

?????? C-540/07

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

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«????????? ??????? ????? – ?????????? ?????????? ??? ????????? – ????? 56 ?? – ????? 31  
??? 40 ??? ?????????? ??? – ?????? ????? – ?????????????? ?????? ??? ?????? ??? ???? ???  
????????????? ?????????? – ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ???»

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

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

(????? 56 § 1 ??)

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

(????????? ???, ?????. 31 ??? 40)

1. ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? 56, ?????????? 1, ??, ??????  
????? ?? ?????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ???  
????????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ??' ??? ?? ?????? ??? ??  
????????? ??? ?????????? ?????? ?????????? ??????????, ?????????????? ?? ?????? ?? 95 % ??  
????????? ??? ?????????? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????????? ??  
????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ??  
?? ?????????? 27 %, ?????? ??? ?????? ?????, ??????, ?????? ?? ?????????? ?????? ??  
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?????????????, ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????????? . ??????, ??? ?????????? ??? ?????? ???  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???  
????????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? . ??????????, ???  
????? ???, ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
????' ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ??? ?? ?????? ??  
????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? , ?????????? ??? ??????  
? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? . ?? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

????? ?????????????? ?????????????? ??? ???????????, ????????, ?? ?? ?????????? ??? ??????? ??  
?????? ?????? ?????????? ?? ?????? ?????????? ??????? ?????? ?????? ? ?????? ??????????  
??? ?????????? ??? ???' ?????? ? ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ??????  
?????? ?????????? ??? ?????????? ???, ???????????, ?? ??????? ??? ?? ?????? ?????? ??????  
??? ?????? ??????? ?????????? ??? ??????? ?????? ?????? ?????????? ??? ?????????? ?????? ??????  
????? ?? ??????? ?????????? ??? ???????, ??????? ???????, ?????????? ?????? ?????????? ??? ??  
?????? ?????? ?????????? ???????, ??? ???????????????, ??????????. ??????????????, ??  
????????? ??? ?????????? ?? ??????? ?????????? ??? ?????????? ?????????? ?? ?????????? ???, ???  
?? ??????? ??????, ??????, ??????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ??  
????????? ?????????? ??? ??????? ?????????? ??? ???????, ???????, ?????????? ?????????? ??????????  
????????? ?????????? ?????????? ??? ??? ?????????? ?????????? ??? ??????? ?????????? ??? ??  
????? ??????? ??? ??????? ??????? ??????? ?????? ??????. ???????, ?? ??????? ??? ? ?????????? ???  
????? ??????? ??????? ??????? ??????? ?????? ??? ??????? ?????????? ??? ??????? ?????? ??? ??  
????? ??????? ??????? ??????? ??????? ?????? ??? ???????, ?? ??????? ??? ? ?????????? ???  
????? ??????? ??????? ??????? ??????? ?????? ??? ??????? ?????????? ?????????? ?????? ???????  
??? ?????????? ??? ??????? ??????? ?????? ??? ??????? ?????????? ?????????? ??? ??????? ???????  
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???? ?????? ??????????? ?????????? ?????? ?????? ?? ?????????? ??? ?????????????? ??  
????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??????, ???, ???????,  
??????? ?????????? ??? ?????????? ?????????????? ??? ??????????, ? ?????? ???????????,  
???????, ??? ?? ????? 56, ?????????? 1, ??.

????? ? ?????????? ??????? ?????????????? ?????????????? ??? ?????? ?? ?????????????????? ??? ???  
?????? ?????????????? ??? ??????? ??? ?????????? ?????????????? ??? ?????? ?? ?????? ?? ?????????? ???  
????????? ?????????? ??? ??????? ?????????? ??????????????. ??????, ??? ?????? ?? ?????????? ?? ??????????????  
???? ?? ?? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ???????, ? ?????????????? ???  
????????? ??? ??? ?????????? ??? ?????????????? ??? ?????????????? ??????? ?? ?????? ?????? ?????? ?? ?????? ???  
????????? ?? ?????? ?????????? ??????????????, ?????? ??? ?????? ?????? ?????? ?? ??????????????  
??? ?????????? ????, ?????? ?? ?????? ?????????? ?????????? ?????????? ?????? ??????????  
????????????? . ????, ?? ??????????, ??? ?? ?????????? ??? ?????????? ?? ?????????? ?? ??????????????  
?? ???? ?????? ??? ?????????? ??????????, ???????, ?? ?????????? ?????? ??????????  
?????????. ??????, ??? ?????? ?????? ?????? ?????? ?? ?????????????? ??? ?????? 77/799, ??????  
?? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
??? ??? ?????????? ??????????, ?????????? ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ?????? ????  
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? ?????????? ??????? ?????????????? ?????????????? ??? ????? ? ?????? ? ?????????? ?????? ??????????  
????????? ?? ?????????? ??? ?????????????? ?? ?????????????? ?? ?????????????? ?? ?????? ?????? ?????? ??????????  
???????, ???' ??????????, ?????????? ??? ?????????? ?????????????? ??? ?????????? ? ?????????? ???.  
?? ?????????? ?? ? ? ????? 56, ?????????? 1, ??.

(?. ??????? 32, 36-40, 42-45, 51-54, 56, 58-61, 64, ???????, 1)

2.     ????????????? ???? ?????????? ???? ?????? ???? ???? ???? 31 ??? 40 ??? ??????????  
???? ??? ?????????? ?????????? ??? (???) ?????? ?????? ?? ?????? ?????????? ??  
????????? ?? ?????????????? ?? ??? ?????? ?????? ??? ?? ?????? ?????????? ??  
????????? ?????? ?????????? ?????? ??' ??? ?? ?????? ??? ?? ?????????? ??

????????? ??????? ??????????, ?????????????? ??? ????? ?? 95 % ??? ?????????????? ??  
????????? ?????????? ?????????? ??? ?????????? ?? ?????????? ?? ?????????????? ??  
???? ?????? ??? ?????????? ?????????? ?? ?????????? ?????? ??? ?? ?????????? ?? 27  
%, ??? ?????? ??? ?????? ??????, ??????, ?????? ?? ?????????? ?????? ??????.

??????, ? ??????? ?????? ??????? ?????????? ?????????? ??? ?????? ? ??????? ??????  
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????????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ?????????? ??????????????  
??? ?????????? ??? ??? ?????? ??? ?????? 40 ??? ?????????? ???, ?????? ??? ???  
????????? ?????????????? ??? ??? ?????? ??? ?????? 31 ??? ?????? ?????? ??????.

??????, ? ?????????????? ??? ?????? ?????????????? ??? ??? ?????????? ??? ?????? ??????  
????????? ??? ?????????? ??? ?????? ?????? ?????? ???????????. ?????????? ?, ?? ?????? ???  
?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ??????????  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??????????  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????, ?????? ?? ?????????? ?????? ??????????  
?? ?????????? ??? ?????? ??????, ?? ?????? ?? ?????????? ?????? ??? ?????? ??? ??????????  
????? ??? ?????? ??? ?? ?????? ?????? ?????? 77/799, ?????? ?? ??? ?????? ??? ??????????  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
????? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

(??, ?????? 67-72, 74-75)

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

?? 19?? ??????? 2009 (\*)

«????????? ??????? ?????? – ?????????? ?????????? ??? ?????????? – ??? 56 ?? – ??? 31  
?? 40 ??? ??????? ?? – ??? – ?????? ????? – ?????????? ??? ?????? ??? ?? ??? ?? ??  
????????? ?????? – ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???»

???? ?????? C2540/07,

? ? ?????????? ?????? ??? ?????? 226 ?? ??? ?????? ???????, ? ??? ?????? ?????? ???  
????????? 2007,

????????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? A. Aresu,  
?? ??? ?????????? ??? ??????????,

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

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????????? ??????????, ?????????????? ??? ??? R. Adam, ?????????????? ??? ??? P.  
Gentili, avvocato dello Stato, ?? ??? ?????????? ??? ??????????,

?????,

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

????????? ??? ??? J.?C. Bonichot (????????), ??????? ??? ??????? ??????????  
????????? ??? ??????? ?????????, C. Toader, C. W. A. Timmermans, K. Schiemann ??? P.  
K?ris, ???????,

?????? ??????????: J. Kokott

?????????: R. Grass

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

???? ??????? ?? ?????? ?????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ?? ???????????  
??? 16?? ??????? 2009,

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1      ?? ??? ??????? ???, ? ??????? ??? ?????????? ?????????? ?????? ??? ??  
????????? ?? ?????????? ??? ? ??????? ??????????, ?????????? ?? ??? ??? ??????????  
????????? ???????, ??? ????? ?? ?????????? ??? ?????????? ?? ??? ?????????? ?? ??? ???????  
????????? ??????? ??? ????? ?? ??? ??? ?????????? ??? ?????????? ??? ?????????? ?? ??? ???  
????????? ??????? ??? ?????, ??? 2?? ??? 1992 (?? 1994, L 1, ?. 3, ??? ?:  
????????? ???), ?????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??? ???????  
?????????, ?????? ??? ?????????? ??? ?????? ??? ?? ??? 56 ?? ??? 40 ??? ??????????  
??? ??????? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ?? ??? 31 ??? ?? ??? ?????????? ?? ??? ?????? ??? ??? ?????? ??? ??????????  
????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???????.

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? ??????? ???

2      ?? ????? 6 ??? ??????? ??? ??????:

«[?] ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ???  
????????? ?????????? ???' ?????? ?????????? ?? ??? ????? ?????????? ??? ?????? ???  
????????? ??? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???  
????????? ???' ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???

??? ??? ??????? ???, ??????? ?? ?? ?? ??????? ?????????? ??? ??????????? ??  
????????? ?????????? ?? ?? ?? ??????? ?????????? ??? ?? ?????????? ?????????? ??  
????????? ??????»

3 ?? ????? 31, ?????????? 1, ??? ??????? ??? ?? ????:

«1. ??? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ???????????, ??? ??????? ?????????? ??????????? ??  
????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??? [????????? ??????????] ??  
? ??????? ??? [?????????] ?? ?????????? ?????????? (????) ] ??? ??????? ??????????  
????? ??? ?? ?????? ????. ??? ?????????? ?????? ?????? ?????????????? ??? ?? ??? ?????????? ??? ?? ???  
??????????, ?????????????? ?? ?????????? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ???  
????? ??? [?????????] ?? ??????? ??? ?? ??? ?????? ?????????????? ??? ?? ???  
????????? ??? ?? ?????????? ??? ?? ??? ?????? ???.

? ?????????? ?????????? ?????????? ??? ?? ??????? ??? ?? ??? ?????? ?? ???????  
????????? ?????? ?? ?? ??????? ??? ?? ?????????? ?????????? ???????????, ??? ??  
????????? ??? ?? ??????? ??? ?? ?????? 34, ??????? ??????, ??????? ?? ?? ??? ???????????  
??? ?????????? ??? ?? ?? ?????????? ??? ?? ?????? ?????????????? ??? ?? ??? ?????? ??? ?? ???  
??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? 4.»

4 ??????, ?? ??? 40 ??? ??????? ??? ?? ??????:

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

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5 ?? ????? 3, ?????????? 1, ??? ?????? 90/435/?? ?? ??????????, ??? 23?? ??????  
1990, ??????? ?? ?? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ?? ?????????? ??? ??  
????????? ?????????? ?????????? ?????? (?? L 225, ?. 6), ??? ?????????????? ??  
??? ?????? 2003/123/?? ?? ?? ??????????, ??? 22?? ?????????? 2003 (?? 2004, L 7, ?. 41, ??  
???: ?????? 90/435), ??????:

«[...]

?) ?? ??????? ?? ?????????? ?? ?????????? ?????????????? ?????????????? ?? ?? ??? ???????  
????? ??????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? 2 ?? ?? ??????????  
????? 20 % ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ??????  
????? ?????? ???.

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

[...]»

6 ?? ??? 4, ?????????? 1, ??? ?????? 90/435:

«????? ? ??????? ?????? ?? ?? ?????? ?????????? ???, ??????? ??? ?????? ??? ???????

????????? ?? ?? ?????????? ???, ??????? ?????????????? ??? ?????? ?????? ?????? ??? ??  
????????? ?? ?? ?????????? ???????, ?? ?????? ??? ?????? ?????????? ? ?????? ?????? ??????  
?? ?? ?????? ??? ?????? ?????????? ? ?????? ?????????? ???:

- ??? ?? ?????? ??? ?????????? ?? ?????? ???,  
- ??? ?????????? ?? ?????? ???, ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ???  
?? ?? ?????? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ??  
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ??  
????????? ?????? ??? ?? ?????? ??? ?????????? ?????????? ??????????, ??? ?? ?????? ?????????? ???, ??  
????? ??????, ? ?????? ??? ? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? 2 ??? 3, ?????? ??? ?????? ??? ?????????? ?????????? ???  
????????? ????.»

7 ?? ?????? 5, ?????????? 1, ??? ?????? 90/435 ??????:

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

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8 ?? ?????? ?????? ?????????? ?????????????? ??? ?????? ?????? ?????????? ??? ?????????????? ??  
????????? ?? ?? ?????????? ??????????????, ?? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? 344, ???  
????????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ?????? 4 ??? ???  
????. 80 ??? 7?? ?????? 2003 (decreto legislativo recante *riforma dell'imposizione sul reddito  
delle società, a norma dell'articolo 4 della legge 7 aprile 2003, n. 80*), ??? 12?? ?????? 2003  
(????????? ?????????? ??? GURI ????. 291, ??? 16?? ?????? 2003), ?? ?????? ?????? ??  
???? ??? 1? ?????? 2005.

9 ??? ?? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??  
??? ?????? 89, ?? ?????? «????????? ??? ?????», ?????? ??????, ??? ?????????????? ??  
????????? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?? ?????? ????. 917 ???  
????????? ??? ?????????? ??? 22?? ?????????? 1986 (??? ????: TUIR) ??? ?? ???  
?????:

«??? ?? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?? ???  
????????? ??? ?????? ??? ?????? 47, ?????? 7, ??? ?? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ??? ?????? 73, ?????? 1, ??? a ?? b, ??? ?????? ??? ??  
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? 95 % ??? ?????? ??? ??  
????????? ????.»

10 ??? ?? ?????? 73, ?????? ??????, ?????? a ?? b, ??? ?? ??? ??????????????  
?????????:

«????????? ??? ?????? ?????? ?????????? ??? ??????:

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

b) ?????????? ??????? ?? ?????????? ??????? ?? ?????? ??? ?????????? ???????, ???  
????? ??? ??? ???? ????? ?????? ??? ?? ?????? ? ?????????????? ? ??????  
????????????????? ?????? ?????????? ??? ?????????? ?????? ?????? ??????».

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11 ?? ??? 27, ?? ??? «????????????? ?????? ??? ?? ??????????», ??? ??????, ???  
????????????? ????. 600 ??? ??????? ??? ?????????? ?????????????? ??? ?????? ??????????  
????????? ?? ??? ?????????? ??? ?????? ?????????? (decreto del Presidente della Repubblica  
recante *disposizioni comuni in materia di accertamento delle imposte sui redditi*), ??? 29??  
????????? 1973, ??????:

«? ?????????????? ?????? ?????????? ?? 27 % ??? ??? ?????? ??? ?????????? ?? ??????  
?? ?????? ??? ?????????? ??? ??????. ? ?????????? ??? ?????????????? ??? ?????????? ????  
????????? ?? 12,5 % ??? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ????  
????????? ????. ?? ??????? ??????????, ??? ?? ?????? ?????????? ??? ?????? ?????????? ???,  
????????????? ??????????, ??? ?? ?????? ??? 4/9 ??? ?????????????? ??? ?????? ???  
????????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ?????? ???  
????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????»

12 ?? ??? 27 bis ??? ?????????? ?????????? ??? ?????????? ?, ?? ??????????  
???????????, ??? ??????? ??? ?? ??? ?? ?? 27 ??? ?????? ?????????? ??? ??  
????????? ??????? ?? ?????? ??? ?? ??? ?? ??? ?? ??? ?? ??? ?? ??? ?? ??? ?? ??? ??  
????????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ??  
????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ?? 90/435.

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

13 ? ????????, ????????, ??? ?? ?????????? ?????? ?????????? ?????????? ??? ??????????  
???????????, ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ??? ??  
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ??  
??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??  
??? ?? ?????? 226 ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???  
??? 18 ??????? 2005.

14 ? ????????, ????????, ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??  
???????????, ??? ??????? ?? ?? ?????? ??? 9?? ?????????? 2006, ????????, ??? 4 ??????  
2006, ?????????????? ??? ?? ??? ?????? ?????? ?? ?? ??? ?????? ?????? ?? ?????? ??  
????????? ??? ?????????? ?? ?????????? ?? ?? ?????? ??? ?????? ?????? ?????? ??????????  
??? ?? ?????????? ???.

15 ? ??????? ?????????? ?????????? ??? ?????????? ?????? ?????? ?? ??????? ??? 30??  
???????????, ??? ???????, ?????????? ??? ?? ?? ??? ?????? ?????? ??? ?????? ??? ??  
???????????, ??? ???????, ??? ?????? ??? ?? ?????? ?????? ??????.

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16 ? ??????? ?????????? ?????????? ??? ? ?????????? ?????? ?????????? ??? ?? ??? ??  
?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??????. ? ?????????? ??????????  
???? ??????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????????  
????????????? ??? ?? ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ??

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

17    ???????, ?????? ?? ?????????? ??? ?? ?????? 38, ?????????? 1, ????????, ??, ???  
????????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ?????? ?? ??????????  
????? ???, ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???  
????? ?????? ?????? ??????. ??? ???????, ?????????? ??? ?????? ?????? ?? ?????????? ??  
????? ?????? ??? ?????????? ??? ?????? ?????? 226 ??, ??? ?????? ?????????? ??????  
??? ?????? ??? ?????????? ??? ?????? ?????? ??????, ?????????? ?? ?????????? ??  
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ?????????? ??  
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? (??., ??? ??? ??? ?????? ???,  
????????? ??? 13?? ?????????? 1990, C-347/88, ?????????? ??? ?????????, ????????? 1990, ?.  
I?4747, ??? 28, ??? ??? 4?? ??? 2006, C-98/04, ?????????? ??? ?????????? ??????????  
????? 2006, ?. I-4003, ??? 18).

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

19    ?????????? ?? ? ?????????? ?????????? ??????????, ? ?????????? ??? ??? ???  
????????? ?????? ?????????? ???, ??????, ?? ??????????.

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

21    ??? ??? ???? ???? ???? 90/435 ??? ??? ?????? ?????? ??? ?????????????? ???  
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??????????  
????????????? ??? ?????? ?????? ?????? ?????? ???, ??????, ??? ?????????? ??? ?????? ???  
????????? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
?????, ? ?????? ?????? ?????? ??? ?????? 31 ??? ?????? ???, ?? ?????? ?????? ???,  
???? ?????? ?????? ?? ??? ?????????? ?????? ??? ?????? ???, ??? ?????? ?????? ???,  
???? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

22    ? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ???  
????????????? ??? ??????, ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ?????? ??? ?????? ??? ?????? ???' ?????? ??? ?? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???

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

23 ? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ??????  
? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

24 ? ?????????? ?????????? ????????????, ??????, ??? ? ?????????? ?????????? ???  
????????? ?????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 95 % ???  
????????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? . ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? , ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ?????? ?????? ???  
????????? . ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ? ?????? ?????? ?????? ???  
????????? ?????? ?????? ?????? , ??? ? ?????? ?????? ?????? ?????? ??? ? ?????? ???  
????? ?????? ?? ?? ?????? ??? ?? ?????? ?????? . ?? ?? ?????? ???, ?? ??????  
????????? ??? ?????? , ?????? ?????? ?????? , ?????? ?????? ?????? ??? ? ?????? ???  
????????? ??? ?????? ??????.

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

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

27 ???, ? ?????? ?????? ?????? ?????? ??? ? ?????? ??? ?? ?????? , ?? ???  
????????? , ?? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?? ?????? ??? 14?? ?????? 2006, C?170/05, Denkavit  
Internationaal ??? Denkavit France (?????? 2006, ?. I?11949), ??? ??? 8?? ??????? 2007,  
C?379/05, Amurta (?????? 2007, ?. I?9569), ?? ?????? ?????? ??? ?? ??? ?? ??? ??  
????????? ??? ??? ?????? ??? ?? ??? ?????? ?????? ???.

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

- ??? ??? ?????????? ??? ?????? 56, ?????????? 1, ??

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

????????? ?????, ?? ?? ??? ????? ?????? ??????? ?? ?????? ??? ?????????????? ???  
????????? ?? ?????????? ?????? (??., ?????? ????, ?????? ??? 13?? ?????????? 2005,  
C?446/03, Marks & Spencer, ?????? 2005, ?. I?10837, ?????? 29).

29    ???????, ??????? ?????????? ?????? ?????????????? ? ??????????????, ?? ???? ????  
????????? ??? ?????????? ?? ??????????, ?????????? ? ??????????, ?? ????????  
????????? ??? ?????????? ?? ??????????, ?????????? ?, ?????? ????, ??  
????????? ?? ????? ?????? (?. ?????? ??? 12?? ????? 1998, C?336/96, Gilly,  
????? 1998, ?. I?2793, ?????? 24 ?? 30, ?????? ??? ?? 7?? ?????????? 2006, C?470/04,  
N, ?????? 2006, ?. I?7409, ?????? 44).

30    ? ?????? 90/435 ?????????? ??? ???????, ?? ?? ?????? ??? ?????? ??????????  
?????????, ??? ?????????? ?????????????? ?? ?????????? ?????? ??? ??????  
????????? ??? ?????? ?? ?????? ?? ?? ?????????? ?????? ??? ?????? ??? ??????  
????? ?????? ???, ?? ??? ?????? ???, ??? ?????????? ??? ?????????? ??? ??????????  
????????? ?????? (????? ??? 12?? ?????????? 2006, C-446/04, Test Claimants in the FII  
Group Litigation, ?????? 2006, ?. I?11753, ?????? 103).

31    ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????  
90/435, ?? ???? ??? ?????? ??? ?????? ?? ?????????? ?? ??? ?? ??? ?????? ?? ??????????  
????????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ??????  
????? ?????????? ??? ?????? ?????????? ?? ?????????? ?? ?????? ???, ?????????? ????  
??? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ?????????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????? ?????????? ?????? ??? ??  
????????? ??? ?????????? ?? ?????? (??., ??? ??? ?????? ???, ?????? ??? 12??  
????????? 2006, C?374/04, Test Claimants in Class IV of the ACT Group Litigation, ??????  
2006, ?. I?11673, ?????? 54).

32    ?? ?????????? ? ?????? ?????????? ?????????? ??? ?????? ?? 95 % ??  
????????? ?? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? 5 % ??  
????????? ??? ?????? ?????? ?????????? ?????????? ?? ?????? ??? ?????? ?????????? ???, ???  
????????? ?? 33 %. ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ??????  
????????? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?? ?????????? 27 %, ??? ??????,  
????? ?????????, ?????? ?????? ?? ?????????? 4/9, ???' ?????? ???, ??? ?????? ???  
????????????? ????. ?????, ?????? ?????? ?? ?????????? ?????? ??? ?????? ?? ??????  
?????????, ?????? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???  
?????????, ?????? ?????????? ?????? ?????????? ?? ?????? ?? ?? ?????? ??? ??  
????????? ?????????, ??? ? ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???.

33    ??????, ??? ?????????? ??? ? ?????? ?????? ?????????? ?? ?????????? ?? ??????????  
????????????? ?? ??? ??? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ??????????  
????????? ?? ?????? ??? ?????? ?????????? ?? ?????????? ?? ?????? ?????? ??????????  
?????????.

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

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

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

36    ???????, ?? ?????????? ???, ???????, ??????? ??? ???? ?????? ??? ?????? ?????? ???  
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ???? ?????? ??? ?????????? ???  
?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? (??, ??? ??? ????  
????, ?????????????? ?????? Test Claimants in Class IV of the ACT Group Litigation,  
????? 71, ??? Amurta, ??? 79).

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

38    ?? ??????????, ?????????? ? ?????????? ??? ???? ?????? ?????? ??? ?????? ???  
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
????. ??? ?????????? ? ?????? ?????????? ?? ?? ?????? 58 ??? 59 ??? ?????? ???, ???  
?? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ?????????? ??? ?????? ?????? ???, ? ?????????? ??? ?????? ??? ?????? ???  
????????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

39    ? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ???, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ???, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ???, ???' ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ???, ?????? ??? ?????? ???, ?? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

40    ??? ??????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???  
????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

42    ?? ??? ? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ???, ???, ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? 33 ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

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

45    ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?? ?????????? ??? ??????????????  
?? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????,,  
??? ?? ??? 56, ?????? 1, ??.

46    ?????? ?????? ?? ?????????? ?? ? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ???  
????????? ?????? ?? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??????.

47    ??? ?? ??? 58, ?????????? 1, ??, «?? ??? 56 ??? ?????? ?? ?????? ??? ?????? ???  
????? [...] ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? [...].

48    ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 58,  
????????? 3, ??, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
????????? 1 ??? ?????? «?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? 56».

49    ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?? ?????? 58, ?????????? 1,  
????????? ??, ?? ??????, ???, ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??????  
3 ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?????????? ???  
????? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ???  
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??, ?????? ??? 6??  
????? 2000, C?35/98, Verkooijen, ?????? 2000, ?. I?4071, ?????? 43, ??? 7?? ??????  
2004, C?319/02, Manninen, ?????? 2004, ?. I?7477, ?????? 29, ??? 8?? ??????  
2005, C?512/03, Blanckaert, ?????? 2005, ?. I?7685, ?????? 42).

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

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

51     ?? ??????????? ??, ??? ???? ?? ???? ?? ???? ?????? ?? ?????? ??  
    ?? ?? ?????? ?? ? ?? ?????? ?? ?????????????? ? ?? ?????? ?????? ?????????? ??  
    ?????????? ?? ? ?? ?????? ?? ??????, ?? ?????? ?????? ?????????? ??  
    ????????? ?? ?????????? ?? ? ?? ?????? ?? ?????? ?? ? ?? ?????? ??  
    ????????? ?? ? ?? ?????? ?? (????????????? ?? Denkavit Internationaal ??  
Denkavit France, ??? 34).

52      ???????, ??? ?? ?????? ??? ?????? ?????? ??????????? ????, ??????????? ? ?? ??? ???????,  
??? ??? ?? ??????? ??? ??????? ???????, ??? ?? ??????? ??? ??????? ???????, ? ??????? ??? ???????  
???????, ??? ?? ??????? ??? ??????? ??? ??????? ???????, ? ??????? ??? ??????? (?)?????????????  
????????? ??????? ??????? ??????? ??? ??????? ??? ??????? ??????? ??????? (?????????????????  
????????? Test Claimants in Class IV of the ACT Group Litigation, ??? 68, Denkavit  
Internationaal ??? Denkavit France, ??? 35, ??? Amurta, ??? 38).

53 ????????, ? ?????????????? ?????? ??? ?????????????? ?????????????? ?? ?????? ???  
?????? ?????? ?????????????? ??? ?????? ??? ?????????????? ?? ?????????????? ?? ??????  
????????? ?? ?????????? ?????? ?????????????? ? ?????????????? ?????? ???????????,  
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??????. ?? ??? ?????? ???????????,  
????????? ?? ?????????? ?????????? ?? ??? ?????????? ?????????? ?????? ??????????  
????????? ??? ??????????, ????????, ????????, ??? ?????? 56 ??, ?? ?????? ????????????  
?? ?????????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????????????? ??  
????? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????????  
? ??? ?????????? ??? ?????? ??????????, ?? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ??  
????? ?????? (???. ?????????????? ?????? Test Claimants in Class IV of the ACT Group  
Litigation, ??? 70, ??? Amurta, ??? 39).

54      ???????, ?? ???????????, ??????????? ? ??????????? ??? ? ??????? ?????????? ???????  
?? ??????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ??  
?????????????? ?? ?? ??? ??????? ?? ???????????, ?? ??????????? ?? ??????????? ??  
?? ??????????? ?? ?? ??? ??????? ?? ??????????? ?? ??????????? ?? ??????????? ??  
?? ??????????? ?? ?? ??? ??????? ?? ??????????? ?? ??????????? ?? ??????????? ??  
????? ?? ?? ??????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ??  
?????? ?? ???????, ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ??  
?????????? ?? ?? ??? ??????? ?? ??????????? ?? ??????????? ?? ??????????? ??

55      ???????, ? ?????? ?????????? ?????????? ??? ? ?????????? ?????????? ??????????  
????????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????? ?????? ???  
????????? ??? ?????? ?????? ?????????? ?????? ??????????, ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??????  
????????? ??? ?????? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ??  
????????? ??? ?????? ?????? (??., ??? ??? ?????? ???, ?????? Marks & Spencer,  
????????? ??? 51, ??? 15? ???? 2008, C?414/06, Lidl Belgium, ?????? 2008, ?. I?3601, ??? 42, ??? ??, ??? ?????? ??? ?????????? ??? ??? ??? ?????? ??? ??  
????? ??? ?????????? ??????????, ?????????? ??? 28? ?????????? 1992, C?204/90,  
Bachmann, ?????? 1992, ?. I-249, ??? 28, ??? ??? 13? ?????? 2007, C?524/04, Test  
Claimants in the Thin Cap Group Litigation, ?????? 2007, ?. I-2107, ??? 68).

56      ????? ?????? ??? ?????????????????? ??? ?????? ??? ?????????????? ??? ?? ??????? ??? ??????????????  
????????????? ??? ?? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??????????????,  
??????, ????, ?????????????? ???, ?? ?????????????? ??? ? ?????????? ?????????????? ??????????????????, ????'  
??????? ?? ?????????????????? ??? ?????????? ?????????????? ??? ?????????????? ??? ?????????? ??? ?

?????????????? ?? 33 ?????? ??????????? ??????????? ?? ?? ???????, ?? ??  
?????????? ?? ?? ?????? ?? ?????, ?????, ????? ?? ??????? ?? ?? ?? ?????? ???????,  
?????? ?? ?? ??????? ???????, ?????????? ?? ?????? ????? ?? ?? ?????? ????????. ??  
?????????? ?? ?? ?????? ????? ?? ?????? ????? ?? ?????? ????? ?? ?? ?????? ??????? ??  
????? 43 ??????.

57    ??? ?????? ?? ??????????????? ?? ?????? ?? ??????????? ?? ?? ??????????? ??  
??????????, ?????? ?? ??????????? ?? ??????????? ?? ?? ??????????? ??????????? ??  
?????????? ?? ?????? ?? ?????? ?????? ?? ?????? ??????????? ?? ?? ??????????? ??  
?????????? ?? ?????? ?????? ?????? ?? ?????? ??????????? ?? ??????????? ?? ?? ??????????? ??  
????? ?????? ?????? (????????? Marks & Spencer, ???????????????, ????? 35, ??? 12??  
?????????? 2006, C?196/04, Cadbury Schweppes ??? Cadbury Schweppes Overseas,  
?????? 2006, ?. I-7995, ????? 47, ????? ?? Test Claimants in the Thin Cap Group Litigation,  
??????????????, ????? 64).

58    ???????, ? ??????????? ?? ??????????? ?? ?? ??????????? ?? ?? ??????????? ??  
?? ?? ?????? ?? ?????? ?? ?????? ?? ??????????? ?? ?? ?????? ??????????? ???????????, ??  
?? ?? ?????? ?? ?????? ?? ??????????????? ?? ?? ??????????? ?? ?? ?????? ?? ?????? ???????????  
?????????? ?? ?????? ??????????? ???????????, ???????, ??? ?????? ??????????? ??  
?????????????? ? ??????????????? ?? ?????? ?? ?????? ?? ??????????????? ??????????? ?? ??  
????? ??? ?????? ??? ?????????? (??., ??? ??? ?????? ???, ?????????? ??? 26??  
?????????? 2000, C?478/98, ?????????? ??? ?????? 2000, ?. I-7587, ????? 45,  
????? ??? ??? Cadbury Schweppes ??? Cadbury Schweppes Overseas, ???????????????,  
????? 50 ??? ??? ????? ??????????? ???????????).

59    ??????, ?? ???????????, ?? ?? ??????????? ?? ??????????? ?? ?? ??????????? ??  
????? ??? ?????? ?? ??????????? ???????????, ???????, ?? ?????????? ??????? ???????????  
?????????. ??? ? ?????????? ??????? ??????????? ??????????? ?? ?? ??????? ?? ???????????  
??? ?? ??????? ??? ??????????? ?? ?? ???????????.

60    ???????, ?? ?????? ?????? ?????? ?????? ?? ??????????? ?? ?? ??????? 77/799/?? ??  
??????????, ?? 19?? ??????????? 1977, ??????? ?? ?? ??????? ??????????? ?? ?? ???????  
????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ?? ??????? ??????????? (?? ????. ???.  
09/001, ?. 86), ??? ??????????????? ?? ?? ?????? 92/12/?? ?? ???????????, ??? 25??  
?????????? 1992 (?? L 76, ?. 1, ??? ????: ?????? 77/799), ??????????? ?? ?? ??????? ?? ??  
?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?? ??????????? ?? ?? ?? ?? ??????????? ??  
?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ??????????? ?? ?? ?? ?? ??  
????? (?. ??????????????? ?????? Cadbury Schweppes ??? Cadbury Schweppes Overseas,  
????? 71).

61    ? ??????? ?????? ??????? ??????????? ??????????? ?? ?? ?????? ?? ??????? ???????????  
?????????? ?? ??????????? ?? ??????????? ?? ?? ??????????? ?? ?? ?????? ?? ?????? ??  
??????, ???' ???????????, ??????????? ?? ?? ??????????? ??????????? ?? ?? ??????????? ?? ??  
??? ??????????? ?? ?? ?????? 56, ??????????? 1, ??.

62    ?????, ? ??????? ??????????? ?? ?????? ?? ??????????? ?? ?? ??????? ??  
?????????? ?????? ?? ?? ??????????? ?? ??????????? ?? ?? ??????? ?? ?? ?? ??  
?????????? ?? ?????? ?? ??????????? ?? ?? ?????? ?? ?? ?????? ?? ?? ??????? ?? ??  
?????????????? ??????????? ?? ?? ?????? ??????????? ?? ?? ??????????? ??????????????? ??  
?????????????? ?? ??????????? ?? ?? ?????? ??????????? ?? ?? ??????????? ??????????????? ??

63    ???????????, ? ??????? ?? ?? ??????????? ?? ?? ??????????? ??????? ??

?????????? ?? ?????????? ??? ???? ?????? ??? ?????????????? ??? ???? ?????? ?????????? ??  
????? 234 ?? ?????????? ??? ?????????? ??? ?????? ??? ???? ?????????? ??? ???? ??????????  
?????????, ??? ???? ???? ? ?? ?????? ??? ???? ?????? ??? ?????????? ??? ???? ?????? ??????  
??? ?????? ??? ???? (??., ??? ???? ?????? ???, ?????? ??? 27?? ?????? 1980, 61/79,  
Denkavit italiana, ?????? ????? 1980/?, ?. 605, ????? 16), ?????? ?? ???? ??????????  
????????? ?? ?????????? ??? ?????????????? ?? ?????????????? ??? ???? ?????????? ??  
????????? ??? ?????????? ???' ?????? ??? ?????? (??., ??? ???? ?????? ???, ?????? Denkavit  
italiana, ??????????????, ??? 17).

64 ??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ???? ?????? ???????????,  
????????????? ?? ?????????? ?? ?????????????? ?? ?????????????? ?? ???? ?????? ??? ?????????? ??????????  
?? ?????? ?????? ?????????? ?????????? ??' ??? ???? ?????? ??? ???? ?????????? ???  
????????? ?????????? ??????????, ?????? ??? ?????????? ??? ?????? ??? ???? 56,  
????????? 1, ??.

- ??? ?? ?????????? ??? ?????????? ???

65 ??? ?? ?????? ??? ?????? ?????? ??? ?????????? ??? ???? ???? ???? ?? ??????  
????????? ?????????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????????? ???, ??????????,  
????????? ??? ?????????? ?? ?????????? ??? ?????? ?????????? ??? (??.), ?????? ??? ?  
????????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????  
??? ????. ?? ??? ?????????? ???, ?????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ??  
????????????? ??? ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??  
??? ??? (?. ?????????? 1/92, ??? 10?? ?????? 1992, ?????? 1992, ?. -2821). ???  
????????? ???, ?????????? ??? ?????????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ??????????  
??, ?? ?????? ?????????? ??' ?????? ?? ?????? ?????? ??? ?????????, ?? ??????????  
???? ?????????? ??? ?????? ??? ?????? ??? (?????? ??? 23?? ?????????? 2003,  
C?452/01, Ospelt ??? Schlössle Weissenberg, ?????? 2003, ?. I?9743, ??? 29).

66 ???????, ??????? ?? ?????????? ??? ?????????? ?????????????? ??? ??????????  
?????? ??????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??  
?????? ?? ?????? 40 ??? ?? ?????? XII ??? ?? ?????? ???????, ?? ?????????? ???  
????? ?? ??? ?????? ?????????? ?? ??? ???' ?????? ?????????? ?????????? ??? ??????  
56 ?? (?. ??????? ?? 11?? ?????? 2009, C?521/07, ?????? ??? ?????? ???, ??? ??  
????????? ??? ??? ??????, ??? 33).

67 ???' ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????  
?? ?? ?????? ??? ?????? 56, ?????????? 1, ??, ?????? ?? ?????? ??? ?????? ??? ???? ??????  
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??  
????????? ??? ?????????? ?? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ??????  
????????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??????  
??? ?????? 40 ??? ?????????? ???.

68 ??????, ?????????? ??? ???? ?????????? ?????? ?????????????? ??? ??  
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????????????.

69 ??? ?? ?????? ??? ?????? ?? ?????????? ?, ?????????? ??? ?????? ?????????????? ??? ??????  
?? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ??????  
?? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????  
????? ?? ?????? ??? ?????? ?????????? ?? ?????????? ?????? ?????? (??., ??? ??  
????? ???, ?????? ??? 18?? ?????????? 2007, C?101/05, ?, ?????? 2007, ?. I?11531,  
????? 60).

70 ?? ?????????? ??????? ?? ??????????, ???????, ??? ?? ?????? ?????????????? ??????  
??? ??????? ????? ?? ?????? ?????, ?? ????? ??????? ? ?????? 77/799, ??? ???????  
????? ????? ?? ?????? ?????? ?????? ??? ?? ??????? ?????? ?????? ?????? ??? ?? ???  
????????? ?????? ?????? ??????.

71 ?? ????????, ? ??????? ??????????? ???????????, ?????? ?? ??????????????, ??? ??????  
????? ??? ?? ??????????? ??? ??????????? ??? ??????? ?????? ?????????? ???????????  
???????????. ?????, ? ??????? ??????????? ???????????, ?????? ?? ?????????????? ?? ??? ??  
?????? ???, ??? ?? ??????? ??????????? ??? ??????? ??? ??????? ?????? ?????????? ??? ?? ???  
?? ?? ??????????? ??? ??????????? ??? ?? ??? ??????? ??? ?????????? ??? ?????????? ??? ?? ???  
????????? ?? ??????? ?? ??????????? ?????????? ???????.

72 ??? ?? ??????? ?? ???, ? ??????? ??????? ?????????? ??????? ?????? ?? ???????  
????????????? ?? ??? ??????? ??? ??????????? ??? ??????? ?????? ??? ?? ??? ??????????  
???? ??????? ??????????? ??? ??????? ?????? ?????? ?????????? ??? ?????????? ??? ?? ???  
?? ??????????? ??? ??????? ??? ??????? ?????? ?????? ??? ?????????? ??? ?? ??? ??????? ???  
??? ??????? ??? ?????? ?????.

73 ???' ????????, ? ??????? ?????? ?? ?????????? ??????? ?????? ??? ?? ??? ?????? ???  
????????? ??????????? ??? ??????? ??? ?????????? ??? ??????? ??? ?? ??? 40 ???  
????????? ???.

74 ?? ??????? ???????????, ??????, ??? ? ??????? ?????????? ??????? ?????????? ??????????  
????????? ??? ?????????? ?????????? ?????????? ??? ??????? ?????? ?? ??? 31 ??? ??????????  
???.

75 ????????, ??? ?? ??? ?????? ?????? ??? ??????????? ?? ?????? ?? ?? ?????? 40 ???  
????????? ???, ? ??????? ?????? ?????????? ?????????? ??????? ?? ???????  
????????????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ??????? ??? ?? ??? ??????????  
???? ??????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ???  
??? ?????????? ??? ?????? ?????.

76 ???' ????????, ? ??????? ??????, ??????, ?? ?????????? ??????? ?????? ??? ??  
?????? ??? ??????? ?????????? ??? ??????? ??? ?????????? ??? ??????? ??? ?? ??? 31  
??? ?????????? ???.

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

77 ??? ?? ??? 69, ?????????? 2, ??? ?????????? ???????????, ? ??????? ??????????  
????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????????  
????????? ??? ?????? ??? 69, ?????????? 3, ??? ?????? ??????????, ?? ??????????  
?????? ?? ?????????? ??? ??? ?????? ?????? ?? ?????????? ??? ?????? ?? ??????????  
?????? ??? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???.

78 ??? ??????? ??????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ??? ?????????? ??? ?????? ??????.

79 ??????, ?????? ? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ???  
????????? ??? ?????????? ??????. ? ?????? ??? ?????????? ?????????? ?????????? ???  
????????? ??? ?????? ?????? ??? ?? ??? ??????.

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

1) ? ??????? ?????, ??????????? ?? ?????????? ?? ?????????????? ?? ?????????????? ??  
????? ?????? ??? ??????? ??????? ?? ?????????? ?????? ?????????? ?????????? ??????????  
??' ??? ?? ?????? ??? ?? ?????????? ??? ?????????? ?????????? ?????????? ??????????, ??????  
??? ?????????? ??? ?????? ??? ?? ????? 56, ?????????? 1, ??.

2) ?????????? ??? ?? ?????? ??? ??????.

3) ? ??????? ?????. ? ??????? ??? ?????????? ?????? ?? ?????? ??????. ? ?????? ??????.  
(?????????)

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