??????.

92 ?? ?????? ?????????? ?????????? ??? ? AbgÄG ??? 1997, ??????, ??????????
?? ??? 12, ?????????? 2, ?????? 1, ??? UStG ??? 1994 ??? ?? ?????? ??? ??
????? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???, ???????, ?? ??
????? 6, ?????????? 1, ?????? 16, ?? ?????????? ?? ?? ?????? 6, ?????????? 2, ??? 12,
????????? 3, ??? UStG ??? 1994, ?????????? ??? ? ?????? ?????? ??? ?????? ???
????????? ?????????? ?????? «????????????? ?????» ??? ??? ?????? ???
????? 13, B, ??????? ??, ????? ?????, ??? ????? ??????, ?????????? ??? ??????????.

93 ???????, ??????? ?? ??????? ??? ? ?????? ??? ? ??? ???????, ?????? ??? ?? ???
????? ?? ?????????? ??? ?????????? ???' ?????? ?????????? ????????????,
????????? ?? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?????????? ???, ?????? ?? ??
????????? ?? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ???
????? ??? ????? ?????? ??????.

94 ???????, ??? ?????????? ? ?????? ?????????? ??? ?????? 77 ??? ?????????? ???,
??? ??? ?????? ?? ? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ??????.

95 ??????, ??? ????? ?? ??????? ?? ? ?????????? ?? ?????? 12, ?????????? 2, ??????
1, ??? UStG ??? 1994 ??? ?? AbgÄG ??? 1997 ?????????? ?????? ?? ?????????? ??????????
??? ?????? 17, ?????????? 6, ??????? ??????, ??? ?????? ?????? ?? ?????? 12, ??????????
2, ?????? 2, ??????? a, ??? UStG ??? 1994, ?? ?????? ?? ?????? ?????????? ??????????
?????????????, ?????? ?? ??????? ??? ? ?????? ?????? ?????????? ??? ??? ??????????
????????? ?????? ??? ?? ?????? ?????? ?????.

96 ???????????, ?? ?? ?????? 2, ??????? a, ??? ?????? 12, ?????????? 2, ??? UStG
??? 1994 ??? ?????? ?? ?????????? ?????????? ??? ?????? 1 ??? ?????? ?????? 12,
????????? 2, ?????????? ?????????? ??? ?? ?????? 1 ?? ?????? ?????? ?????????? ???
?? ?? ??? ?????? 2, ??????? a. ??, ??????, ?????????? ??? ?????? ?????????? ?????? ???
????? ?????? ??? ?????? ??????, ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??
????? ?????????? ??????????, ??? ? ?????????? ??? ?????? 17, ?????????? 6, ??????
?????, ??? ?????? ?????? ??? ?????? ??? ?????? ???.

97 ??? ?????? ?????? ?????? ?????????? ?? ?????????? ?? ?????? ?????????? ??? ??????
????? ??????.

98 ?????? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?? ??????
????????? ??? ?? ?????? 17, ?????????? 6, ??? ?????? ?????? ?????? ?? ?????????? ???
????? ??? ? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????, ? ?????? ?????????? ?? ?????????? ?????? ?????? ??? ?????? ??????????????
????????? ??? ?????? ?????? ?????? ?????? ??????. ??????, ??? ??? ?????? ??? ? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? ??????????
????????? ??? ?????? ?????? ??????. ? ?????? ??? ?????? ?? ??? ? ?????? ?????? ???
????????? ?????? ?????? ??????, ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??????
?? ?????? 17, ?????????? 6, ?????? ??????, ??? ?????? ??????, ??? ?????? ?????? ??????
????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ??????,
????? ?? ?????? ?????????? ??? ?????? ?????? ???.

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

99 ?????????? ??? ? ?????? ?????????? ?????? ?? ??? ?????? ?????? ?????????? ??? ??????
?? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????????, ?' ???
????????? ?? ?????? ??? ?????? ?????? ??????. ?? ?????? ??? ?????? ?????? ??????????
???? ?????? ?????? ?????????? ??? ?????? ??????, ??? ??? ?? ??? ?????? ??? ?????? ??????.

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

1) ?? ?????? 17, ?????????? 2, ??????? ?, ?? 6, ?????????? 2, ??????? ?, ??
????? ??????? 77/388/??? ??? ??????????, ?? 17? ??? 1977, ??? ??????????
?? ?????????? ??? ?????? ?????, ?? ?????????? ?? ??? ?????? ?????? ?????? -
????? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ?????? ???
????????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??????????????,
?? ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?????????? ??? ??????????
????? ?????????????? ??? ??? ??? ?????? ??? ??? ?????? ?????? ?????????? ??? ??????
????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ??? ?????????? ?????, ?? ?????????? ?????????? ??? ?????? ??? ??
????? ??? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??????.

2) ?? ?????? 87, ?????????? 1, ?? ?????? ?? ?????????? ?? 17, ?????????? 2, ???????
??, ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????????? ?????? ?????? ?????????? ?????? ??? ??? ?????? ??????
????????? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????
????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ??
????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

3) ?? ?????? 17, ?????????? 6, ?? ?????? ?????? 77/388 ?????? ?? ?????????? ??
?? ?????? ??? ? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ??????
?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????,
? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ??????. ??????, ?? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
? ?????????? ?????? ?????? ?????? ?????? ?????? .? ?????? ?????? ?? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????, ?????????? ??????
?? ?????????? ?????? ??? ?????? 17, ?????????? 6, ?????? ??????, ??
????? ?????? 77/388, ?? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????????? ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ??????.

(?????????)

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