

???????? C-182/08

Glaxo Wellcome GmbH & Co. KG

???

Finanzamt München II

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

«?????????? ?????????????? ??? ???????? ?????????? ??? ?????????? – ????? ???????????
????????? – ????? ?????????? ?????????? ?????????????? ?????????? – ??????????????
?????????? ?? ?????????? ?????, ??? ??? ?????????? ??? ?????? ?????????? ?????? ???
?????????, ? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????????»

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

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

[?????? ??, ????? 52 ??? 73 B (??? ?????? 43 ?? ??? 56 ??)]

2. ?????????? ?????????? ??? ????????? - ?????????? - ?????????? ????????? - ?????
????????? ??????

[???????? ??, ????? 73 B (??? ????? 56 ??)]

1. ?????????????? ?????????? ????????, ??????? ???? ??????? ???? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ?????????????? ??? ?????????? ?? ??? ?????? ?????? ???
????????? ?????????????? ??? ?????? ?????? ?????????????? ??? ?????????? ??? ?????? ?????? ???
????????? ??????????, ???, ?? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ???
?????????, ? ?? ??? ?????? ?????? ??? ?????? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ???,
????????? ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????????? ?????????? ??? ?????????? ???
?????????????, ?????????? ??? ?????? ??? ?? ?????? ??? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
????????????? ?????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
??? ?????????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?
????????? ??? ?????????? ??? ?????????? ??? ??????, ?????? ?? ?????????? ??? ? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ????
????????? ?? ??? ?????????? ?????????????? . ???????, ?????? ??? ?????? ??? ?????????? ??? ? ?? ???
????????????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
?????????????, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???,
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 52 ???
????????? ??

(??, ??????? 50-52)

2. ?? ???? 73 B ?? ??????? ?? (?? ???? 56 ??) ????. ?? ???? ?? ???? ??

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

.? ??????????, ????. ?????????? ?????????? ?????????????? ?????? ????, ??? ?????????????? ?? ???????
??? ? ? ?????????? ?????? ??? ???? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???????,
????????????? ??? ?????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??????
????????? ???, ??? ??????, ???, ?????? ?? ?????????? ??? ? ???? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ????. ??? ?????? ?????????? ?????????? ?????? ??????
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????????????? ??? ?????? ?????? ??? ?????? ??? ? ???? ?????? ?????? ??? ? ???? ?????? ??????
??? ??? ? ???? ?????? ??? ? ???? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???? ????
???, ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ??????????, ??????????????, ???' ????, ??? ? ???? 73 B ??? ??????.

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

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

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

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

(?. ?????? 56-59, 73-74, 78, 80-81, 84, 88, 91-94, 96-102 ??? ??????.)

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

?? 17?? ?????????? 2009 (*)

«????????? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????????? – ??? ??????????????
????????? – ??? ?????? ?????????? ?????????? ?????????????? ?????????? – ??? ??????????????
????????????? ?? ?????????? ?????, ??? ??? ?????????? ??? ?????? ?????????? ?????? ???
????????, ? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??? ?????????? ??????????????»

???? ??????? C-182/08,

? ?????????????? ?????? ?????????? ?????????????? ?????????? ?????? 234 ??,
?? ??????? ?? Bundesfinanzhof (????????) ?? ??????? ?? 23?? ?????????? 2008, ? ??????
????????? ?? ?????????? ??? 30 ??????? 2008, ??? ??????? ?? ??????

Glaxo Wellcome GmbH & Co. KG

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Finanzamt München II,

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

????????? ??? ??? P. Jann, ?????? ???????, M. Ileši?, A. Borg Barthet, E. Levits
(????????) ??? J.-J. Kasel, ???????,

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

?????????: R. ?ere?, ?????????? ???????????,

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

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

- ? Glaxo Wellcome GmbH & Co. KG., ?????????????? ??? ??? H.?M. Pott ??? T. Englert,
Rechtsanwälte,
- ? ?????????? ????????, ?????????????? ??? ??? M. Lumma ??? C. Blaschke,
- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? W.
Mölls,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????????? ??? ??????? ??? ??? ?? ??????????
??? 9?? ??????? 2009,

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

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1 ? ?????? ?????? ?????????? ?????????????? ?????? ??? ?????????? ??? ?????? 52 ???
????????? ?? (???, ?????? ??????????????, ?????? 43 ??) ??? 73 ? ??? ?????????? ?? (???
????? 56 ??).

2 ? ?????? ??? ?????????? ??? ??????? ?????????? ??? ?????? ??? Glaxo Wellcome GmbH &
Co. KG, ?????????? ?????? ?????????? ???????, ??? ?????? ?? ?????????? ??????
????? ?????? ?????????? ???????, ??? ??? Finanzamt München II (??? ???:
Finanzamt), ??? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? 1995 ???
1998.

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

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

3 ??? ?????? ??? ?????????? ?????????????? ??? ??????? «??????
?????????», ?? ?????? ??? ?????? ??? ?????????? ??? ??? ?????? ??? ??????????????
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ?? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????????????? ??? ?????? ???
??? ?????????? ??? ???????, ?? ??? 36, ?????????? 2, ??? 3, ??? ?????? ??? ???
????? ?????????? (Einkommensteuergesetz, ??? ???: EStG) ??? 49 ??? ?????? ??? ???
????? ?????????? ?????? Körperschaftsteuergesetz, ??? ???: KStG), ?????????? ???
????? ?????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ???
??? ??? ?????????? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ???
????? ?????????? ??? ?????? ??? ???????.

4 ??? ?? ??? 36, ?????????? 4, ???????, ??? EStG, ?? ?????? ?????????? ??????????
??? ??? ?????????? ??? ?????? ?? ??? ?????? ?????? ?????? ?????????? ?????????? ??????????
????????? ??? ?????? ?????????? ??? ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ??? ??????????
????? ??? ?? ??? 20, ?????????? 1, ??? 3, ??? EStG ?????????? ??? ?? ?????????? ???
????????? ??? ??? ??????????.

5 ?? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??????????

????????????? ??? ????? ?????????????? ?????? ??? ?????? ??? ??????????? ??????????, ?????
????????? ?? ???????, ???? ??? ????? ??????????? ??? ???????????, ??? ?????? ??? ??????????
???? ??????????? ??? ???????????, ??????? ??? ?????? 6, ??????????? 1, ?????? 1, ??? EStG.
????? ?????? ??? ??????? ??? ???????, ??? ??????????????? ?? «????????? ??? ??????? ???
??? ???????» ???? ??? ? ??????? ?????????? ??????? ?????????????? ?????????? ???
?????????. ?? ?? ??????, ? ???? ??? ??????? ?????????? ??????? ?? ??????? ??? ??????? ??? ???????
?? ?? ??????? ??? ?????????????? ??????.

6 ????? ??????????, ?? ?????????????? ?????????????? ??????, ??? ????? ?????????????????? ??
????????????? ?? ???? 36 ??? EStG ?????????? ?????????????? ??? ?????? ??? ?????? ??????????????
?????????, ??? ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????
????? ?????? ?? ??? ?????? ??? ?????????????????? ??????????.

7 ??? ???. ?????? ??????, ?? ?????????????? ?????? ?? ?????? ??? ?????????????? ??????????. ????
?????????, ??? ?????? ?????????? ?????? ?????????????? ????, ?????? ?????? ??????, ? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ? ?????? ??????. ????????, ?? ? ??????????
????? ????, ??? ?? ?????????? ??? ?????? ????, ??? ??????, ? ?????? ????.
?????????? ?? ?????????? ??????????.

8 ? ?? ??? ??????? ? ?? ?????????? ??????????, ? ?????? ?????????????? ??? ??? ???? ??
 ?????? ? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ?????????, ??????????
 ????????, ??? ??? ?????? ??? ?????????? ?????????? ??? ?????????, ?? ??? ???? ??
 ?????????? ?????????? ?????????????? ??? ???, ??? ????? ?????????????? ?????????? ?????????,
 ??????? ? ? ? ??? 17 ??? EStG, ? ??? ????? ?????????? ????????, ??????? ? ? ? ??? ????
 8, ?????????? 2, ??? KStG.

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

10 ?? ??????? ???? ?????? ?? ???? ?????????? ?? ???? ?? ???? ???? ?????????? ?? ???? ?? ????
?? ???? , ?? ???? ?? ???? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?? ???? , ?? ???? ???? ,
?? ???? ?????? ?? ???? ?? ???? ?????????? ?? , ?? ???? , ?? ???? ?????? ?? ???? ?? ???? ????
????? ?? ???? ?? ???? ?? ???? ?? ???? ???? ???? ???? .

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

1. ??? ??? ?????????????? ??? ?????????????? ??????? ??????

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

[...]

4) ?? ??????????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ???
????????????? ??? ?????? ??? ???????. [...»

12 ?? ?????? ??? ?????????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????
(Gesetz zur Änderung des Umwandlungssteuerrechts), ?? 28?? ?????????? 1994 (BGBl. 1994 I,
? 3267, ?? ?: UmwStG), ??????? ?? ?????????? ?????? ?? ?????????? ?????? ?? ?????????? ??????????
???? ?????????????? ?? ?????????? ?????? ?? ?????????? ?????? ?????? ?????? ?? ??????????
????? ?? ?????????????? ?????? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ?? ??????????
????????? ?? ?????????? ?????? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ?? ??????????.

13 ??? ?? ??? 4, ?????????? 4, ??? UmwStG, ?? ? ???????? ??? ?????? ??????????
????????????? ?? ?????????? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ??? ?????????? ???,
?? ?????? ?? ? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?????????? ?????? ?? ?????? ?? ???
????? ?????????? ?? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? ?? ?????? ?? ???
????? ?????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????? ??
????????? ?? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??
????? 14 ?? UmwStG, ?? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ??
????????? ??????.

14 ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?????????? ??????????
(«????? ??????») ????, ??? ?? ??? 4, ?????????? 5, ??? UmwStG, ?? ?????????? ?? ?
?? ?????????? ??? ?? ?????????? ?????? ?? ?????? ?? ?????? 10, ?????????? 1, ??? UmwStG
???? ?????????? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? 50c ??
EStG ???, ??? ?????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ????, ??? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ????, ??? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????.

15 ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????
?? ?????? ?? ?????? ???. ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? 4, ?????????? 6, ???
UmwStG.

16 ?? ?????? 10, ?????????? 1, ??? UmwStG ?????? ?? ???:

«? ?????? ??????????? ???????? ??? ??????? ??? ?????? ?????????? ???
????????????? ??????? ???????, ??? ?? ?????? ??? ?????? 30, ?????????? 1, ?????? 1
??? 2, ??? [KStG], ?? ?????? ??????? ?? ??????????? ??? ?? ?????? ?????? ?????? ??
???????????, ??? ?? ?????????? ??? ?????????? 2, ?? ?? ?????? ?????????? ? ?? ?? ??
???????????, ??? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??? ?????? ???
???????????, ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??? ?????? ???
???????????, ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????? ???
?????????..»

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

17 ? ??????? ??? 26?? ?????????? 1964, ?????? ??? ?????????????? ?????????????? ???
????????? ??? ?? ??????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ??????
????????? ?, ??? ??????? ??? ?????? ?????????????? ??? ?? ?????? ?????????? ??? ??????????????
(BGBl 1966 II, ? 358), ?????, ??? ?????? ??? III, ?????????? 1, ??? «?? ??????? ???
????????? ??? ?????? ?????? ?????????????? ?? ??? ?? ?????? ?????????? ?????????????? ???
????? ??? ?????????? ????, ????? ?? ? ?????????? ????, ????? ?? ??? ?????? ??? ?????? ?????????? ???,
????????? ??? ?????????? ?????? ?????????? ????, ?????? ?????? ?????? ?????????? ???,
????????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????????? ?????????? ???
????????? ????.».

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

18 ? ??????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????????? ???
????? Glaxo Wellcome, ?????? ??? ??????????, ??? ?? ?????????? ?????? ??????, ???
1? ?????? 1995, ??? Glaxo Wellcome GmbH (???: GW GmbH), ??????
????????????? ??? ?????? ?????????? ??????.

19 ?? ?????? ??? ?????????????? ??? ?????? Glaxo Wellcome ?????? ?? ???????????
?? ???.

20 ??? 26 ?????? 1995, ? ?????? ?????????? ?????? Verwaltungs GmbH (???: GV GmbH),
? ?????? ?????? ??? ?? 95 % ??? ?????? ??? GW GmbH, ?????? ??? ??
Glaxo Group Limited (???: GG Ltd), ??? ?????????? ??? ?????? ?????????? ??????????
?? ??????, ?? 5 % ??? ?????? ??? GW GmbH ??? ?????? ? ??? ?????? ?????? ???
????????? ??? ?????? ??????.

21 ??? 27 ?????? ??? ??? 7 ?????? 1995, ? GW GmbH ??? ?? ??????? ?
????????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? Wellcome GmbH
(???: W GmbH). ?? ?????? ??? ?????? ??? ?????????? ?? ?? ??? ?????? ?????? GG Ltd, ?
????? ?????? ?? 99,98 % ??? ?????? ??? W GmbH, ??? ? Burroughs Wellcome Ltd,
????? ?????? ??? GG Ltd, ? ?????? ?????? ?? 0,02 % ??? ?? ??? ??????.

22 ?? ?????? ??????????? ??? 25?? ?????? 1995, ? W GmbH ???????????
????????? ??? 29 ?????? 1995 ??? ?? ?????? ?????? ?????? ???, ??? GW GmbH.

23 ??? 30 ?????? 1995, ? GV GmbH ?????? ?? 1 % ??? ?????? ??? GW GmbH ??
????? ?????? ??? Seftonpharm GmbH, ??? ?????? ?????? ??? 100 %.

24 ??? 1? ?????? 1995, ? GW GmbH ?????????? ?? ?????????? ?????? ??????????
????????? ??? ?????? ??? ?????? Glaxo Wellcome GmbH & Co. KG.

25 ??? ?? ?????????? ??? ?????????? ?????, ? ??? ?? ?????? ??? GW GmbH ???
????????? ??? ?????? ?????? ??? GV GmbH (????????????????? ??? Seftonpharm GmbH)

?????????? ?? 500 ?????????? DEM. ???' ?????????? ??? ?????? 4, ?????????? 4 ??? 5,
??? UmwStG, ? ?????????? ??? ?????? ????? ?????? ?????? ??? ??????????
????????? ????, ?????? 328 096 563 ?????????? ?????? (DEM), ??????????
?????, ?????? ??? ?????? 50c ??? EStG, ?? ?????????? ??? 22 887 706 DEM ???
?????? ??? ??? ?????? 5 % ??? ?????? ??? GW GmbH ??? ??? GG Ltd ??? ??
??????.

26 ?? Finanzamt ?????????? ??? ? ?? ??????? ??? GV GmbH ?????, ??? ??? GG Ltd,
????????? ?????????? ??? GW GmbH ??? ??? ? ??? ?????? ??? ?????????? ??? ??????????
??? ?????????? ??? ?????? ?? ?????????? ????. ??? ?? Finanzamt, ??? ?? ?????? ??? W
GmbH ?? ?????? ?????? ? ?????????? ??? ?????? ??? ?? GG Ltd ??? ??? ??
Burroughs Wellcome Ltd ?????????? ?? ?????????? ??? ?????? 322 565 500 DEM. ??????
??? ?????????? ??? W GmbH ??? ??? GW GmbH, ?? ?????? ??? ?????????? ??? ??
?????????, ??? ?????????? ??? ?????? ??? GW GmbH ?? ????? ?????? ? GV GmbH.
??????, ??? ?? Finanzamt, ? ?????? ??? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? GW GmbH ??????, ?????????? ???
??? ?????????? ???, ?? 5 531 063 DEM.

27 ? ?????????????? ??? ?????? ?????? ?????????? ?? ?? Finanzamt, ???' ??????, ?? ???? ??
?????? ?? ? ???? ??? ?????? ?????? ?????????? ? GW GmbH ???? ???? ?? ??? ??????????????
????????? ???? ?? ?????????? ???, ??? ??? ?????? ??? ?????? 50c ??? EStG, ?? ????
??????? ??? ??? ?? ?????? ??? GW GmbH ???? ?????? ??? ?????? ??? W GmbH.

28 ????? ? ?????????? ??? ?????????????? ??? ?????? ?????? ?????? ?????????? ?????? ??????
??? Finanzgericht München, ?? Finanzamt ?????? ?????? ?????????? ?????? ???
Bundesfinanzhof.

29 ?????????? ??? ???? ?????? ?? Finanzgericht München, ?? ?????? ??????????? ??????
???, ?????? ??? ?????????? ??????? ??, ? ?? ??? ?????? ?????? ?? ??????? ?? ??????? ??
?????????? ??, ??? ?????? ??, ?????? ??, ?? ?????? ??, ?? ?????? ?? GW GmbH ?????? ?????????? ??????
??? W GmbH.

30 ???????, ??? ? Bundesfinanzhof, ? ?????????? ??? ?????????????????? ??? ??????????????
????? ??????? ?? ?? ????? 50c ??? EStG ????? ??????? ??? ?? ?????? ??? ?????????
???????, ?????????? ??? ? ?????????? ??? ?????????? ?????????? ?????????? ??????????????
????????? ??? ?? ??????? ?? ?????????? ??? ?????????? ?????????? ??? ?????????? ??????????
????????? ??? ? ??? ?????? ?????????? ?? ?????????? ?????????? ?????????? ??????????.

31 ??? ???. ????????, ?? Bundesfinanzhof ???????, ?? ???????????, ?? ???????????, ?? ???????????
??? ?? ???????, ?? ???????????, ?? ???????????, ?? ???????????, ?? ???????????, ?? ???????????:

«???????????? ???? ?????? 52 [...] ? ??? ?????? 73? [...] ??? ?????????? ? ?????????????? ???????
????????? ?????? ??? ??????, ??? ?????????? ?????????? ?????????????? ?????????????? ??? ??????
????????????? ??????????, ? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??????????
????????????? ??? ?????????? ?? ??? ?????????????? ??? ?????, ??? ?????????????? ???
????????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????????? ??????????
?????????, ??? ?????? ?????????? ?? ?????????? ??? ??????????, ??? ?????? ??????????, ??? ??????
????????????? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ???, ???, ??? ??????????
?????? ?????????? ??? ?????? ?????????? ?????????? ?????? ?????????? ???, ??? ?????? ??????
??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????;»

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

32 ???' ??????, ??????????? ???, ??????? ?? ??? ??????????? ? ?????????? ???????????, ???
?????? ?????? ?? ??????? ?????????? ??????? ??????? ?????????? ?????????????? ?? ?????????? ??
????????????? ??? ??????????? ??????? ??????? ??? ????? ?????? ?????????? ?????????????? ?? ??? ??????
????????????? ??????????. ???????, ?? ?????? 50c ??? EStG ??? ?????? ?????? ?????????? ??? ??
????????????? ?????????? ?????????? ??? ?????????????? ??? ????? ?????? ?????????????? ??????????????
?????????, ? ?????? ??? ?????????? ??????? ?????? ?????? ?????????? ???????????, ?? ???????
????????? ??????? ??????????, ? ??????? ??? ?????????? ?????? ?????? ?????????? ?????????? ??????????????,
??? ??????? ?????????? ??????? ???????, ? ?????? ?????????? ??? ????? ?????????? ?? ?????? ?????????? ?? ??? ??????
????? ?? ??? ???????????.

33 ????????, ?? ??????? ??????? ??????? ?? ?????????? ??? ??? ?????? ??? ?? ??????
?????????? ????? ?? ??????????????? ?? ?? ????? 52 ? 73 B ??? ??????? ???????????
?????????? ??????? ??????? ???????, ??????? ?? ?????? ???? ?????? ??? ?????? ??? ?????? ???
?????????? ??????? ??? ?????? ?????? ?????? ?????????? ??????????? ?? ??????????? ?? ???
????? ??? ??????? ??????? ?????????? ?????? ???, ?????? ?????? ?????? ????? ???????
?????? ??????????????? ?? ?????? ??????? ?????????????? ?????????? ??? ?????? ?????? ???????????
?????? ???????, ???, ?? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ???????????
?????? ???????, ? ?? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
??????.

34 ?????????????? ?????? ???, ??? ????? ??????????, ?????????? ? ????? ??????????
????????? ??? ?????????????? ??? ?????? ?????, ?? ?????? ??? ?????? ?????? ?? ?????? ???
????????????? ??? ?????????? ?? ?????????? ?????? (??., ?????? ???, ?????????? ?? 13??
????????? 2005, C-446/03, Marks & Spencer, ?????? 2005, ?. I-10837, ????? 29, ??? 12??
????????? 2006, C-196/04, Cadbury Schweppes ??? Cadbury Schweppes Overseas, ??????
2006, ?. I-7995, ????? 40, ??? ??? 12?? ?????????? 2006, C-374/04, Test Claimants in Class IV
of the ACT Group Litigation, ?????? 2006, ?. I-11673, ????? 36, ????? ??? ??? 8?? ??????????
2007, C-379/05, Amurta, ?????? 2007, ?. I-9569, ????? 16).

35 ?????????? ?? ???? ?????? ??????????? ??????? ?? ??????? ?? ?????? ?? ???? ?? ???? ?????? ?? ???? ??
?????? 52 ??? ?? ???? ?????? 73 ? ??? ???????, ??????? ?? ??????????? ??????????? ?? ???? ?????? ?? ???? ??
??? ?? ???? ?????? ?????? ??????? ??????? ?? ???? ?? ???? ?????? ?????? ?????? ?? ???? ?????? ?? ???? ??
?????????? ?? ???? ?????? ??????????? ?? ???? ?????? ??.

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

36 ???????, ?????????????? ???, ??????????? ?? ??????? ?? ?????? ?????????? ???????
????????? ?? ?????? ??? ??? ?????????? ??????????, ??? ?????? ?????? ??????????
????????? ??? ?????? ?? ?????????? ?????? ?? ?????????? ??? ?? ??? ?????? ?????????? (?.
?????? ??? 24?? ??? 2007, C-157/05, Holböck, ?????? 2007, ?. I-4051, ????? 22 ??? ???
????????????? ?????????).

37 ???? ?? ?????????? ?????????? ??????? ??? ?? ?????????? ?????????? ?? ??????? ??????,
????' ??????, ??? ?? ?????? ????? ?? ??? ?? ????? ??????????, ??? ?????????? ???,
???? ?? ?????????? ??? ?????????? ??? ??????? ?????, ? ??? ?? ??? ?? ?????????? ?????? ??????
????????? ?????????? ?? ?????? ?? ??? ?? ????? ?????? ?? ?????????? ?? ?????? (???????)
??? 3?? ?????????? 2006, C-452/04, Fidum Finanz, ??????? 2006, ?. I-9521, ????? 34).

38 ???????, ?????? ?? ????????, ??????, ?? ? ?????, ?? ?????? ??????? ????????,
?????? ?????? ??????? ?????????????? ??? ?????? ?????? ?????? ?????? ????????
????? ???????, ??? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????, ??????
????? ???????, ??? ??? ?????? ??? ?????? 73 B ??? ??????.

39 ????????, ??? ? ????????, ??? ?????? ??? ?????? ??? ?????? ??? «???????, ???????», ??
????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ???????
88/361/??? ??? ????????, ??? 24?? ?????? 1988, ??? ???? ??? ???? ?????? ??? ?????? 67
??? ?????? [????????? ??? ???? ?????? ??? ?????? ??? ??????] (?? L 178, ?. 5), ???
????????? ???, ??? ???? ??? ???? ?????? ??? ?????? ??? ?????? 69 ??? 70, ?????????? 1, ??
????????? ??? (?? ?????? 67 ??? 73 ??? ?????? ??? ?????????????? ?? ???? ?????? 73 B
??? 73 ? ??? ?????? ?, ??? ?????? 56 ?? ??? 60 ??), ?????????????? ???, ?????? ??? ??
????????? ??? ?????? ??? ??????????????, ? ?????????? ??? ?????? ?????? ?????????? ??? ??????
????????? (??., ?????? ???, ?????? ??? 23?? ?????????? 2006, C-513/03, van Hilten-
van der Heijden, ?????? 2006, ?. I-1957, ??? 39, ??? 14?? ?????????? 2006, C-386/04,
Centro di Musicologia Walter Stauffer, ?????? 2006, ?. I-8203, ??? 22, ??? 11??
????????? 2008, C-11/07, Eckelkamp ?.., ?????? 2008, ?. I-6845, ??? 38, ??? ????
?? 27?? ????????, 2009, C?318/07, Persche, ??? ??? ??? ?????? ?????????? ???
??????, ??? 24).

40 ????????, ??????, ??????? ????????, ??? ?????? ?? ?????? 73 ?, ?????????? 1, ??,
????? ?????, ?? ?????? ????????, ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ?? ???? ??????????
??? ??? ?????? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ??? ??? ?????? ??? (?? ?????? «?????» ??????????) ?????? ??? ?
????????? ?????? ??? ?????? ?????????? ?????????? ?? ?????????? ?????????? ??? ?
????????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?
????? ??? ?????????? (?? ?????????? ?????? «?????????») (??., ??? ??? ???? ????
????, ?????????? ??? 16?? ?????? 1999, C-222/97, Trummer ??? Mayer, ?????? 1999, ?.
I-1661, ??? 21, ??? 4?? ?????? 2002, C-483/99, ?????? ??? ??????, ?????? 2002, ?.
I-4781, ?????? 36 ??? 37, ??? 13?? ?????? 2003, C-98/01, ?????? ??? ?????? 28?? ??????????
????????, ?????? 2003, ?. I-4641, ?????? 39 ??? 40, ?????? ??? ??? 28?? ??????????
2006, C?282/04 ??? C-283/04, ?????? ??? ?????, ?????? 2006, ?. I-9141, ?????? 19).

41 ??????, ?? ?????????? ?????? ??? ? ?? ?????? ?????? ?????????? ?????????? ??????
????????? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????, ??? ??? ?????? ??? ?????? 1 ??? ?????? 88/361 ??? ??? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? 1 ??? ?????? ?????? ?????? (?. ?????? ???
19?? ?????????? 2006, C-265/04, Bouanich, ?????? 2006, ?. I-923, ?????? 29).

42 ???????????, ??? ???? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ???
? ??? ?????? 88/361, ? ?????? ?????? ?????????? ??? ?????????? ?????????? ??? ??????
????????????? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???

43 ???????, ? ?????????? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????, ??? ???
????? ??? ?????? 1 ??? ???? ?????? ?????? ?????? ??? ??? ?????????????? ??? ??????
????????? ??? ?????????? ??? ?????????? 1 ??? ?????? ?????? ???.

44 ??? ???????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????, ?? ?????? ???????
?????????, ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 88/361, ? ?????? ???

????????? ?????? ??????????, ??? ??? ?????? ??? ?????? 1 ??? ?????? ?????? ??? ??????

45 ????? ??????, ????????, ?? ?????? 52 ??? ??????????, ??? ? ? ?????????? ??? ??????????
????????? ??? ? ?????????? ??????????????, ??? ?????? ?? ?????? ??? ?????????? ??? ?????
????????? ?????? ??? ? ?????? ?????????? ??' ?????? ??? ?????? ??? ?????? ??
????????? ??????????????, ?????? ??? ? ?????? ??? ?????????? ??? ?????????? ??? ??????????, ??? ??
????? ?????????? ?? ?????? ??? ?????????? ? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ???? ?????? ??? ?????????, ??? ?????????? ??? ???? ?????? ??? ?????????? ??? ????
????????? ??? ? ? ?????????? ??? ?????? ??? ???? ?????? ??? ???? ?????? ??? ?????????? ??? ????
????? ???, ??? ?????? ??? ?????? ??? ???? ?????? ??? ???? ?????? ?????????? ??? ?????? ???
????????? ??????????, ?? ?????? ?? ?????? ?? ?????????? ??? ?????????? ??? ???? ?????? ???
????? ??? ?????????? ??????, ?????????????? ? ?????????? (????????? ??? 23??
????????? 2006, C-471/04, Keller Holding, ?????? 2006, ?. ?-2107, ????? 29, Centro di
Musicologia Walter Stauffer, ??????????????, ????? 17, ??? ??? 11?? ?????????? 2007, C-
451/05, ELISA, ?????? 2007, ?. I-8251, ??? 62).

46 ? ??????? ???. ?????????????? ???. ???. ??????? ???. ??????? ???. ??????? ???. ??????? ???.
?????????? ???. ?????????? ???. ??????? ???. ???. ??????????, ???. ??????? ???. ??????? ???. ??????, ???.
?????????? ???. ??????? ???. ??????? ???. ??????? ???. ??????? ???. ??????????? ???. ??????? ???.
?????????? ???. ??????? ???. ???????, ?????????????? ???. ???' ????? ???. ????? ???. ??? ????? ???.
?????????? ???. ?????????????? ???. ?????????? ???. ?????????? ???. ??????? ???. ????? ???.
?????????? ???. ?????????????? (??., ??????? ???. ?????, ?????????????? ???. ?????????? Centro di
Musicologia Walter Stauffer, ??? 18, ???. ELISA, ??? 63).

47 ????? ?????? ???????????, ?????????? ??? ?????????? ?????? ?????????? ??? ??????????
???? ??????? ??? ?????????? ?????? ?????????????? ?????????????? ?? ?????????? ?????????? ???
????? ?????????? ??? ??? ?????????? ?????? ?????? ?????? ??? ?????????? ?????? ??????????
????????????? ??? ?????? ?????? ??????, ??? ?????? ?????? ??? ? ?????????? ??? ?? ???
????? ?? ?????????? ?? ?????? ?????????????? ?????? ?????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????????????? ??? (??., ?????? ????, ?????????? ??? 13?? ????????
2000, C?251/98, Baars, ?????? 2000, ?. I-2787, ????? 22, Cadbury Schweppes ??? Cadbury
Schweppes Overseas, ??????????????, ????? 31, ??? 13?? ?????? 2007, C-524/04, Test
Claimants in the Thin Cap Group Litigation, ?????? 2007, ?. I-2107, ????? 27, ????? ??? ??
17?? ?????? 2008, C?207/07, ?????? ??? ???????, ????? 60).

48 ????? ?????????? ??? ??? ?????????????? ??? ?????????????? ??????????????, ??? ??? ???
????????????? ??? ?????????????? ??? ??? ?????????? ??? ?????????? ??? ????? ??? ??? ????
????????????? ??? ?????????? ??? ??? ? ?????????? ??? ????? ??? ?????? ? ?????????? ?????????? ??????
????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??

49 ???????, ??? ??????????????? ?? ? ??????? ?? ?? ???? ?????????????? ??????????? ??
?????????? ?? ?? ???? ????? ?? ??????? ?? ???? ?????????????? ? ?????????? ?????????? ??
?? ???? ??????????? ?? ???? ??????????? ?? ???? ?????? ? ?????????? ?? ???? ?????????? ?? ????
?????????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?????????? ?? ???? ?? ???? ?????? ??
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50 ????????, ????????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????????
????????? ??? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??
????????? ?????????????????? ??? ?????????? ?????????????????? , ?? ??? ?????? ?????????? ?????? ???
??? ?????????? ??? ?????? ??? ?????????????????? ??? ?????? ??? ?????????? ?????? ???
????????? ??? ?? ??? ????? ?????????????? ??? ??? ?????? ?????? ??? ?????? ?????????? ??? ??????

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

51 ???????, ??? ?? ??????? ?? ??????? ?? ? ?? ????? ?????????? ??????? ??
????????? ?????? ?????????? ?? ?????? ?? ?????????? ??????????????, ?? ??????????????
???? ??????? ?? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?? ?????? ??
????????? ?? ?????????? ?? ?????? ?? ?????????? ?????? 52 ??? ?????? (??., ??? ?? ?????? ??,
????????? ?? 14?? ?????????? 2004, C-36/02, Omega, ?????? 2004, ?. I-9609, ?????? 27,
Cadbury Schweppes ??? Cadbury Schweppes Overseas, ??????????????, ?????? 33, Fidium
Finanz, ??????????????, ?????? 48, ????? ?? Test Claimants in the Thin Cap Group Litigation,
?????????????, ?????? 34).

52 ???????, ? ??????? ?? ?????? ?? ?????? ?????? ?????????????? ??????? ?? ?????? ??
????? ?? ?? ?????? ?? ?????????? ?????????????? ?? ??????????.

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

53 ??? ?????????? ?? ?????? ??????????, ? ??????? ?? ?????? ?? ?????? ??
????????? ?????????? ??, ?????? ??????? ?????????? ?????????? ?????????????? ?? ?????? ??
????????? ?????????? ?? ?????? ?????????? ?????????? ?????????? ?? ?????? ?? ??????????
????????? ???????, ? ??????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?????????? ?? ?????? ??
????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ?? ?????????? ??, ?? ?????????? ??
????????? ?????? ?? ?????? ?????????? ?????? ?????????? ?? ?????? ?????????? ??, ?? ?????? ?????? ??
????????? ?? ?????? ?????????? ?? ?????? ??????????.

54 ?????? ? ?????????? ?? ?????????????? ?? ?????????????? ?? ?????? ?????? ??
????????? ?? ?????? ?????????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????????? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?? ?????????? ?????? ??
????????? ?? «????????? ??».

55 ??? ?? ?????????? ??, ?? ?????? ?????????? ?? ?????? ?????? ?? ?????? ??
????? ?? ?????? ?????? ?? ?????????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ???????, ??????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ???????, ?????????? ??' ?????? ?? ?????????? ?? ?????? ?? ?????? ??
??? ??????? ? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????.

56 ? ?????????? ?? ?????????? ?? ?????? ?????? ?? ?????? ?? ?????? ??
?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?????? ?? ??????.

57 ? ?????????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?????? ?? ?????? ??
????? ?????????? ?? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ??
????? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??

58 ???????, ??? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??
????????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??

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

59 ???????, ?????????? ?????? ??? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??????? ?????????? ??? ?????????? ?????????? ?????' ?????, ??? ?? ?????? 73 B
??? ??????.

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

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

61 ??? ?? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ?????????????? ??????????????, ?
?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ?? ??????
????????? ?????????? ?????? ?????? ?????????? ?????????, ??? ?? ?????????? ?????????? ?????????, ???
????? ?????? ?? ?????????????? ??? ?? ?????? ?????????? ?????? 100 ???
????????? ???, ??? ?????? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ???.

62 ???????, ? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? ??????????
??? ?????? ??? ?????????? ?????????? ?????? ?????? ?????????? ??? ??????
?????????????, ??? ?? ?????? ???, ??? ?? ?????????? Test Claimants in Class IV of the ACT
Group Litigation, ?????????????, ??? ?? 26?? ?????? 2008, C-284/06, Burda (??????
2008, ?. I-4571), ?????????? ??? ?? ?????? ??? ?? ?????????? ?????? ?????? ??????, ? ??????
????? ?????? ?????? ??? ?????? ?????????? ?????????? ?????????? ?????? ?????????? ??????????
????????? ?? ?????? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??????????
??? ?????? ?? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ??????????
????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??????.

63 ??? ? ?????????? ?????????? ??? ?? ? ?????????? ?????????? ?????? ??? ?
????????? ?????????? ???, ??? ?????? ?????????? ?????? ?????? ?????????? ???????, ??? ??????????
????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ???.. ? ?????? ?????? ?????????? ?????? ??? ? ?????? ?????? ??? ?????????? ?????? ?????? ??????
????????? ?????????? ?????? ?????? ?????? ?? ?????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?? ???
????????? ??????, ? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ??????????
????????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ??????.

64 ??????????, ? ?????????? ??? ?? ?????? ?????? ?????? ?????????? ??? ???? ? ??????
????????????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ???? ? ?????? ??????????
??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ???
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????????.

65 ? ?? ??? ?????????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ???, ???????, ?? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ???????, ??? ?? ?????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ??????.

66 ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???, ? ?????????? ??? ?? ???

?????, ? ?????????? ?????????? ??? ? ???????, ?????????? ? ?????????? ???, ??????? ?? ??
????? 73 ?, ?????????? 1, ??????? ??, ??? ??????? ?? [??? ?????? 58, ?????????? 1,
?????? ??, ??], ?? ?????????? ??? ?????? 73 B ??? ??????? ??? ?????? ?? ??????? ???
????? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ? ??? ??? ????? ?????????? ??? ?????? ???.

67 ??????, ?? ??? 73 ?, ?????????? 1, ??????? ??, ??? ???????, ?? ??????, ??
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??????????, ?????? ??
????????? ??? ?????????? ??? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? 1, ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? 73 ?, ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? 1 ??? ?????? ??? «?? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? 73 ?» (???. ?????????? ??? 7?? ??????????
2004, C-319/02, Manninen, ?????? 2004, ?. I-7477, ?????? 28, ??? Centro di Musicologia Walter
Stauffer, ???????????, ??? 31).

68 ??????, ?????????? ?? ??? ?????? ??????? ?????? ??? ?????????????? ??????? ??
????? 73 ?, ?????????? 1, ??????? ??, ??? ??????? ?????????? ?????? ??? ??????????????
?? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? 3 ?? ?????? ????.
?? ?? ?????????? ?????????? ???, ?????????? ?? ?????? ??? ?????? ?????????? ??????
?? ?? ?? ?????????? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ?????? ?????????? ?????????? ?? ?? ?????????????? ???
????????? ??? ?????? ?????????? (???. ?????????? ??? 6?? ?????? 2000, C-35/98,
Verkooijen, ?????? 2000, ?. I-4071, ?????? 43, Manninen, ???????????, ?????? 28 ??? 29,
??? ??? 8?? ?????????? 2005, C-512/03, Blanckaert, ?????? 2005, ?. I-7685, ??? 42).

69 ?? ?????????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ??????????, ? ???
????????? ??? ?????? ??? ?????????? ? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??? ?????? (??., ??? ??? ?????? ???, ?????????? ??? ??????
Test Claimants in Class IV of the ACT Group Litigation, ?????? 55 ??? 57).

70 ???????????, ?? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????????? ??? ?????????? ???
????????, ?????? ?? ?????? ??? ?????? ?????????? ??? ??????, ??? ?????????? ??? ???
????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
(????????? ?????? Test Claimants in Class IV of the ACT Group Litigation, ?????? 58).

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

72 ?? ??? ??? ?????????? ?????????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ?????
????????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?? ??????
????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

73 ??? ?????????? ? ?????? ?????????? ??? ?????? 139 ??? ?????????? ???, ???
????? ??? ?????? ??? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????? ??????, ?? ?? ??? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???.

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

75 ?????? ??? ?????? ?? ?????????? ?? ??? ?????? ?????????? ??? ? ?????????? ??? ?????? ???
????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ???
????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

76 ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ? ?????????? ??? ??????
????????? ??? ?????? 61 ??? 63 ??? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ???.

77 ??? ????, ???' ????, ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
??? ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?? ?????????? ??? ?????? ???
??? ? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? (????????? ??? 28? ?????? 1992, C-204/90, Bachmann, ?????? 1992, ?. I-249,
????? 28, Manninen, ?????????? ???, ??? 42, ??? ??? 27? ?????? 2008, C-418/07,
Papillon, ??? ??? ??? ?????? ?????? ??? ??????, ??? 43).

78 ??????, ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???, ??
????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ?, ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?? ??? ?????? ?????? ?????? (?. ?????????? Papillon, ???
44 ??? ??? ?????? ?????? ???).

79 ??? ?????????? ? ?????????? ?????????? ??? ? ???????, ? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

80 ??? ??????????????? ??? ? ??????? ??????? ??????? ??????? ? ??????? ???
?????? ?? ?? ??? ????? ??????? ??? ??????? ??????? ??????? ?? ??????????????? ???
????????? ??? ?? ??????? ????? ??????? ??? ??????????? ??????. ??? ?? ?? ???
????? ??????? ??????? ???????, ? ??????? ???????, ??? ?? ??????????? ??????? ??,
??? ??????? ??? ??????? ?? ??????? ??????? ??? ??????? ??? ??????? ??????? ???
?????????????? ??? ????? ???????, ??? ?? ??????? ??? ??????? ??? ??????? ??????? ???
?? ??????? ??? ???????, ??? ??????????????? ??? ??????? ??????? ??????? ??????? ???
??????????, ? ??? ?? ??? ? ??????? ??? ????? ??????????? ? ??????? ??????? ??????? ?
????? ??????????? ?? ??????? ??? ??????? ??????? ??????? ??????? ??????? ??? ??????? ??
????? ??? ??????? ??? ??????? ??? ??????? ??????? ??????? ??????? ??????? ??? ???????
????? ??? ??????? ???.

81 ??? ???????, ?? ??????? ?? ??????? ???? ??????? ? ??????? ??????? ??? ??????? ??????? ?
?????????????? ??? ????? 78 ??? ??????? ??????? ??????? ??? ??????? ??? ? ??????? ???
????? ??? ??????????? ??? ??????? ??? ??????? ?? ??????????????? ??? ??? ???????
?????????? ??? ??????? ??? ??????? ??? ??????????????? ??? ??????? ???????????.

82 ??? ???????, ??? ????? ?? ??????????? ??? ????? ?? ??????? ??????????? ???
?????????? ??? ??????????? ??? ??????? ??? ??????? ??? ??????? ?? ??????? ??? ??????????? ???
?????????? ?? ????? ?? ??? ??????????? ??? ??????? ??? ??????????? ??? ??????? ???,
?????????? ???, ???????, ??? ????? ???????, ? ??????? ??? ??????????? ??? ??????? ???
??? ????? ?? ??????????? ?? ??????????? ??? ????? ??????? ??????????? ??? ??????? ??
?????????? ??? ?? ??????????? ??? ????? ?? ?????' ????? ??????????? ?? ???????????
????????? (??., ?????? ???, ??????????? ??? ?????? Manninen, ??? 49 ??? ???
?????????? ???), ?? ??????????? ??? ?????? ??????? ??? ??????? ??? ??????????? ???????????
?????????? ?? ??????????? ?? ??????? ??? ??????? ??????? ?? ??????? ?? ???????????
?????????? ??? ?? ????? ?? ??????? ??? ??????????? ??? ??????????????? ??? ??????? ???
??? ?? ????? ?? ??????? ??? ??????? ??? ??????????? ??? ??????? ??? ??????? ??? ??????? ???
(??.. ??????????? ??? Marks & Spencer, ??? 46), ??????????? ?? ??????
?????????? ??? ??????????? ??? ??????????? ??????????????? (??.. ??????????? Cadbury
Schweppes ??? Cadbury Schweppes Overseas, ???????????, ??????? 55 ??? 56, ??? ??
29?? ??? 2007, C-347/04, Rewe Zentralfinanz, ??????? 2007, ?. I-2647, ????? 42).

83 ?? ??????????? ??? ????? ?? ??????? ??? ?? ??????? ?? ??????? ??? ??????? ???????????
?? ??????????? ??? ??????? ?? ??????????? ??? ?? ??????? ??? ??????? ??? ??????????? ?? ???????
?????????? ??? ????? ?? ??????? ??? ??????? ??? ??????? ??? ??????????? ??? ??????? ??? ???????
??????????, ??? ??????????? ?? ??????? ??? ??????? ??? ??????????? ??? ??????? ??? ?? ??? ???????
?????????? ??? ?? ????? ?? ??????? ??? ??????? ??? ??????? ??? ??????????? ??? ??????? ??? ??????? ???
?????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????????? ??? ??????? ??? ??????? ??
????? ??? ??????? ???, ??? ??????????? ??? ?? ??????? ??? ??????? ??? ??????? ??? ??????? ??
?????????????? ??? ??????????? ??????? ??? ??????? ??? ??????? ??? ??????? ??? (??????????????
?????? Test Claimants in Class IV of the ACT Group Litigation, ????? 59).

84 ?? ?????? ???????, ??? ???? ??????? ???????????, ?? ?????? ??????? ?????? ???????
?????????? ?????? ??????? ?? ??????????? ?? ?????????? ?? ??? ????? ??????????? ???
????????????? ???????, ?? ??? ???? ????? ??????????? ?? ??????????? ?? ?????????? ???
??? ????? ??????????? ???????, ?? ?????????? ?????? ?? ??????????? ?? ?????????? ???
????????? ?????????????? ??? ???? ????? ?????????? ?? ?????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????????? ?????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ?????? ?? ?????????? ??? ?????????? ???.

85 ???????????, ?? ?? ??? ???? ??????????? ?? ?????? ?????? ??? ?????? ?? ??????
?? ?????? ???? ?????? ??????? ??????? ?????????? ?????????? ??? ?????? ??? ??????? ???
????????? ??? ?? ???? ?????????? ?? ?????? ??? ?????? ??? ?? ?????? ??? ???????, ???????
??? ??????? ???????????, ??? ??? ??? ???? ?????????? ?? ?????????? ??? ?????????? ???
????? ???????, ? ??????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ???????
?????????? ??? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????? ???,
????? ??? ??? ??? ??????????? ???????????, ?? ??? ????? ?????????? ?? ?????? ??? ?????? ??????????
????? ??? ??? ??? ?????????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
????? ???.

86 ?????????? ??? ???? ??? ?????? ?????????? ?????????????? ?? ??? ?????? ??? ?????????????? ???
????????? ????, ? ?????????? ?????????? ?????? ? ? ?????????? ?????? ??? ?????? ??? ???? ???
????????? ???? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ? ??????.

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

88 ???????, ?????????? ??? ???? ? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????????? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ??????.

89 ??? ???, ???, ?? ?????????????? ?? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ??? ?????????? ?? ?????????????? ??? ??? ?????? ?????????????? ???
????????????? ??? ?????????? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ???
????????? ???????????, ?????? ??? ?????????? ?????? ?????????????? ?????? ?????????? ???
????? ??? ?????? ?????? ??? ?????????? ?????? ?????????? ?????? (??., ???????,
????????? Cadbury Schweppes ??? Cadbury Schweppes Overseas, ?????????????? ???, ???????
51 ??? 55, Test Claimants in the Thin Cap Group Litigation, ?????????????? ???, ??????? 72 ???
74, ??? ??? 4?? ?????????? 2008, C-330/07, Jobra, ??? ??? ??? ?????? ?????????? ???
??????, ?????? 35).

90 ??? ?????? ??? ?????? ???, ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ???????????, ?? ?????? ?????????????? ??? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

?????????? ??????? ?????????? ??????????????, ??? ? ? ?????????? ??? ? ? ???? ???????,
????? ?? ???? ?? ?????? ?????? ??? ???? ?????? ?????????? ?? ????
????????? ? ?????????????? ??? ?????? ???????, ??? ?????????? ??? ? ? ??????????????
?? ?????? 100 ?? ??????? ??? ?????? ??????????, ?? ?????? ?????????????????? ??
?????????? ?????? ??? ?????? ??? ?????.

92 ????? ??????????, ??? ?????? ??????? ?????? ?????????? ??? ??? ?????????? ??? ?????? ???
????????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ??????
????? ??? ??? ?????????? ??? ?????? ????????????, ??????? ??? ??? ??????????
???????????????, ?????????????? ??? ?????? ??? ?????? ?????? ? ?????????? ??????????
?????????????.

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

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

95 ????????, ? ?? ??? ?????????????? ????????, ??? ??????????, ??? ?????????? ? ????????
????????????? ??? ?????? 170 ??? ?????????? ???, ?????? ??? ?????????? ??????
????????????? ??? ?????? ??? ?????? ?????? ?? ????????, ??? ?? ?????????????? ??? ?????? ??????
????????? ??? ?????? ?????????? ?????? ?????? ?????? ?? ???, ??? ?????????????? ???,
????????? ??? ?????? ??? ?????? ??????????.

96 ????? ??????????, ? ??????? ????? ?????????????? ??? ?????????? ??? ?????? ?????? ??? ?????
????????? ??????? ?????????? ?????????????? ??? ?????????????? ??? ?????????? ??? ?????? ???
????????????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????. ??? ?????????? ?
????????? ?????????? ??? ?????? 172 ??? ?????????? ???, ??? ?????????? ?? ??????????
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?, ?? ??? ?????? ??????????, ?? ?? ?????????? ?????? ?????? ?????? ??? ? ??????????
????????? ?????? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? ???
??? ??? ?? ?????????? ?????? ?????? ??????.

97 ???????, ? ?????????????? ??? ?????? ?????? ?????? ?????????????? ???????? ??? ??????????

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

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

98 ????????? ??????????? ?????????????? ?????????????? ?? ?????????? ?????? ?? ? ?????????? ???
????????????? ??? ?????????????????? ??? ?????????? ??? ?????? ??? ?????????? ??????????, ????
??? ?????????? ???????????, ??? ?? ??? ?????? ??? ?? ??? ?????? ?????????? ?????????? ??? ??? ??
????? ??????? ???, ?????? ?????? ??? ?????????? ?????? ??? ??? ?????????? ??? ?????? ??? ??????? ???
????????? ? ??????? ??? ?????? ??? ?????????? ??????.

99 ??????, ????, ?????? ??, ?????? ??, ???????????, ???, ?????? ???????????, ???????????, ?????? ??
???, ???????????, ???????????????, ?? ?????? ??????? ???????????, ??? ?????? ???????, ?????? ??
??????????, ???????????, ???????????, ???????????, ???????????, ???????????, ??? ?????? ?? ? ???????
??????????, ??? ?????? 174 ??? ???????, ???, ???, ??????????? ?????? ??? ?????? ?? ???????
????? ???, ??? ?????? ???????, ??? ?????? ??? ?????? ??? ?????? ???????????, ?????? ?? ??????? ??
????? ???????????, ?? ???????????, ?? ???????????, ?? ?????? ???????????, ???????????, ???????????
????? ??? ???????????????, ??? ???????????????, ???????????????, ???????????, ??????????? ??
??????????????, ???????, ???????????, ?? ???????, ?????? ??? ???????????, ??????????? ?
????? ???????????, ?? ???????.

100 ???? ?? ?????? ??? ?????????????? ????????, ??? ? ??????? ?????? ?????? ???, ???
?????? ?????? ??? ?????????????? ??? ?????????? ??? ?????? ?????? ??????????????, ?? ??????
????????????? ??? ?????? ?????????????????? ??????????, ??? ?????? ?????? ??? ?????????????? ???
????? ? ??????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????
????????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ?
?????, ??? ?????????????? ???, ?????????? ??? ?????????? ?????? ??? ?????? ??? ?? ??? ??????????
??????, ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???????????, ?????? ??? ??
????????? ?????????????? ?? ?????? ?????? ?????? ?????? ?????????????? ??? ?????? ??????
????????? ??????????????.

101 ???????, ??? ?????????? ??????? ??????? ?? ?????? ? ?????????? ??? ?? ?????? 73 B ???
????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ?????????? ?????????? ??????,
????????? ??? ??????? ? ??????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ???????
?????????? ??? ?????????? ?? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??????????
?????????? ??? ???, ?????? ?????? ??? ?????????? ?????????? ?????????? ?????????????????? ???
????????? ?????????????????? ?????????? ??? ?????????? ?????????? ?????????? ??????????, ???, ??
????????? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ?????????? ?????????? ??????????, ? ?? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ??????????.

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

103 ?????????? ??? ? ?????? ?????????? ?????? ?? ?????? ?????? ?????? ?????????? ??? ?????? ??????

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

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

? ? ?????? 73 B ??? ??????? ?? (??? ?????? 56 ??) ?????? ??? ?????? ??? ???
?????????? ??? ?????????? ?????? ??????? ???????, ??????? ??? ?????? ?
????? ??? ?????? ??? ?????????? ??????? ?????? ??? ?????????? ?????????? ???
????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????????? ???
????, ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????? ??????
????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ??
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?,
?? ??? ?????? ??? ?????? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

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

(?????????)

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