

???????? C-174/08

NCC Construction Danmark A/S

???

Skatteministeriet

(?????? ?? Østre Landsret ??? ??? ?????? ?????????????? ??????????)

«???? ??????? ??? – ?????? 19, ??????????? 2 – ??????? ??? ?????? ??? ??? ?????? –  
????????????? ??? ?????? ??? ?????????? ?????????????? ?????? ?????????????? ??? ?????? –  
????????????? ??? ??? ??? – ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? –  
??? ??????? ?????????????? ??? ??? ??????? ?????????????? – ?????????? ???  
????????? ?????????? – ?????? ??? ??? “????????? ?????? ??? ??????” –  
????????? – ??? ??? ?????????? ??????????»

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

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

(?????? 77/388 ??? ????????????, ????? 19 § 2)

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

(?????? 77/388 ??? ??????????)

1.     ?? ?????? 19, ?????????? 2, ??? ???? ?????? 77/388/???, ??? ?????????????? ???.  
????????? ??? ?????? ????, ??? ?????????? ?? ??? ?????? ?????? ?????? ??????, ?????? ??  
????????? ??? ?????? ?????, ??? ?????????????, ??? ?????????????????? ??????????,  
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????????????? ?? «?????????»  
????? ??? ??????» ??? ?????? ??? ?????? ??? ?????????? ?????, ?????? ? ?????????????? ???  
????? ??? ??????, ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????????? ?????????? ???.  
??? ??? ?????? ????, ??? ?????????? ?? ?????? ?????????? ?????????????? ??? ?????? ??? ?  
????????????? ?????? ??????????, ??????, ?? ?????????? ?????? ?????????? ??? ?????? ???  
??? ?? ?????? ?????????? ?????? ?????? ?????????????? ???.

(?. ??????? 34-35, ???????. 1)

2. ?????????????? ????? ???? ?????????????? ?????????????? ?? ?? ??? ?????????? ???  
????????????? ??????????, ? ?????? ?????????? ????? ?????????????? ?????? ???  
????????????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????????? (?????????????), ??  
????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???  
????????? ?????, ?????????? ??? ? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????  
????????????? ?? ??? ?????? ?????? ?????????????? ??? ?????? ?????? ?????????????? ????.  
?????????????, ??????? ? ??? ?????? ?????????????? ?????????????? ?????? ?? ??????????

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

(???. ??????? 41-43, 46-47, ????????. 2)

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

??? 29?? ?????????? 2009 (\*)

«????? ??????? ??? – ?????? 19, ??????????? 2 – ??????? ??? ?????? ??? ??? ?????? –  
?????????? ??? ?????? ??? ?????????? ?????????????? ?????? ?????????? ?????????? ??? ??????  
????????????? ??? ??? ??? – ?????? ??? ?????????? ??? ?????????????? ?????????? ???  
??? ??????? ?????????????? ??? ??? ?????? ?????????????? – ?????????? ??? ??  
????????? ?????? – ?????? ??? ??? “????????? ?????? ?????? ??? ??????” –  
????????? – ??? ??? ?????????? ??????????»

???? ??????? C?174/08,

?? ?????????? ?? Østre Landsret (?????) ?? ??????? ??? 17?? ??????? 2008, ? ???  
?????? ?? ?????????? ??? 28 ??????? 2008. ??? ??????? ??? ???

# NCC Construction Danmark A/S

?????

**Skatteministeriet,**

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

????????? ??? ??? K. Lenaerts, ?????? ??? ?????? ????????, ?????????????? ???  
????????? ????????, R. Silva de Lapuerta, E. Juhász, ?. ?????? ??? J. Malenovský (?????????),  
???????,

?????? ??????????: Y. Bot

?????????: C. Strömholm, ??????? ????????????,

?????? ??? ?? ?????? ?????????? ??? ??????? ??? ??' ?????????? ?????????? ???  
23?? ??????? 2009,

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

- ? NCC Construction Danmark A/S, ?????????????? ??? ??? B. Møll Pederson, advokat,
- ? ?????? ??????????, ?????????????? ??? ??? B. Weis Fogh, ?????????????? ??? ???  
D. Auken, advokat,
- ? ?????? ??? ?????????? ??????????????, ?????????????? ??? ??? ?. ??????????????  
??? S. Schønberg,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????????? ??? ?????? ???  
??? 18?? ??????? 2009,

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

???????

1 ? ??? ????? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ???  
?????? 19, ?????????? 2, ?????? ???????, ??? ?????? ??????? 77/388/??? ??? ???????????,  
??? 17?? ????? 1977, ??? ?????????????? ??? ?????????? ??? ?????? ???, ??? ??????????  
?? ??? ?????? ?????? ?????? – ?????? ?????? ?????? ?????????????? ????: ??????????  
????????? ??? (?? ????. ??? 09/001, ?. 49, ??? ????: ??? ?????), ?????? ??? ??  
????????? ??? ?????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ???????.

2 ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? NCC Construction  
Danmark (???: NCC) ??? ??? Skatteministeriet (????????? ?????????? ??? ??????), ??  
????????? ?? ?????? ??? NCC ??? ?????? ?????? ??? ?????? ?????????????? ???  
(???: ???) ??? ??? ?????? ?????? ???.

? ????????

? ????????

3 ??? ?? ?????? 2, ?????????? 1, ??? ?????? ???????, ?? ??? ?????????? ? ????????

4 ?? ?????? 5, ??????????? 7, ?????????? ?, ??, ??? ?????? ?????????? ?????? ?????:

«?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????;

5      ?? ?????? 6, ??????????? 3, ??? ?????? ??????? ??????? ?? ????:

«???? ?????????? ?????????????? ??? ?????????????? ??? ??? ??? ?????????? ??? ??????????????  
??? ??? 29 ??????????????, ?? ?????? ??? ?????????? ?? ?????????????? ??? ??????  
????????? ?? ?????????? ??????? ??? ?????????? ??? ??? ?????????????? ??? ?????? ??? ??????  
??? ??? ?????????? ??? ?????????????? ???, ??? ?????????????? ??? ? ?????????? ??? ?????? ??? ??????  
????????? ??? ????? ?????????????? ??? ??? ??? ??? ?????????????? ??? ?????? ???  
????????? ??? [??].»

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

7      ????? ?? ?????? 17, ??????????? 5, ??? ????? ???????, ????? ????? ?? ?????? ??? ??  
????????? ??? ?????????????????? ??? ?????????? ??? ?????? ??? ??? ?????????????? ???  
????????? ?????????????? ??? ?????????????? 2 ??? 3, ?? ?????? ??????? ?????????? ??????????,  
??? ??? ?????? ?? ?????? ??? ?????? ????? ?????? ???????, ?????????? ????? ?? ?????? ???  
??? ??? ?????? ??? ?????? ??? ?????? ??????????. ? ?????????? ??? ?????????????? ???  
????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????? 19.

8      ?? ?????? 19, ??????????? 1 ??? 2, ??? ?????? ??????? ?????? ?? ?????;

«????????????? ??? ?????????? ??? ??????????

1. ?????????? ?????????? ??? ?????????? ??? ?? ?????? 17, ?????????? 5, ?????? ????,  
????????? ??? ?? ?????? ??? ???????????:

– ???? ??????? ?? ??????? ??? ?????? ?????? ??????? ???????, ??? [??], ???  
?????????? ?? ?????? ?? ?????? ?????????? ??????? ??????? ?????? ??????? ?? ??  
????? 17, ?????????? 2 ??? 3,

– ????? ?????????????? ?? ?????????? ????? ?? ?????????? ??????? ??????????, ??? [??], ???  
?????????? ????? ?????????? ?? ?????????????????? ????? ??????????, ?????? ??? ????? ??????????  
??? ?? ?????????????? ?????????? ??? ??????????. [...]

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

2. ??? ?????????????? ??? ?????????? 1, ??? ?????????? ?????? ??? ??? ?????????? ???  
????????? ??????????, ?? ???? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ??????????  
????? ??????????, ?????????????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??????????  
???. ??? ??????????, ?? ???? ??? ?????? ?????????? ?? ??? ?????? ?????????? ?? ??? ?????? ??????????  
????????? ?????? ??? ?????? ?????????? ? ?????????? ??? ?????? ?????? ??? ??????????  
??? ?? ??? 13, ??? ?, ?????????? ?, ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????. [...]»

9 ??? ?? ?????????? ??????? 28, ?????????? 3, ??????? ??, ??? ???  
???????, ?? ???? ??? ??????????, ???? ??? ?????????? ??? ?????? ?????? 4 ??????????  
???????, ?? ?????????? ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ???, ?? ??? 16 ???  
????? ?????? ??? «????????????? ??? ?????? 4, ?????????? 3, ?????????? ??????».

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

10 ? ??? ?????? ?????????? ??? ?????? ?????? ??? ?? ??? ??? ??? ??? ???  
(momsloven).

11 ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ???  
???????????, ?? ??? 6, ?????????? 1, ??? ?????? ??? ?????? ?????????? ??? ?? ??????????  
????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ?????????? ???,  
?? ?????? ?? ?? ????????, ??????? ??? ?????? ?????????? ?????????? ??????????, ???, ???  
??? ?????????? 2 ??? ?????? ????, ??? ?????? ?? ?????? ??? ?? ?????? ?????????? ???, ?  
????????????? ?????? ??? ? ?????? ?????? ?????? ??? ?? ?????? ?????????? ??? ??????????  
????? ?? ?????? ???, ???????, ?????????? ??????.

12 ??? ?? ??? 13, ?????????? 1, ?????? 9, ??? ?????? ????, ? ?????????? ??????  
????????? ??? ?? ???.

13 ?????? ?? ?? ?????????? ??????????, ?? ?????? 37 ??? ?????? ??? ?????? ??? ?????????? ?? «??  
????????????? ??? ?????? ??? ?????????? ?????? ??????, ???? ??? ?????????? ??? ??????  
??? ??? ???????, ?? ??????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???  
????????????? ?????? ??? ? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????????? ??? ?????? ?? ??? 13».

14 ??? ?????? ?? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ??????????????  
?? ?? ?????????? ??? ?????????????? ??? ?????? ?????????????? ??? ??????, ?? ?????? 38 ??  
????? ??? ??? ?????????? ???, «??? ?? ?????? ??? ?????? ?????? ??? ? ?????????????? ???  
????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????  
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????? ????. ???? ??? ?????????? ??? ?????? ??? ??????  
????????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??  
????????????? ??? ?????? ??? ?????????? [...] . ??????????, ????, ?? ??? ??  
????????? ?? ??? ?????????? ??? ?????? ??? ?????? [...]».

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

15 ? NCC ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?????????????? ???,  
????? ??? ?????? ?????? ??? ?????? ??? ?????. ?????????????? ?????????????? ???  
???????, ??? ?????? ?????????????? ??? ?????? ???, ?? ?????????? ?????????? ?,  
?????????, ? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???, ???

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

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

17      ?????????? ???, ??? ???? ?????? ?????????? ???, ???, ? ?????? ?????? ?????? ??? ????  
????????? ?????????? ???, ??? ???? ?, ? NCC ??? ???????????, ?? ?????????? ??? ????  
??? ?????? ?????? ?????????? ??? ?????? ?????????????? ??? ?????? ??????????????, ??  
????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?? ?????? ?? ?????? ??????????  
??? ??? ??? ??? ?????? ??? ??? ?????????????? ??? ?????? (????????? ??????).

18      ????. ????. ?????????? ????. ? NCC ????. ?????????? ????. ????. ??????. ??????. ????. ????.  
?????. ??????. ??????. ??????. ??????. ????. ????. ??????. .? ????. ??????. ????. ????. ??????. ????. ????.  
?????. ??????. ????. ??????. ????. ??????. «?????. ????. ??????. ????. ??????. ????. ??????.», ????. ????.  
?????. ????. ??????. 19, ??????. 2, ??????. ??????, ????. ??????. ??????.

19     ?? ??????? ?????????????? ????, ??????? ?????????? ??? 1?? ??????? 2002 ???  
????????? ????, ??????? ??? ? ?????? ?????????? ??? ?????????????? ??? ?????????? ???  
?????? ?? ?????????? ??? «????????? ??? ?????? ??? ??????». ?????? ??? ?? ???????? ???  
? ??????? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ??????? ???????.

20 ? NCC ???????????? ??? ????? ??? Skatteministeriet, ?????????????? ??? ??????????  
?? ??????? ?? ???????? ??? ??? ??? ??? ??? ?????? ??????.

«1) ????? ? ??? “????????????? ??????? ??? ??????” ??? ?????? 19, ?????????? 2,  
????????? ???????, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????????????  
????????????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ?????? ?????????? ??????????  
????????? ??? ?????????????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ?????? ??????????, ??  
????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??????????;»

2) ????? ??????? ????? ?? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????????????????  
?????????, ????????, ?????????????? ?? ?????????????? ?????? ? ?????????? ?? ??? ??????  
????????? ???;

3) ??????? ????? ?? ????? ?? ?????????????????? ??? ????? ?? ????? ?? ????? ?? ??????????????  
???????????, ? ????? ?? ????? ?? ?????????????? ??? ??????? ??????? ??????? -?? ??????? ??  
?????? 5, ??????????? 7, ??? ?? ????? 6, ??????????? 3, ??? ????? ???????- ???????????  
???? ?????????? ?? ????? ?? ??????????? ??? ??????????? ?? ??????? ?? ??? ?????????? ???????  
??? ??? ??????????? ??? ????? ?? ??????? ?? ??????????? ????????, ??? ????? ?? ??? ????? ???????  
????????? ??? ?? ??????? ??? ????? ?? ??????????? ? ??????????? ????????????, ??????? ?  
????????? ?????? ??? ??????? ??????????? ????????????, ??? ????? ?? ????? ?? ??????????? ??? ???????  
??????, ??? ?? ??? ?? ????? ?? ??????? 28, ??????????? 3, ????????? ??, ??? ????? ???????  
??, ?? ??????????? ?? ?? ??????? 16 ??? ??????????? ?? ??? ?? ????? ???????;»

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

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

???????????? ?????? ??????????? ?? ???????????????, ??????, ?? ?? ??? 19, ??????????? 2,  
??? ??? ????? ?????? ??? ?? ??????????? ??? ??? ?????? ??? ? ??????, ???  
?????????????? ?????? ???????????, ??????? ??????????????? ??? ??? ??? ??? ?????? ?????  
????? ?? ??????????? «?????????? ??? ?????? ??? ??????» ??? ??? ?????? ??? ?????  
????? ???, ???????, ??, ?????? ??? ??????????? ???, ?????? ?? ???????  
?????????? ??? ?????? ??? ?? ??? ???????????????, ???????, ??????????? ??  
?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ???.

23    ???????????, ???????, ??? ??? ??? ??????????? ??? ??????????? ???  
????????? ??? ?????????? ??????? ??? ?????? ??? ??????????? ??? ?? ?????? ???, ??  
?????? ??? ??? ?????? ?????????? ??? ?? ?????? ??? (????????? ??? 15?? ?????????? 1992,  
C?162/91, Tenuta il Bosco, ?????? 1992, ?. I-5279, ??? 11, ?? 16?? ?????????? 2003,  
C?315/00, Maierhofer, ?????? 2003, ?. I?563, ??? 27, ?? ?? 8?? ?????????? 2005,  
C?280/04, Jyske Finans, ?????? 2005, ?. I?10683, ??? 34).

24    ???????, ??? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ???????????  
?????? ??? ??? ??????? ??????? ??? ?? ?????????? ??? ?????????? ?????????? ??? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????????? ???  
?????? ??? ??? ?????????? ??? ?????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??  
????????? ??? ?????? (??., ???, ??????? ??? 15?? ?????? 2004, C?321/02, Harbs,  
????? 2004, ?. I?7101, ??? 28, ?? ?? 18?? ?????? 2007, C?195/06, Österreichischer  
Rundfunk, ?????? 2007, ?. ??8817, ??? 24).

25    ??????, ???????????, ??????, ??? ?? ??? 19, ?????????? 2, ??? ?????? ??????  
??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?? ?????? ???  
??? ?????????? ??? ??, ??????, ??? ?? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??  
??? ?? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ???.

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

27    ??? ?????, ??????, ?? ?????? ??? ?? ??? ?????? ??????????, ?????????????? ??? ?? ???  
19 ?????? ??? ?? ?????? ?? ??? ?????? ??? ?????? ??????, ? ?????? ?????? ??? ??  
????????? ????. ?? ?????????? ?? ?? ?????? 17, ?????????? 2, ??? ?????? ??????  
????????? ??????, ?? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ???  
????????????? ???, ???, ??? ?? ?????? ?? ?????????? ?????? ??? ?? ?????????????? ???  
??? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??  
????????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??  
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ???, ??????, ?? ?? (??., ????  
????, ?????? ??? 8?? ?????????? 2007, C?435/05, Investrand, ?????? 2007, ?. I?1315,  
????? 22 ?? ??? ?????????? ???).

28    ?? ? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ??? ??????, ??? ??  
????? ?????????? ??? ?????? ??????????, ??? ?? ?????????? ??? ??????, ??? ?? ??? ??  
??? ?????????? ????, ?? ?????? 17, ?????????? 5, ??? ?????? ?????? ?????? ???  
??? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????? .?  
????????? ??? ?????????? ??? ?? ?????? ??? ?????? 19 ?? ??? ?????? ???.

29    ? ?????????? 1 ??? ?????? 19 ??? ?????? ?????? ?????????? ??? ? ??????  
????????? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ???  
????????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???

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

30 ??????, ?? ?????? ?? ?????????? 2 ?????????? ??? ?? ?????????? ?????? ??  
????????? ?? ?? ?????? ??????, ?? ?????? ?????? ? ?????????? ??? ?????????? ??????????  
?? ?????????? ?? ?????????? ?????????? ?????? 29 ?????? 1973 (??. ?????? ??  
????????? ??????????, ?????????? 11/73, ?. 20). ??? ???? ?????????? ??? ?????, «??  
????????? ?? ?????? ?????????? ??? ? ?????????? ?????? ?? ?????????? ??? ??  
????????? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ??????????  
?? ??????, ??? ?? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????????? ???  
????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??  
????????? ?????? ?????????? ??? ?? ??? ?? ?????????? ?????? ?????? ??? ?????? ??? ??  
????????? ?????????????? ??????, ??? ?? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???  
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???».

31 ??????, ??? ?????????? ?? ?? ?????? ?? ?? ?? ?????? ?????? ?????????? ??  
?????????, ?? ?????????? «?????????», ??? ?? ?????? ??? ?????? 19, ?????????? 2,  
?? ?????? ??????, ? ?????????? ?????????? ??? ?????????? ???, ?????? ??? ??????  
????????? ??? ?????????? ?????? ?????? ?????? (????????? ?? 11??  
????? 1996, C?306/94, Régie dauphinoise, ?????? 1996, ?. I?3695, ?????? 22) ? ??  
????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ?????? ???  
(????????? ?? 29?? ?????? 2004, C?77/01, EDM, ?????? 2004, ?. I?4295, ?????? 76).

32 ??????, ?? ?????????? ?????? ?? ?????????? ??? ?????? ??? ??????????  
????????? ??? ?? ?????? ??? ?????????? ???.

33 ??? ?????? ?? ?????? ??????????, ? ?????? ?????? ?????????? ?????????? ???  
????????????? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??????????  
????????????? ?? ?????? ?? ?? ?????????? ?????? ?????????? ?????????? ??? ??????????  
????, ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????.  
?????????????, ? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??????????  
?? ?????? ?????? ?????? ??? . ? NCC ??? ?????? ?????????? ?? ?????? ???, ??? ??  
????? ?????? ??? ?????????? ???, ?? ?????????? ?????? ?????? ??? ?? ?????? ???  
????????? ??? ?????? ?????? ?????? –??? ??? ?????– ?????? ??? ?????? ??? ?????? ??????  
?? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???, ?  
????????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ???  
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ???, ??  
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???, ??  
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???, ??  
????????? ??? ?????? ?????? (??., ???' ??????, ?????????? ?????? EDM,  
????? 67).

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

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

??? ?? ?????? 19, ??????????? 2, ??? ?????? ??????? ??????? ?? ??????????? ??? ?? ??????? ???? ?? ???????  
??? ? ??????, ??? ??????????????? ???????????, ??????? ??????????????? ??? ?? ??????? ???? ?? ???????  
?????????? ??? ?????? ?? ??????????????? ?? «?????????? ?????? ??? ???????» ??? ?? ???  
?????? ??? ?????????? ?????, ????? ?????????? ?????, ?????? ??? ??????? ?????????? ?????????? ???  
????????????? ?????????????? ????. ??? ?? ??????? ?????, ??? ?????????? ?????, ??? ?????????? ??  
????????? ?????????????? ??? ?????? ??? ?? ????? ?????????? ?????????? ?????????? ?????????? ???,  
????????, ?? ?????????????? ?????? ??? ?????????? ??? ?? ?????? ?????????? ???.

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

36 ?? ?? ?????? ???????, ?? ?????? ?????????? ?????? ?????? ??????????? ??? ?? ??????????? ??  
????????????? ?? ??????? ??? ?????? ??? ?????? ??? ??????????? ?????????????? ?? ?? ??? ?? ??????  
??? ?????????????? ???????????, ?? ?????? ?????????? ??? ?? ?????????? ?????????? ?????????? ???  
??? ?????????????? ??? ?????? ?????????? (?????????????), ?? ??????? ?? ?????????? ???  
??? ?? ??? ?????? ??????? ??? ?????? ?????????? ?????? ?????? ??????? ?????, ?????????? ??? ?  
?????? ??????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?? ??? ?? ???  
????? ?????????? ??? ?? ??? ???.

37 ? NCC ?????????? ???, ??? ?? ?????? ?????????? ??? ?? ?????? ?????????????? ??? ?? ??  
????????? ?????????? ?????????????? ??? ?? ???, ? ?????????? ?????????? ??? ?? ??? ??????????  
????????? (?? ?????????? ??? ?? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ??????)  
????????? ?????? ?????? ?????) ????? ?? ?????? ??? ?????????? ??? ?????????????? ?????, ??? ?? ??  
????????? ?? ??????? ??? ?? ??? ?????? ?????????? ??????. ??? ?? ?????????? ???, ? NCC  
????????? ???, ?? ?? ?????????? ?? ???, ?????????? ?? ???, ?????????? ?? ?????????? ?????????? ??? ??  
??? ?? ?????? ??? ?? ??? ?????????? (????????? ??????) ??? ?????????????? ??? ?? ??? ??  
????????? ?????????????? ?????? (?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????????).  
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??  
????????? ??? ???????????.

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

39 ???????????, ???????, ???, ?????? ?? ??? ?? ??? ?????? ??? ?????????? ??????????????,  
? ?????? ??????? ??? ?? ?????????? ??? ?? ?????? 17, ?????????? 2, ??? ?????? ???????, ?  
????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ?? ??????? ?? ?????????? ??? ?? ??? ??  
????? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?? ??? ?? ?????? ???  
????????????? ?????????????? ??? (??., ???????, ??????? ??? 6?? ?????? 2008,  
C?98/07, Nordania Finans ??? BG Factoring, ?????? 2008, ?. I?1281, ????? 19).

40 ???????????, ???????, ???, ??? ?????? ?????? ??????????, ? ?????? ??? ???????????  
????????????? ???, ??????????, ?? ?????????? ?????????, ???????, ?? ?????????? ?????? ???  
??? ?????????? ??? ??, ?????????? ???, ??????? ??? ?????? ??? ?????????? ??? ?? ??? ?? ??????????  
????????? ?????? ??? ?? (?. ??????? ??? 10?? ?????? 2008, C?25/07, Sosnowska,  
?????? 2008, ?. I?5129, ?????? 14 ??? 15 ??? ?????? ?????????? ?????????, ??? ?? 23??  
????????? 2009, C?74/08, PARAT Automotive Cabrio, ??? ??? ??? ?????? ?????????? ??? ??  
??????, ????? 15).

41 ??? ??? ??? ?????? ??? ?????????? ?????????????? ?????????? ?? ?????????? ?????????? ???  
?????? ??? ??? ?????? ?????????? ??? ?? ??? (??., ???????, ??????? ???  
10?? ?????? 2008, C?309/06, Marks & Spencer, ?????? 2008, ?. I?2283, ????? 49 ??? ???

????????????????? ???????????).

42 ??????, ??? ? ??? ?? ???????????????, ??? ?? ?????? ?? ?????? ?????? ?? ?????? ??  
?????????? ???????, ??? ?????????????? ???, ? ??? ?? ?????? ?????????? ??????????????  
?????? ?????????? ??????????, ? ?????? ?? ?????? ?? ?????????????? ?????? ??? ??  
????? ?? ?????????? ?????????? ?????? (?. ?.?' ???????, ??? ?????? ??? ??????????  
?? ?????????????? ???????, ??????? ?? 15?? ?????????? 2009, C?101/08, Audiolux ?.??.,  
??? ??? ?? ??? ?????? ??????????? ??? ???????, ??? ???????, ??? 63).

43      ??????????????, ? ????? ??? ?????????????? ?????????????? ?????? ?? ???????????,  
????????? ??????? ??????? ?????????????? ???????, ?????????????? ?????????????? , ??? ?????  
?? ?????????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????????? ???  
??? ?????????? ??? ?????? 19, ?????????? 1, 28, ?????????? 3, ??????? ??, ??? ?????  
??????, ?????? ??? ??? ?????? 16 ??? ?????????? ?? ??? ?????? ?????, ??? ??  
????????????? ?????????? ??? ?????? ?????????? ??? ? ?????????? ?????? ??? ??? ??? ??????????  
?????????? ?????????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?? ?????????? ?? ?????????? ??? ??? ??? ?????? ?????? ??? ?????? ???.

44 ?????????????? ?????? ??? ? ?????? ??? ?????? ??? ??????????????, ??????????  
?????? ??? ?????? ??? ?????????? ?????????? ???, ??????????, ??? ?????? ???  
????????? ?????? ???, ??? ?????? ??? ?????????? ?????????? ???, ?????????? ??? ??  
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ???, ?????? ??? ?? ?  
????????? ?????? ??? ?????? ??? ?????? ??? (????????? ?????? Marks & Spencer,  
????? 51 ??? ??? ?????? ?????? ??????). ? ??? ?????? ??????????, ?????? ???, ???  
?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ??? ?????? ??? ?????? 3, ?????? 1, ?????? ??, ??.

45      ????, ?? ?????????? ???, ?????????? ???, ?????? ??????? ?????, ????? ?????????? ?????, ???, ??  
????? ????, ?????? ???, ?????????? ??, ?????? ?????? ?????? ???, ???, ???, ???, ???, ???, ???, ???, ???,  
????? ??????? ???, ???, ?????? ??????? ?????? ???, ???, ?????????? ?????, ??, ???, ???, ??  
????????????? ???, ??????, ?????????? ??, ?????? ???, ?????? ???, ?????? ?????? ?????? ???, ???, ???  
????????? ???, ?????????? ?????? (?., ??????, ?????????? ??? 18?? ????? 2000,  
C?107/97, Rombi ??? Arkopharma, ?????? 2000, ?. I?3367, ????? 65, ????? ??? ??? 8??  
?????? 2000, C?396/98, Schloßstrasse, ?????? 2000, ?. I?4279, ????? 44).

46      ????, ????, ?????????? ??? ? ? ?????????? ??? ?????? ?????? ????????????, ?? ???  
????????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ????,  
? ?????? ?????????? ??????, ?????????? ?????? ?????? ??? ???? ?????? ??? ?????? ??? ??????  
?????????????, ?? ?????????? ??? ?????????? ??? ????????, ??? ? NCC, ??????,  
????????? ?? ??? ?????????????? ?????????????? ????, ??? ?????????????? ??? ??? ??? ???  
????????????? ??? ?????????? ??????, ??? ?????? ?????????? ?? ??? ??????????????  
????????? ???????, ?? ??????, ??? ??? ?????????? ??? ?????????????? ?????? ??? ??? ??? ???,  
??? ??????? ?? ?????????? ??? ??? ??? ?????? ??? ?????????????? ??? ?????? ??????????????  
????????????? ??????, ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ???  
????????? ??????. ??? ??? ?????????? ????, ????? ?????????? ? ?????????? ??? ?????? ???  
????????? ?????????????? ??? ??? ?????????? ??? ??? ??????????, ??? ?????? ??????  
????????? ??? ?????????? ????

47 ??????? ?? ??????????????, ?? ?????? ?????? ?????? ?? ?????? ? ?????? ? ?????? ?? ?????? ?? ??  
????????????? ?? ?? ?????? ?? ?????? ?????? ?????????????? ?? ?? ?? ?????? ?????? ?? ??  
????????????? ?? ?????? ?????? ?????? ?, ?? ?????? ?????? ?? ?? ?? ?????? ?????? ?????? ?? ??  
????????????? ?? ?? ?????? ?????? ?????? (?????????????). ?? ?????? ?? ?? ?????? ?????? ?? ??

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

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

48    ?????????? ??? ? ??????? ?????????????? ??? ????? ?? ??? ????? ?????????? ??? ?????? ???  
??? ?????????? ?????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??????????, ?' ???  
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ?????????????? ???  
????????? ?????????????? ??? ?????????? ?????, ??? ??? ?? ??? ??????, ??? ??????????.

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

1)    ?? ??? 19, ?????????? 2, ??? ??? ?????? ?????? 77/388/??? ??? ??????????, ???  
17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ???  
????????? ?? ??? ????? ?????? ?????? ?????????? – ????? ?????????? ?????? ??????????????  
?????: ?????????? ?????????? ???, ?????? ?? ?????????? ??? ??? ?????? ??? ????  
????? ????????, ??? ?????????????? ??????????, ?????????????? ??? ??? ??? ???  
????????? ??? ?????? ?? ?????????????? ?? «????????? ?????? ??? ??????»  
???? ??? ?????? ??? ?????????? ???, ?????? ? ?????????? ??? ?????????? ???  
????, ?????? ??? ?????????? ?????????? ??? ?????????????? ?????????????? ???.  
??? ??? ?????????? ???, ??? ?????????? ?? ?????????? ?????????????? ??? ?????? ???  
?? ??? ?????????????? ?????????? ??????????, ?????????, ?? ??????????????  
????? ??? ?????????? ??? ?? ??? ?????? ?????????? ?????? ?????????????? ???.

2)    ??? ?????????? ??? ??? ??? ??? ?????????? ?????????????? ?? ?? ??? ??? ??????  
??? ?????????????? ??? ?????????? ? ??? ????? ?????????? ??? ?????????????? ???  
??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????????? ???  
(?????????????) ?? ??????? ?? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ???  
????????? ?????? ??? ?????????? ?????????? ?????? ?????????? ???, ?????????? ??? ????  
????????? ??? ??? ?????? ?????????? ?????????????? ??? ??? ?????? ???  
????????????? ??? ??? ?????? ?????????????? ???.

(?????????)

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