

????????????????? ?????????? C-436/08 ??? C-437/08

Haribo Lakritzen Hans Riegel BetriebsgmbH

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Österreichische Salinen AG

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Finanzamt Linz

(????????? ??? Unabhängiger Finanzsenat, Außenstelle Linz

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

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

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1. ?????????? ?????????? ??? ????????? – ?????????? – ?????????? ?????????? – ???
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(????? 63 ????)

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

(????? 63 ????)

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

(????? 63 ????)

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

(????? 63 ????)

5. ?????????? ?????????? ??? ????????? – ?????????? – ?????????? ?????????? – ???
????????? – ?????????? ??? ??????????

(????? 63 ????)

6. ?????????? ?????????? ??? ????????? – ?????????? – ?????????? ?????????? – ???
????????? – ?????????? ??? ??????????

(????? 63 ????)

(?. ???? 75, ??????. 1)

2. ?????? 63 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?
????? ?????????? ??? ??????? ??? ?????? ??? ?????? ?????? ?? ?????????? ?????????????? ??
????? ?????????? ??????? ??? ?????? ?????? ?????? ??????, ??? ?????????? ??? ?????? ???
??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????????? ?? ??? ?????? ?????? ?????? ?? ??? ?????? ?????? ??? ?????? ?????????????? ???
????????? ??? ??? ?????????? ?????????? ???, ??? 2?? ????? 1992, ?????? ?????? ?
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
??? ?????? ?????????? ?? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?? ?????? ?? ?????? ??? ?? ??? ?????? ???????????. ?? ?????????? ??? ?????? ???
????? ? ?????? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
?????, ? ?????? ?????? ?????? ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?????????????? ??? ?????????? ?????? ?????? ??????, ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ??????????

(??, ????? 104, ????????, 2)

(?. ???? 138, ??????. 3)

4. ?? ?????? 63 ??? ?????????????? ??? ?????????? ?????????? ?????????????? ?????? ? ??????,
??? ?? ?????????? ??? ?????????? ?????? ??????, ?????????? ?? ?????? ??? ??????????????
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??????????????
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ??????, ??? ?????????? ??????????????
?? ?????? ??? ?????????? ??? ?? ?????????? ?????????? ??????????????, ??????, ??????, ??
????????? ?????????? ??? ?????????? ? ?????????? ??? ?????????? ?????????????? ?????????????? ??
????????????? ??? ?????? ?????????? ?? ?????????? ?????????????? ??????????. ?? ?????????? ??? ? ??????
????????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????????? ???
??? ?????? ? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???

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

(???. ???? 147, ??????. 4)

5. ?? ????? 63 ??? ????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
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????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
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????, ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
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????????? ??, ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???.

(???. ???? 173, ??????. 5)

6. ?? ????? 63 ??? ????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?????????, ??? ?????????? ??? ??????????, ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

(???. ???? 173, ??????. 5)

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

?? 10?? ?????????? 2011 (*)

«????? ?????? ??? ?????????? ??? ?????????? – ??? ?????? ?????? – ?????? ??? ?????? ???
– ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? – ?????? ??? ?????? ???
????????????? ??? ?? ?????????? ?????? ?????? – ?????? ??? ?????? ???
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????? ?????????????? ?????? C?436/08 ??? C?437/08,

? ? ?????????? ?????? ?????? ?????????? ?????? ?????? ??? ?????? 234 ??,
??? ?????? ?? Unabhängiger Finanzsenat, Außenstelle Linz (??????) ?? ?????? ??? 29??
????????? 2008, ? ?????? ?????? ??? ?????????? ??? 3 ?????? 2008, ???
????????????? ??? ?? ??? ?????? ?????????? ??? 30 ?????? 2009, ??? ?????? ???
?????????

Haribo Lakritzen Hans Riegel BetriebsgmbH (C-436/08),

Österreichische Salinen AG (C-437/08)

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Finanzamt Linz,

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

????????? ??? ??? K. Lenaerts (?????????), ?????? ??????????, D. Šváby, R. Silva de Lapuerta, J. Malenovský ?? T. von Danwitz, ????????,

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

?????????: K. Malacek, ??????? ????????????,

????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ??? 15?? ?????????? 2010,

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

- ? Haribo Lakritzen Hans Riegel BetriebsgmbH, ?????????????? ??? ??? R. Leitner, Wirtschaftsprüfer und Steuerberater, ??? G. Gahleitner, Steuerberater, ????? ??? ??? B. Prechtl,
- ? ?????????? ??????????, ?????????????? ??? ??? J. Bauer ??? ??? C. Pesendorfer,
- ? ?????????? ??????????, ?????????????? ??? ??? J. Möller ??? C. Blaschke,
- ? ?????????? ??????????, ?????????????? ??? ??? G. Palmieri, ?????????????? ??? ??? P. Gentili, avvocato dello Stato,
- ? ?????????? ??????????, ?????????????? ??? ??? J. Langer ????? ??? ??? C. Wissels, M. Noort ??? B. Koopman,
- ? ?????????? ??????????, ?????????????? ??? ??? J. Heliskoski,
- ? ?????????? ??? ?????????? ?????????? ??? ?????????????? ??? ??? V. Jackson, ??? ???????, ??? ??? S. Hathaway ??? L. Seeboruth, ?????????????? ??? ??? R. Hill, barrister,
- ? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? W. Mölls,

????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ??? 11?? ?????????? 2010,

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1 ?? ?????????? ??? ?????? ?????????????? ?????????? ??? ?????????? ??? ?????????? ??? ????????

2 ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??? Haribo Lakritzen Hans Riegel BetriebsgmbH (??? ????: Haribo), ?????????? ?????????????? ?????????? ??????????

???????, ????. ??? ?? Österreichische Salinen AG (??? ????: Salinen), ?????????? ???????
?? ?????????? ???????, ??? ?? Finanzamt Linz (????????????? ?????? ?? Linz) ?? ???.
????????? ????? ?????? ?????????? ?????????? ?? ?????? ?????????? ?????? ?????? ?????????? ?????????? ??
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| – ?? ?????? ?????? ??????

3 ????? ??????? ???? ?????? ?????????????? ?????????????? ??? ?????????????? ??? ???????????
????????? ? ?????????? ???????, ?? ?????? ?????????????? ??? ?????????? ???????, ? ??????????
?????????? ?????????? ??????????, ?? ?????????? ??????????????, ??? ?? ?????????? ???
????????? ??? «?????? ??? ?????????», ??? ?????????????? ??? ?? ?????????? ?? ???
????????? ? ?????????? ??????? ?????????????? ??? ??????????, ??? ?? «?????? ???
?????????????», ??? ?????????? ??? ? ?????????? ?????? ?????? ?????? ??? ??
????????? ??? ?????????? ??????? ?????????? ?????? ?????????????? ??? ??? ?????? ?????? ???
????????? ? ?????????? ??????? ?????? ?????? ??????.

4 ?? ????? 10 ??? ????? ??? ?????????????? ???????? ??? 1988

(Körperschaftsteuergesetz 1988, *BGBI.* 401/1988), ????? ??????????????? ?? ??? ??? ??? ????
????????? ??????????? ?? 2009 (*BGBI.* I, 52/2009, ??? ????: KStG), ??? ???????????, ???
?? ????? 26c, ?????? 16, ??????? b, ??? KStG, ?? ??? ?? ?????????? ??????????? ??????,
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«1) ?????????????? ??? ?????? ??????? ?????????? ?? ?????? ??? ??????????. ?????? ???
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1. ?????????? ?? ??? ?????????? ?????? ?? ?????????????? ?? ?????????? ??????????????????

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[...]

5. ?????????? [...] ??????????? ??? ?????????? ?? ??????? ????????, ? ?????? ?????? ???
????????????? ??? ?????????? ?? ?????????? 2 ??? ????? ?? 1988 ??? ????? ???????????,
??? ?????? 2 ??? ?????? 90/435/??? [??? ??????????], ??? 23?? ??????? 1990[, ??????? ??
?? ????? ?????????? ??????? ?? ????? ??????? ?? ??? ?????? ??? ?????? ??? ??????????
????????? ?????????? ?????? (?? L 255 ?. 6),] ??? ??? ?????????? ??? ?????? 7.

6. ?????????? [...] ??? ???????? ?? ??????? ?????????? ?? [?????] ??? ??? ??? ??????????
?????????? ?????[, ??? 2?? ????? 1992, (? 1994, L 1, ?. 1, ??? ?????: ????????? ????),] [...]
??? ?? ?? ??? ?????????????? ??? ?????? ?????????? ?????? ?????????? ?????????? ???
????????? ??? ??? ???????, ??? ??? ?????????? ??? ? ??????? ??? ?????????? ??? ?????????? ???
7.

7. ?????????? ??? ?????? ??? ?????? ?????????? ?????????? (??? ????: ?????? ??????????) ??? ?????? 2 [?????????].

2) ??????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? [...] ,????????? ?????????? ?????????? ??? ??? ?????????? ?????, ??? ????? ?????????? ??????????, ????? ?????? ?????? ?????????? 10 % ??? ?????????? [?? ?????????? ??????????].

[...]

4) ???? ?????????? ??? ?? ?????????? 1, ?????? 7, ??? ?????????????? ??? ?? ???
????????? ?? ???? [...] ??? ??????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ???

?????????? 2, ??? ??? ?????????????? ??? ?????????????? ??????????, ??? ?????????????? ???
????????? ??? ??? ?????? ??? ?????? ???? ?????? ?????????? ?????????? ?????? ???
????????? ??? ?????????????? ??? ??? ?????????? (????? 22 ??? ?????????????? ??????
?????????). ?????? ?????? ?????? ?????????? ?????? ?????????? ?????? ????:

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

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

5) ??? ?????????? ??? ??? ?????????? 1, ?????? 5 ??? 6, ??? ?????????? ??? ??? ???
????? ?????? ?? ?????? ??? ?????? ?? ??????:

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

2. ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ???
????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ?????? ?????? ?????? ???
??? ?????? ??? ?????? ?????? [...] ??? ?????? ?????? ??? 10 ?????????? ?????? ????

3. ? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? [...]

6) ??? ?????????? ??? ?????????? 4 ??? 5 ?????? ? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? [?????????] ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? : ? ?????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ?? ?????? ?????? ?????? ?????? . ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?? ?????? ?????? ?????? ?????? »

5 ??? 13 ?????? 2008, ?? Bundesministerium für Finanzen (????????? ????)
????????? ????, ??? ?????? ??? ?????? ??? Verwaltungsgerichtshof ??? 17??
????????? 2008, ?? ?????? ?????????? ??? ?????? 13 ??? ?????? ????, ??? ?????? ??
????? ?? ?????? 10, ?????????? 2, ??? KStG ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? 2009 (BMF-010216/0090-VI/6/2008). ? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? 25 %.

6 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ??????????
????????? ??? ?????? ??? ?????? ??? 25 %, ? ?????? ??? 13? ??? 2008
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

7 ??? ?????? ???, ??? ?????? ?? ??? ?? ??? ?????? ???, ? ?????????? ????

????????????? ?????????????????????? ??? ?????????????? ?????? ?????????? ?? ?????????? ???? ??????????; ?? ??????????;

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

- ?? ??????? ??????? ??? ???????????.

– ?????? ?????????? ??????? ?? ??? ?????????????? ?????? ?????????? ??? ?????? ??? ???? ??
?????????? ??????? ?? ?????? ????? ?????? ?????? ?????? ?????? ???. ?? ?????????? ??? ??
????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????? (????, ??????????????)
?????, ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ?????????? ??????????
????????????? ?????????? ?? ?????????? ??? ??????????????), ?? ?????? ?? ?????????? ?
????????????? ?????????? ??????????.

- ?? ??????? ???. ???. ???. ????????????. ??????????????. ???????????. ???????. ???. ???. ???.
?????????????. ???. ???. ???. ????????????. ???. ???. ??????????. ???. ???. ??????. ???. ???. ???.

- ??? ?????????? ??? ?????????????????????? ????.

8 ?? ??????? ??????????? ?????? ??? ? ??????????? ??? 13?? ??????? 2008 ???????????
?? ??????????? ??? ?? ??????????? ??????????? ??? ??????????? ??? ??????? ??? ?? ??????? ???
2009.

|| - ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????????? ?? ??????????????

9 ????? ?? ??????????? ??? 2001, ? Haribo ?????????? ?????? ?? ?????? ?????????????? ???
????????? ?? ?????????? ???????? ??? ?????????????? ?????????? ?????????? ??????????
????????????? ?????? ?? ?????? ?? ?????? ???, ??? ????? ?????????????? ??? ??????????,
????? ??? ?? ?????? ????. ? Salinen ?????????? ?????????? ?????? ??? ?? ?????????? ??
????????? ??? 2002. ??? ?? ???????? ??? ????? ?????????? ???, ? ??????
Salinen ?????? ?????????? ???.

10 ??????? ??? ?????????? ??? ?? Finanzamt ??? Linz ??? ???????? ??? ?? ????? ??
????????????? ??? ?????????? ??? ?????????? ?????????????? ???????, ? Haribo ??? ?
Salinen ?????????? ??? ?????? ??? ?????????? ????????????

11 ?? ??? ??? 13 ?????????? 2005 ?????????? ???, ?? ?????? ?????????? ?????? ??? ??
????? 10, ?????????? 2, ??? KStG, ?? ????? ??? ??? ??? ??? ????? ?????? ?????????? ??????????
??? 2009, ?????????? ??? ??? ??? ?????????? ?????????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????????? ??? ?????????? ??????????, ?????????????????? ???
????????? ??? ?????????? ??? ?????????? ?????????????? ?? ?????? ?????, ??????????
????????? ?????????? ??? ?? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??????
????????? ??????????, ????? ?? ?????????????? ? ?????????? ?????? ??????????.
??????????, ???' ???????, ?? ?????????? ?????? ??? ?????? 10, ?????????? 1, ???
KStG ??? ?????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?? ?? ???
????????? ??? ?? ?????????? ??? ?????????? ?? ?????? ?????? ?????? ??? ?? ?????? ?????.
????????????? ??????? ?????????? ??? ?????????? ?? ?????????????? ??? ?????? ?????.

12 ?? Finanzamt Linz ??????? ?????? ??? ??????????? ?????? ??????? ???
Verwaltungsgerichtshof (???????????) ????????????, ?????? ????, ??? ??
?????? ?? ??????? ?????????? ??????? ?? ??????? ?? ??????? ?? 63 ???.

13 ?? ?????????? ??? 17?? ???????? 2008, ?? ?? ??? ???????????????????, ???' ??????, ??? ?????????? ??? ?????? 63 ??? ???? ???? ? ?????? ??????, ?? ?????????? ???????, ?????????? ???????, ?????????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??????.

14 ??? ?????? ?? ?????? ???????????, ?? Verwaltungsgerichtshof ??????, ??? ????????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 10, ??????????? 2, ??? KStG, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? 2009, ??????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? Verwaltungsgerichtshof ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

15 ??????, ?? Verwaltungsgerichtshof ?????? ???, ??? ?????? ?????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 25 % ??? ?????????? ?? ?????? ??? ??????.

16 ?????, ??? ?? Verwaltungsgerichtshof, ? ?????? ??? ??????????? ?????? ?????????? ?????? ?????? ???' ?? ? ?? ? ?????? ??? ??????????. ????????????, ??? ?? ?????? ?????????? ?????? ?????? ??? ?????????? ??????.

17 ?? Verwaltungsgerichtshof, ?????? ??? ????' ??????? ?????? ??? ?????? ??? ?????? ??? ?????? 10, ?????????? 2, ??? KStG, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 2009, ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

18 ?? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? 3 ???????? 2008, ?? ?????? ?????????? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????.

19 ?? ????? 10 ??? KStG, ?? ?????? ???, ???????????, ???????????, ?? ??? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 8 ?????? 2009, ?????????? ??? ???? ?????? ?????? ?????? ?????? 104, ?????? 5, ??? ?????? ?????? ?????? ??? . ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

20 ?? ??? ??? 30 ???????? 2009 ?????? ??? ?????? ?? ?????? ?????? ??????

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

21 ??? ?????? C-436/08, ?? ?????? ?????????? ???????, ???' ?????, ??? ? KStG ??????
??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? 10 % ??
????????? ??? ?????????? ?????, ??? ?? ?????????? ?????????????? ?? ??????
????????? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????. ? ?????????? ??? ??????
????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 10, ?????????? 2,
??? KStG.

22 ??? ????????, ?? ?????? ?????????? ??????? ??? ?????????????? ??? ??????????????
????????????? ?? ?????? ?????????? ?????????? ?????????? ?????????? ?????????????? ?? ??? ??????
???? ??? ?? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??? ??? ?????? ?????????? ??
???? ?????????? ?? ?????? ?????????? ?????????? ?????? ??? ?????????? ?????? ??? ??????
????????? ?? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ?????? 10, ?????????? 5, ??? KStG. ???????, ? ?????????????? ??????
?? ?????? ?? ?????? ??? ?????????? (????? 10, ?????????? 5, ?????? 1, ??? KStG), ??
????????? ?? ?????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? 2, ??? KStG) ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????????? ?????? (????? 10, ?????????? 5, ?????? 3, ??? KStG),
?? ?????? ?? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? . ?????????? ??? ?????? ???
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 10, ?????????? 5, KStG.

23 ?? ?????? ?????????? ?? ?????????? ?? ?? ??? ?????? Verwaltungsgerichtshof, ???
????? ?????? ??? 17 ?????? 2008 ?????? ???, ??? ?? ?????? ??? ??????.
?? ??? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ??????.

24 ?????, ?? ?????? ?????????? ?????????? ??? ? ?????????? ??? ??????????, ??? ?????
10 ??? KStG, ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? 10
% ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???, ?? ?? ?????? ???
????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? 25 %. ??
? ?????????? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???
??? Verwaltungsgerichtshof ??? 17? 2008.

25 ??? ??? ?????? ???, ?? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ???
????? ??? ?????????? ???, ??? ?????? C-436/08, ?? ??????
????????? ??? ?????? ???:

«1) ?????????? ??? ?????? [??? ??????] ?? ?? ???? ?????? ?????????? ?????????? ??????????
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??????????
??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????
(????? ??? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????);

2) ?????????? ??? ?????? [??? ??????] ?? ?? ?????????? ??? ?????? ?? ??????

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

3) ?? ??????????? ?? ?? ?????? [?? ?? ??????] ?? ?? ?? ?? ??????????? ?? ?? ??????? ??
?????????? ?? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ?? ??
???????? ?? ?? ??????????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ???????, ???
???????? ?? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? 10 % (25 %), ????????? ?? ?? ??
???????? ?? ??????????? ?? ??????????????? ?? ??????? ?? ??????? ?? ?? ?? ??;

4) ?) ?? ??????????? ?? ?? ?????? ??????????? ?? ??????? ?? ??????? ?? ??????? ??
?? ?????? [?? ?? ??????] ?? ??????????? ?? ??????? ?? ??????? ?? ?? ??????????? ?? ?? ??
?? ??????????? ?? ??????????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??
??????????????, ??? ?? ??????????? ?? ??????????????? ?? ??????? ?? ??????? ?? ?? ??
?????????????? ?? ??????????????? ?? ??????? ?? ??????? (??????????) ?? ????? ?? ??????? ?? ???????????
???????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ???????, ???
???????? ?? ?? Verwaltungsgerichtshof, ??????????????? ?? ??????????? ?? ????? (??????????)
???????? ?? ?? ???????, ??? ?? ??????????? ?? ???????, ???, ??? ?? ????????? ?? ???????????
???????? ?? ?? 10 % (? ?? 25 %) ?? ?? ?? ?? ??????? ?? ??????????? ?? ??????????? ??
???????? ?? ??????????? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ??;

) ?? ??????????? ?? ?? ?????? ??????????? ?? ??????? ?? ??????? ?? ??????? ??
?????? [?? ?? ??????] ?? ?? ?? ?? ??????????? ?? ??????? ?? ?? ??????? ?? ??????? ??
?? ??????? ?? ??????????? ?? ??????? ?? 10 % (25 %), ??????? ?? ??????? ?? ??
???????? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? 10 % (25 %) ?? ?? ??????????? ?? ??
?????? ?? ??????? ?? ??????????? ?? ??????? ?? ??????? ??;

) ?? ??????????? ?? ?? ?????? ??????????? ?? ??????? ?? ??????? ?? ???????, ??????? ?:
?????????? ?? ?????? [?? ?? ??????] ?? ?? ?? ?? ??????????? ?? ??????? ?? ??????????????? ??
?????????????? ?? ??? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??
?????? ?? ?? ??????? ?? ??????????? ?? ??????? ?? ??????? ?? 10 % (25 %), ??????? ??
?????????? ?? ??????????? ?? ??????? ?? ??????? ?? ??????????? ?? ????? ?? ??????????? ??
???????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ?? ????? ?? ??????????? ??
?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ?? ????? ?? ??????????? ??
?????? ?? ???????;»

26 ?? ??????? C-437/08, ?? ??????? ??????????? ?? ??????? ?? ?? ?? ??????? ??
Verwaltungsgerichtshof ?? 17?? ??????? 2008 ??????? ??????? ?? ?? ?? ?? ??
?????????????? ?? ??? ?? ??????????? ?? ??????? ?? ??????????? ?? ?? ?? ??
?????????????? ?? ??? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ?? ??
?????? ?? ??????????? ?? ??? ?? ??????? ?? ?? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??
?????? ?? ???????????.

27 ?? ???????, ?? ?? ??????? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??
?????? ?? ??????? ?? ??????? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ??
?????? ??, ?? ?? ??????? ?? ??????????? ?? ??????? ?? ??????? ?? ?? ?? ??????????? ?? ??????? ??
?? ?? ??????????? ?? ??? ?? ??????? ?? ??????????? ?? ??????? ?? ??????? ?? ?? ??
?????????? ?? ??? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??

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

28 ??? ??? ?????? ??????, ?? ?????? ?????????? ?????? ??? ?????? ?? ?????????? ???
????? ??? ?????????? ?? ? ??????, ??? ?????? C-437/08, ?? ??????
????????????? ??????????, ??? ??????????????:

«1) ??? ?????? ??? ????? [??? ??????] ?? ? ?????????? ??? ?????? ??????????,
???? ?????????? ??? ?????? ??? ??????, ? ?????? ??? ??????????????, ??? ?????? ???
????????? ??? ?????????? ?? ?????? ?? ? ?????????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ???
?????;»

2) ??? ?????? ??? ????? [??? ??????] ?? ? ?????????? ?? ?????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?? ? ?????? ??? ??????,
????? ?????????? ??? Verwaltungsgerichtshof, ?????????????? ?????????? ???
(?????????) ?????? ??? ??????, ?? ??? ?????????? ??? ?????????? ??? ?????? ???
????????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????;»

29 ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? 16? 2009, ?????????? ?
????????? ??? C-436/08 ??? C-437/08 ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ??????.

30 ??????, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?? ??? 30 2009 ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ??? ??????????, ?? ?????????? ?????????, ??? 18 2009,
?? ?????? ?? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??????.

III – ??? ??? ?????????? ??????

? – ??? ??? ?????? ?????? ??? ?????? ??? ?????? ???

31 ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ??????.

32 ??? ?????? ??????, ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? (????????? ??? 18? 1999,
C?107/98, Teckal, ??? 1999, ?. I?8121, ??? 34, ??? 23? 2003,
C?57/01, ??? ?????? ??? ?????? ??? ?????? 2003, ?. I?1091, ??? 56).

33 ??????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? 49 ??? ?????? ?????? ?????? ??? ?????? 63 ??? ???
????????? ?????? (??., ??????, ?????? ??? 12? 2006,
C?446/04, Test Claimants in the FII Group Litigation, ??? 2006, ?. I?11753, ??? 36).

34 ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???

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

? – ??? ??? ???????? ??? C-436/08

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

39 ?? ?? ??????? ???, ?? ?????? ??????????? ????, ???' ??????, ?? ??????????????? ??
?? ????? 63 ??? ??????????? ????, ?????? ?????? ?? ?????? ?????? ?? ??????????????? ??
?????????? ??????????? ?? ?????? ??????????? ??? ?????? ??????????? ?? ??????????????? ?? ??????
?????????????? ?? ?????? ?????? ?? ?????? ??????????? ??? ?????? ??????????? ?? ??????
?????????????? ?? ?????? ?????? ?????? ???????????, ??? ??? «????????? ??????????» ???
?????????????? ??? ?????? ??????????? ??????????.

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

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

41 ???????, ??????????? ???, ??? ??????? ??? ?????????? ??? ?????? 267 ???, ???
?????????? ?? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???
??????????, ??? ??????? ??? ??????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??????????. ??????, ?????????? ?????????? ??? ?????? ??? ?????????? ???, ???
???? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ? ???
????????? ?? ???????, ?? ???????, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???, ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???????, ???
????????? ??????????, ???????, ?? ?????????? (?., ???, ???, ???, ??? 22?)
????????? 2009, C?261/08 ??? C?348/08, Zurita García, ?????? 2009, ?. I-10143, ????? 34
??? ??? ?????????? ??????).

42 ? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????? ?????? ??? ??????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ???????, ??? ??????
????? ?? ?????? ??????????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ???
????????? ??? ?????? ???, ??? ?? ??????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? 13?? ?????? 2001, C?379/98, PreussenElektra, ?????? 2001, ?. I-2099,
????? 39, ??? 22?? ?????????? 2002, C-390/99, Canal Satélite Digital, ?????? 2002, ?. I-607,
????? 19, ??? Zurita García, ???????????, ??? 35).

43 ?? ??? ?????? ??? ???????, ?????????????? ??? ? ?????????? ??? ?????? ???
????? ???, ??? ?? ??????? ??? ??????? ?????????? ???, ??????????
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ???
????????? ??? ?? ?????? ???, ?????? ?? ?????? ??? ?????? ???, ??? ?? ??????
????????? ??? ?????????? ?? ?????? ??? ?????? ??? «????? ???»,

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

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

45 ?? ?? ??????, ?? ?????? ?????? ?????? ?? ?????? ?????? ??????.

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

i) ?????????????? ??????????????

46 ?????????????? ???? ?? ?????? 63, ?????????? 1, ???? ?????? ?? ?????????? ???? ??????????
????????? ??? ?????? ?????? ???? ?????? ???, ???? ???? ?????? ???? ?????????? ???? ??????????
??? ?? ?????? ??????. ???? ?????, ?????? ???, ???? ?????? ???? ?????????? ???? ??????????
??? ?? ????? «????????? ??? ??????», ?????????????? ???? ?? ?????????? ???? ??????????
????????? ?????? ??? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ????.

47 ?? ?? ?????? ???, ?? ?????? ?????????? ?????????? ?? ?????? ?? ?????????? ???
?????? 63 ???? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ???
????? ????, ? ?????? ?????????? ???? ?? ?????????? ???? «????????? ??????????»
?????????, ???? ?????????? ?????????? 10 % ?? ?????? ?????????? ?????????? ??????????
????????????? ?????????? ???? ?????? ?????????? ???? ?????? ???? ?????????? ???? ??????????
????????????? ?? ?????? ?????????? ???? ?????? ?????????? ?????????????? ?? ?????? ?????? ???
????? ???? ????.

48 ??????, ???? ?????????? ? ??????????, ? ?????????? ???? ? ?????????? ??????????
????? ???? ?????????? ???????, ?? ?????????? ???? ?????? ???? ?????? ????, ?????? ??
????? ?????????? ??????, ??????, ???? ?????????? ?????????????? ? ?????? ??????????????
??? ?????????? ?????????????? ?????? ???, ???????, ???? ?????????? ???
????? ?????????????? ???? ?????????? ?????????????? ?????????? ?????????????? ?? ??????
????? ???? ???? ???? ????. ???????????, ?? ?????? 63 ???? ??????????, ???' ??????, ??
????????? ??????????, ???? ?????? ??????, ???? ?????????? ?? ?????? ??????????
??? ?????????? ?????????????? ?? ?????? ?????? ?? ?????? ?? ? ?????????? ???? ??????????
????????? ???? ?? ?????? ?????? (??.. ??????? ??? 4?? ?????? 2009, C?439/07 ???
C?499/07, KBC-Bank, ?????? 2009, ?. I?4409, ?????? 71). ???????, ? ?????? ???? ???
????? ???? ?????? ?????????? ?????????? ???? ?????????? ?? ?????? ?????????? ???? ?????? ????
????? ?????? ?? ?????? ?? ?????????? ???? ?????? ?????? ?????? ??????????.

49 ??? ?????? ???? ?????????? ??????????, ?????? ?? ?????????? ?? ?? ?????? 63 ????
????? ???? ?????? ???? ?????????? ?????? ?????? ???? ?????? ?????????? ???? ??????????
????????????? ?? ?????? ?????????? ???? ?????? ???? ?????????? ???? ?????? ??????????
????????????? ?????? ???? ?????? ???? ?????? ???? ?????????, ???' ?????????? ???? ?????? 10,
????????? 1, ?????? 1, ??? KStG, ???, ?????? ???? ?????? 10, ?????????? 1, ?????? 6, ???
KStG, ?? ?????????? ?????????? ?? ?????? ?????????? ???? ?????? ?????????? ???? ?????? ?????????? ??
????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ????
????????? ???? ?????? ???? ?????? ?????? ???? ?????? ?????? ?????? ?????? ?????? ????

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

ii) ??? ??? ?????? ?????????? ?????????? ??? ?????? ??? ????????

50 ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??
????? 63, ?????????? 1, ????, ?????? ?????????? ?????????????? ??? ?????? ?????????? ??????????
????????????????? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????????? ??? ??????????
??? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????
??? ?????? ?????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ??????
(????????? ??? 25?? ?????????? 2007, C?370/05, Festersen, ?????? 2007, ?. I?1129, ???
24, ??? A, ??????????????, ??? 40).

51 ??? ?????? ?? ? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????
????? ????????, ?????????? ?????????? ???, ??? ???? ?????? ??? ?????????? ??? ?? ??? ??
?????????, ?? ??????? ?????? ??? ?????? ?????????? ?????????? ?????????? ??????????????
????????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ???
????????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??????????
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????????? ?????? ??? ??????????
????? ??? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??????????
??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
??????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ??????
?? ?????????? ?? ?????????? ?????????? ??? ?????? ??? ? ?????????? ??? ?????? ??????
????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? de facto, ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ???
????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ???, ?????? ?????????? ??
????????? ?????? ??? ?????? ?????? (??., ???' ???????, ?????? ??? 28??
????????? 2010, C?72/09, Établissements Rimbaud, ??? ??? ?????? ?????????? ???
??????, ??? 25).

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

53 ??????, ? ?? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????, ???'
?????, ?????????? ?? ?????? 63 ???.

54 ???????, ?????? ?? ?????????? ?? ? ?? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ???.

iii) ??? ??? ?????? ?????????????? ??? ?????? ??? ??????????

55 ??? ?? ??? 65, ?????????? 1, ??????? ??, ???, «[?] ??? 63 [??] ??? ??? ??
????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????».

56 ? ??????? ???? , ??????? ??????? ??????????? ??? ?? ?????????? ????? ?? ??????? ???? ???????????
????????????? ??? ??????????? , ??????? ?? ??????????? ????? . ?????????? , ??? ??????? ??
????????????? ??? ??? ?????? ??? ??? ?????????? ?????? ?????? ??? ?????????? ?????? ???
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?)
????????? ??? 11?? ??????????? 2008, C?11/07, Eckelkamp ??. , ?????? 2008, ?. I?6845,
????? 57, ????? ??? ??? 22?? ??????? 2010, C?510/08, Mattner, ??? ??? ?????
????????? ??? ?????? , ????? 32).

57 ??????????? , ? ?????????? ??? ?????????? ? ?? ??? ?????? ?????????? ?????????????? ??? ??
????? 65, ?????????? 3, ????, ?? ?????? ?????????? ??? ?? ?????? ?????????? ?????? ???
????????? ? ?????????? 1 ??? ?????? ????? «??? ?????? ?? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????????????? ?????? ?????????????? ?????? ??? ?????????? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? 63».

58 ?? ??????? ?????????????? ??? ?????? ?????????? ?? ?????? 65, ?????????? 1,
????????? ??, ??? ?????, ???????, ?? ?????????? ??? ?????????? ??? ?? ?????????????? ??? ??
????????? 3 ??? ?????? ?????? ?????????? . ??????, ??? ?? ?????????? ?????????? ???,
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??
????????? ?????? ?? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ???
????????? , ?????? ? ?????????? ?????? ?????????? ??? ?????? ?????????? , ?????? ??????????
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????? (?. ??????? ??? 6?? ?????? 2000, C?35/98, Verkooijen, ?????? 2000, ?.
I?4071, ????? 43- ??? 7?? ?????????? 2004, C?319/02, Manninen, ?????? 2004, ?. I?7477,
????? 29- ??? 8?? ?????????? 2005, C?512/03, Blanckaert, ?????? 2005, ?. I?7685, ?????
42, ??? ??? 19?? ?????????? 2009, C-540/07, ??????? ??? ?????? , ?????? 2009, ?. I-
10983, ????? 49).

59 ?????????? ???, ?????? ?????????? ???, ?????? ?????????? ???, ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? , ?
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??????????
????????? , ??? ?? ?????? ???, ?? ?????????? ??? ?????????? , ?? ?????????????? , ??
????????? , ?????? , ?? ?????? ?????? ?????? (?. ??????????????
????? Test Claimants in the FII Group Litigation, ????? 62).

60 ??? ??? ??????? ???, ?? ??? 63 ??? ?????? ?? ??? ?????? ??? ?????? ?? ???
????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? , ??? ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????????? , ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? (?. , ?????? , ??????????????
????? Test Claimants in the FII Group Litigation, ????? 72).

61 ?????? , ? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? , ??? ? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ??????
????? ?????? , ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????

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

62 ??? ??????????, ? ?????????????? ??????????????, ?????? ??? ?????? ??????????, ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????????
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????????? ??? ??? ??????????
??? ?????? ?????????? ??? ?????? ?????? ?????? ??????????.

63 ??? ????????, ?????? ?? ?????????? ?? ? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????????????? ?????? ??? ??????
????????? (?? . ?????? ??? 11?? ?????????? 2007, C?451/05, ELISA, ?????? 2007, ?. I?8251, ??? 79).

64 ? ??????????, ? ??????????, ? ???????, ? ?????????? ?????????? ??? ? ?????????? ???
????????? ?????????? ?????????????? ???, ?????? ?????? ?????????? ?????????? ?????????? ???
??? ??????? ?????????? ???, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 77/799/??? ???
????????? ??? 19?? ?????????? 1977, ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (?? ??? . ??? 09/001, ?. 86),
???? ?????????????? ?? ??? ?????? 92/12/??? ??? ??????????, ??? 25?? ?????????? 1992
(?? L 76, ?. 1, ??? ?: ?????? 77/799), ??? ?????? ?????? ?????????? ?? ?????? ???
????????? ??? ?????????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
?????????.

65 ??? ?????????? ??? ? ?????????? ?????? ?? ??? ?????????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????
?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?? ?????????? ?????? ?????? ?????????? ?? ?????????? ?????? ?????? ?????? (??.,
????????? ?????? ?, ??? 60, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
?????????.

66 ??? ??????????, ???????, ??? ?? ?????? ?????????? ?????? ??? ?????????? ???
??? ?????? ???, ?? ?????? ?????? 77/799, ??? ?????????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? (????????????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? 70, ??? Établissements Rimbaud, ??? 41).

67 ??? ???????, ??? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ?????????? ???
????????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ???,
?? ?????? ?????? ?????? ??????, ???' ?????, ?????? ?? ?? ?????????? ?? ?????? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?? ?? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
(????????????? ?????? Établissements Rimbaud, ??? 44).

68 ??? ?? ?????? ??? ?????? ?????? ?????? ?????? 10, ?????????? 5, ??? KStG

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

69 ???????, ??????? ??????? ???????, ??? ?????? ??? ?????? ??? ?????? ??????, ? ?????? ?????? ???
????????? ??? ?????????? ?? ?????? ?????????? ?????????? ?????????? ?????????? ?? ?????? ??????
??? ?????? ?????? ??? ??? ?????? ?????? ?????????? ?????????? ?? ?? ?????? ?????? ??????
????????? ?? ?????????????? ??? ?????????????? ?????? ?????????? ?????? ?????????? ?????????? ???
????????????????? ??? ?????????????? ?????? ?????????? ??? ?????? ?????????????? ?????????? ???
?????????.

70 ??????, ? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ??? ?? ?????? ?????????? ???
??? ?????????? ???, ??? ?????? ?? ?????? ?????? ??? ?????????? ??? ?? ?????? ?????? ???
(?. ?????????? ?????? ELISA, ????? 82 ??? ??? ?????????? ??????).
????????, ?????? ?? ?????????? ?? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ?????? ?????? ?????? ??? ?????? ??? ??????????.

71 ???????, ??????????????, ??????, ???, ?????????????? ?????? ??? ??????????????, ???
?????? ?????? ???, ???' ?????, ??? ?????????? ?? ?????? ??? ?????????? ??? ?????????????? ???
????????? ?????????????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ?????????? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? 10 % ??? ?????????? ??? ?????????? ??? ??????????.

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

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

74 ?? ?????????? ??? ?????????? ? ?????????? ?????????? ?????????? , ??? ?' ??????????
????????? , ??? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????? ?????????? , ?????? ?? ?????????? . ?????????? , ???
????????? ? ?????? ?????????? ??? ?????? 90 ??? ?????? ???, ? ?????????? , ???
????????? ??? ?????????? ??? ?????? ?????? , ? ?????? ??? ?????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????????
????????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ??????.

75 ??? ???????, ??? ?????? ?????????? ?????? ?? ?????? ? ?????? ? ?????? ??? ??
????? 63 ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ? ?????? ??????

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

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

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76 ?? ?????? ?????????? ?????????????? ???, ??????? ??? ?????? 10 ??? KStG, ??
????????? ?????????? ?????????? ?????????? ??????????, ?? ?????????? ?????????????? ???
????????? ??????????, ?????????? ?????????????? ?? ??? ?????? ??? ?????? ??? ??????
????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ???,
???? ?? ?????? ??????????, ? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??????
????????????? ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????????????? ??? ??????, ? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?,
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

77 ? ???????, ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ???, ???' ??????, ??
????????????? ?? ?? ??? 63 ??? ????? ?????????? ?????? ?????? ??? ?????? ??? ??????
????? ? ?????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ?????????? ?????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??? ??? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???
????????? ??? ?????? ??? ??????????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??? ???
????????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
?????????, ?? ??? ??? ??? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

78 ? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?? ??????????
?? ?????????? ?? ?????? ?? ?? ??? 63 ???, ??????, ??? «?????????» ??? ?? ?????? ???
????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ???
? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??????, ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

79 ?????????? ??? ?? ?????? 10, ?????????? 1, ?????? 1, ??? KStG ?????????? ???
????? ?????????? ?? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ????. ???
?? ?????? 10, ?????????? 1, ?????? 5 ?? 6, ??? ?????? 5, ??? KStG, ? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

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

81 ????????, ?????? ??? ????? ?? ?????? ?????? ?????? ?????????????? ?????????? ???
????????? ?????????? ?????? ?????? ?????? ??? ?????? ?????, ? ??????, ???' ????,
????????????? ??? ?? ?????? 63, ?????????? 1, ???.

82 ??????????, ?????? ?? ?????????? ?? ? ?? ????? ?????????????? ?? ??????????
????????????? ?? ?????????? ?????????????????? ?? ?????????? ?? ?????????? ?? ??????????
????????? ?? ??? ?????????? ?????????? ?? ??????????.

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

83 ??? ??? ???????????? ??? ??? 58 ??? ?????? ?????????? ?????????? ?????????? ??????????
???, ??? ?? ??????? ??????? ?? ??? ????? ??????? ??? ?????? ?????? ?????? ?????????? ??????????
???? ???????, ?????? ?????????? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?
????????? ?????? ?????????? ?? ??? ????? ?????????? ??? ??? ?????? ?????????? ?????? ??????
? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????.

84 ???????, ????????????, ????????, ???, ?????? ????????????, ????????, ???, ?????? ????????????, ????????, ???, ?????? ???
?????? ??????, ??? ?????????? ??? ??????? ? ??? ?????? ?????????? ??? ?????? ?????? ????????????
?????????? ??, ??? ????????????, ???????, ? ?????????? ??? ?????? ?????????? ??????? ? ???
????????? ???????, ?????????? ?????????? ?????????? ???????, ?????? ?????????? ??? ?????? ?????????? ????????
? ??? ?????? ???????, ?????????? ?????????? ?????????? ????????????, ????????, ?? ?????????? ???
???????????, ?? ?????????????????????? ?????? ??????????, ??????????, ?? ?????????? ??????????????
????????? (??.. ?????????????? ?????? Test Claimants in the FII Group Litigation, ??? 62).

85 ??? ???. ?????????? ??????, ?? ????? 63 ????. ?????????? ?? ???. ?????? ??????, ?? ??????
????????? ?????? ?????? ?????? ???. ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ???. ?????????? ?????? ?????? ?????? ?????? ???. ?????????? ?????? ?????? ??????, ?? ??????????
???. ?????? ?????????? ???. ?????????? ???. ?????????? ?????? ?????? ?????? ?????? ?????? ???.
????????? ?????? (??., ??????, ?????????? ?????? Test Claimants in the FII Group
Litigation, ???. 72).

86 ???????, ??? ?????? ?????? ?? ? ?????? ?????? ?? ?????????? ?? ?????????????? ?? ?????? ?????? ??
?????????? ?? ???? ?????????????? ??????????? ?? ???? ?????????? ?????????? ?????????? ??????????????
????????? ?? ?????? ?????????????? ?? ? ???? ?????? ?????????? ?? ? ???? ?????????? ?? ????
?????????????? ?? ???? ???????, ??????????????, ??? ?????? ?? ????
??????????????, ??? ?????????????? ?????????? ?? ? ???? ?????? ?????????????? ?? ???? ??????????????
?? ???? ???????, ?????? ?????? ? ?????????????? ?????????????? ?? ???? ??????????? ?? ????
????????? ?????????????? ?? ???? ?????? ?????????? ?????????? ?? ???? ?????????????? ?? ????
????????? ?????????????? ?? ???? ?????? ?????????? ?????????? ?? ???? ?????????????? ?? ???? ??
????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?????????? ?? ???? ?????????????? ?? ????
????????? ?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?????????? ?? ???? ??????????

?????????? ??????? (??., ??????????????? ?????? Test Claimants in the FII Group Litigation, ??????? 48 ??? 57- ??? ???? ??? ?????? ??? 23?? ??????? 2008, C?201/05, Test Claimants in the CFC and Dividend Group Litigation, ??????? 2008, ?. I?2875, ????? 39).

87 ???????, ?? ? ??????? ?? ?????????? ?????????? ?????????????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????????? ?? ?????? ??? ?????????? ??? ???? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? (?????????????? ?????? Test Claimants in the FII Group Litigation, ?????? 51).

88 ???????, ?? ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????????????????? ??? ?????????????? ?????? ??? ?????????? ??????, ?? ??????? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? (?. ??????????????? ?????? Test Claimants in the FII Group Litigation, ?????? 52).

89 ? ??????? ?? ??????????? ?????? ???????, ??? ??? ??????? ???????, ??
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????????? ?, ?? ?? ?????? ??? ?????????? ??? ?????????? ?? ?????? ?????? ?????????????? ???
????????? ????????. ????????????, ? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ??????? ??? ?? ?????????? ??????????????
????????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??????, ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ??????????
????????? ?, ??? ?????? ??? ??? ?????? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????? ????????. ??? ?????????? ???, ? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????? ?? ?????? ?? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? .

90 ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?????????????, ?? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????????????? ??? ?????????? ???
?? ?? ?????????? ??? ?????????? ?? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ?????? ????. ?????????? ?, ?? ?????????? ??? ?????? ????, ??
? ?????? ?????????? ??? ?????????????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ???,
????????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?????????? ?, ?? ?????? ?????? ?????? ???
????????? ??? ?????????? ?, ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
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91 ??? ?????? ?? ?????????? ?????? ??? ???? ?????? ?????????? ??? ?????? ?????????? ???
?? ?????????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ?? ?????? ??? ?????????? ??? ????,
????????????? ?? ?? ?????? ??? ?????? ???, ?? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????????
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? (??.
????????? ?????? Test Claimants in the FII Group Litigation, ?????? 53).

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

93 ? Haribo ??????????? ??????? ???, ?????????? ??? ? ?????????????? ??????????
????????????? ?? ?????? ?????????????? ??? ?????????? ??????????, ?? ??????????
????????????? ?? ?????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ??
????? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????????? ?????????? ?????????? ???????, ??? ??????, ?? ??? ?????? 25 % ???
??? ?????????? ?????????? ?????????? ??????? ? ?????? ?????????? ??? ??????????????.
????? ?? Haribo, ?? ??????? ??? ?????????? ??? ??? ?????????????? ?????? ?????????? ???
???? ?????????? ??? ?????? ?????? ?????? ?????????? ?? ?????????????? ??????????????
????????? ??? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?? ?????????????? ?????? ?????? ?????????? ?????????????? ?????? ?????????? ???.

94 ???????, ? ???????, ? ???????, ? ???????, ? ??????? ??? ? ??????? ??????????, ?
????????? ??? ??????? ?????????? ??? ? ??????? ?????????????? ??? ? ??????????
????????? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??????????
??? ?????? ??????????. ???????, ? ??????? ?????? ?????????? ??? ??? ?????????? ???
????????? ??? 13?? ?????? 2008 ?????????? ?????????? ?? ?????????? ?????????? ???
????????? ??? ??? ?????? ?????????????? ??? ?????????????? ??? ?????????? ???.

95 ???????, ?????????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ??????????
?? ?????????? ??? ??? ?????????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ??
????????????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??
????????? ?????????? ???, ??? ???????, ?? ?????? ?? ?????????? ?? ?????????? ???
?????? (?., ??????, ??????? ??? 3?? ??????? 2002, C?136/00, Danner, ?????? 2002,
. I?8147, ????? 50- ??? 26?? ?????? 2003, C-422/01, Skandia ??? Ramstedt, ?????? 2003,
. I?6817, ????? 43, ????? ??? 27?? ??????? 2009, C?318/07, Persche, ?????? 2009,
. I?359, ????? 54).

96 ???????, ?? ??????? ??? ?? ??????? ?????????? ?????????? ?????????????? ??
????? ?????????? ??? ??????? ?????????? ?????????? ?? ??? ?????? ?????? ??? ?????? ???
??? ?? ?????? ??? ?????? ??? ?????? ??? ??????????, ??? ?????????? ?????????? ???
??????????, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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97 ???????, ?????? ??? ?????? ?????? ?????? ???????, ???' ?????, ?????????? ?? ?????????? ???
?????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????????? ???????
????????, ?????????? ?? ?????? ??? ?????????? ??? ?????? ?? ?????????? ?????????? ???
????????? ?????? ??? ?? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ??,
?? ?????????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??,
????????? ??? ? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ???, ????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ?????? ??? ?????? Test Claimants in the FII Group Litigation, ?????? 48 ??? 53).

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

98 ??????? ?????? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??
?????? ??? ?????????? ?????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ?? ???
????????? ?????? ?????????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ???, ??? ?????????? ??? ?????? ???????, ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ??? ??? ?????????? ????, ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??????????
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???, ??? ?? ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????
??? ?????? 58 ??? ?????? ???, ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?? ?????? ?? ?????????????? ?? ?????? ?????? ?????? ???.

99 ??????????, ?????????????? ???, ??? ?????????????? ? ?????????? ??????????, ?
????????? ??? 13?? ??????? 2008 ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ??? ?????????? ???
????????????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ?????? ??????. ?? ?????? ???
????????????? ?? ?????????? ?????? ??? ?????? ?? ?????????????? ?? ??? ??? ?????????? ???
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??????. ??????, ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???.

100 ????, ??? ?????? ? ??????????, ? ??????????, ? ?????????? ??????????, ? ??????????
?? ??????? ?????????? ??? ?????? ??? ? ?????????, ?? ?????? ??? ??? ?? ?????????? ?? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ? ??????????
????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????
????????? ??? ?????? 77/799 ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??
????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

101 ??????????, ?????? ? ?????? 77/799 ?????????? ??? ?????? ??? ?????? ?????? ??????????
????? ?? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? 2, ?????????? 1, ??? ?????? 77/799 ??? ???
«?????» ?????????? ???, ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
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????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
?? ??? ?????? ?????? ?????? ?????? ?????? ?????? (????????? ??? 27?? ??????????)
2007, C?184/05, Twoh International, ?????? 2007, ?. I?7897, ??? 32, ??? Persche,
??????????, ??? 65).

102 ??????, ? ?????? 77/799 ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ???

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103 ??? ??? ??? ?????? ??????, ? ??? ??? ?????? ?????????? ?????????? ?????????? ?????? ???

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104 ??? ????????, ?????????????? ??? ?????? ??? ??????????????, ??? ?????? ?????????? ??????????

?????? ??? ?????? ?? ??? ?????? ??? ?? ??? 63 ??? ?????? ??? ?????? ??? ?????? ??? ???

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

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

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

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

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

3. ??? ??? ?????? ??????????

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105 ?? ?? ??? ?????? ??????, ?? ?????? ?????????? ?????? ??? ?????? ?? ?? ??? 63 ???

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

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

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

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

????????? ??? 10 %, ?????????? ??? 25 %, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

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

106 ??????, ?????????????? ??? ?? ?????? ?????? ??? 25 %, ?? ?????? ?????????? ??

????? ?????????? ??? ?????? ???, ??? ?????? ??? ?? ??? 10 ??? KStG, ?? ?????? ??? ???

?? ?????????? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? 2009. ??????, ??? ???

????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? 10,

????????? 1, ?????? 7, ?????? ??? ?????? 2 ??? 4, ??? KStG, ?? ?????? ??????????

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

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

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

????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 10 % ??? ?????? ??? ???

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

107 ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????, ? ?????? ?????? ??? ???

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

108 ?????? ? ?????????? ??????????????? ??? ?????????? ??? ?????? ?????? ??????????????????? ???
????? ??? ?? ?????????? ?? ??????????????? ??? ?????? ?????????????? ???????????????????
??????????, ?????? ?? ?????????? ???, ?? ?? ?????? ???????, ?? ?????? ?????????? ?????????? ??? ??
?????????????? ?? ?? ?????? 63 ??? ?????????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??
????? ?????????? ??? ?? ?????????? ?????????????? ??? ?????? ?????? ?? ?????????? ?? ??????????
????????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??? ??? ??? ??
????????????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ????, ??? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???
????????????? ??????.

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

109 ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ???????????
?? ??????????? ??? ??????????????? ??? ?????? ?????? ?????????? ??? ?? ?? ?????????? ??
????????? ??? ?? ?????????? ??????????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ???.
??????????, ?????? ?? ?????????? ??? ?? ?????????? ?????? ?????? ?????????? ?? ???????????????
????? ?????? ?????????? ?????????? ?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ???
????? ??? ?????????? ??? ?????????? ?????????????? ??? ?? ?????? ?????? ?????? ???, ?? ??????
??? ?????????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ??????
????????? ??? ?????? ?????????? ???' ?? ?? ?? ?????? ?????????? ?????????????? ??? ??????
????????? (??., ???????, ?????????????? ?????? Test Claimants in the FII Group
Litigation, ??? 166, ?? A, ??? 42).

110 ??????, ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ? ??????
??????????, ???' ????, ??? ?? ?????? 63, ?????????? 1, ???.

111 ????? ?????? ?? ?????????? ?? ? ?????????? ?????? ??? ?????? ?????? ?????????? ?????????? ???
????????? ?????? ?? ?????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??
????????? ?????????? ??? ??????.

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

112 ????? ?????????????? ??? ?????? 58 ??? 83 ??? ?????? ?????????? ??????????, ??? ?? ??????
?? ??????? ?????? ?? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

113 ?????, ??? ?????? ?????????? ???, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ??????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??

?????? ???, ?? ?????????? ???. ??????????????, ?? ?????????????????? ?????? ??????????,
????????, ?? ????????? ?????????????? ?????? (??.. ?????????????? ?????? Test
Claimants in the FII Group Litigation, ????. 62).

114 ??? ??? ?????????? ??????, ?? ????? 63 ??? ?????????????? ?? ??? ?????????? ?????, ?? ??????
????? ???????? ?????????? ??? ?????? ?????????????? ?????????????? ??? ?????? ?????????? ??????????????
?? ?????? ?????????????? ?? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??????????, ??
????????????? ??? ?????????? ??? ?????????? ?? ?????? ?????????????? ?? ?????? ??????????
????????? ??? ?????????? ?????????????? ?? ?????? ?????? ??? ?????? ?????? ??? ??? (??.,
???????, ?????????????? ?????? Test Claimants in the FII Group Litigation, ?????? 72).

115 ???????, ? ?????? ??????? ??? ?????? ?????? ??? ?????????? ?????? ??? ???????????.
???????????, ??? ? ?????? ??? ?????????? ?????? ?????????? ?? ?????? ??????????
????????? ??? ?????????? ?????????????? ?????? ?????????? ?????????? ?? ?????? ??????????
????????? ???????, ??? ??????????, ??? ??????????, ?? ?????? ??? ?????????? ??? ?????? ??????
????????? ??????? ?????????? ?????????? ??? ?????? ?????????? ?? ?????? ??????????
????????? ????

116 ???????????, ? ??????????? ???????????, ??????? ??? ????? ???????, ???
?????????? ?? ??? ?? ??????????? ???????, ??????? ?? ??????????? ???, ???
?????? ?? ?????????????? ?? ??? ?? ??????? ?? ??????? ??????????? ?? ???????
??????????.

117 ?????????????? ??????? ?? ?????????? ?? ? ?????????? ??? ?????????? ??? ?????? ??? ?????
????? ?????????? ?????????????????? ??? ?????????? ?????? ?????? ?????? ?????????? (??.
????????????? ?????? ELISA, ????? 79).

119 ???????, ?????????????? ??? ? ?????????? ??????? ?? ??? ?????????????? ??? ?????
??? ?????????? ?????????? ??? ?????????? ??? ??????? ?? ??? ?????? ?? ??????????
????????? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?????, ?????? ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? (????????????? ??????)
Établissements Rimbaud, ??? 40 ??? ??? ?????????? ??? ??????).

120 ??? ??? ?????????? ??????, ??? ?????????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?? ???? ??
????????? ??? ??? ?????????????? ??? ?????? ?????? ?????????? ??? ? ??? ?????? ???
????????????? ??? ??? ?????? ??? ??? ?? ?????????? ?? ?????????????? ??? ?????????? ???
????????? ?????????? ??? ??? ?????? ??? (????????????? ?????? A, ??????? 36 ???
37, ??? ??? ?????????????? ?????? Test Claimants in the CFC and Dividend Group
Litigation, ??? 93, ??? KBC-Bank, ??? 73).

121 ????? ??????????????? ?? ???? ??????????? ????, ?????? ?????? ?? ???? ?????????? ?????????????? ??
?? ???? ?????? ?? ???? ???????????????, ?????? ?????, ?? ???? ?????????? ?????????????? ??
????????? ?????????? ?? ???? ?????????? ?????? ?????????? ?? ???? ?????? ?????? (??., ???????,
????????? ?? 13?? ??????????? 2005, C?446/03, Marks & Spencer, ??????? 2005, ?. I?10837,
????? 45- ?? 18?? ??????? 2007, C?231/05, Oy AA, ??????? 2007, ?. ?-6373, ????? 51,
????? ?? ?? 15?? ????? 2008, C?414/06, Lidl Belgium, ??????? 2008, ?. I?3601, ????? 42).
???????, ? ?????????????????? ?? ???? ?????, ? ?????? ?????????? ?????????????? ?? ???? ??????
??????????, ??????, ??? ??????? ?? ???? , ?? ?????????????? ?? ???? ?????????? ?? ???? ?????? ??
?? ?? ?????? ?? ????.

122 ???????, ??? ?? ?????????????? ? ?????????? ?????????? ??????? ??? ??????????
????????? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???
????????? ??? ??? ??? ??? ??? ?????????? ??? ?????? ??????????, ?????? ?? ???
????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???
?? ??? ?????????? ?? ?????????? ??? ??? ?????????? ??? ?????? ?????? ?????? (??.
????????? ??? 15?? ????? 1997, C?250/95, *Futura Participations* ??? Singer, ??????? 1997, ?. ??2471,
????? 26, ??? ??? 11?? ?????? 2004, C?9/02, *de Lasteyrie du Saillant*, ??????? 2004, ?.
??2409, ????? 49, ????? ??? ??? ?????????????? ??????? Marks & Spencer, ????? 35).

123 ??????? ?? ?????????????? ??? ? ??? ?????????????? ??? ?????????????? ??? ?????????????? ???
????? ?????????? ??????? ???????, ?????????????? ??? ? ?????????????? ??? ?????????? ??? ??????? ?
??? ??????? ?????????????? ??? ???? ?????? ?????? ??? ?????? ???, ??? ?????????? ??? ???? , ??? ?????????? ???
?? ??????? ?? ??? ?????? ??????? ?????????????? ??? ?????? ??? ?????? ?????? ?????????????? ???
????????? ??????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? (??., ???????,
????????????? ??????? Glaxo Wellcome, ????? 87). ??? ?????? ?????? ??? ?????? ??????????????
??? ?????? 120 ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
??????, ??? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???.

124 ??? ??? ????????, ? ?????????? ?????????? ?????? ??? ??????????
????????????? ???????? ??? ?????? ? ?????????? ?????????? ?????? ??? ??????????????
??? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??????
????? ??? ?????? ?????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???.

125 ???????, ? ??????? ?? ?????????? ?????????????? ?? ??????? ??????? ??????? ???????
????????????? ?? ?????? ?????? ??? ?????? ???, ? ? ?????????????? ?? ????
????????????? ?? ?????? ???, ??????, ???????, ??? ?? ?????????? ?? ???????,
????? ?? ?????????? ?? ?????? ?????? ?????? ?? ???????.

126 ??????, ??? ????? ??????????, ? ?????? ??? ??????????? ?????? ??? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ?? ?????????? ??? ??
????????? ?????? ?? ?????? ???' ?????? ?????????? ?? ?????????? ?????????? (??., ??
?????, ?????????????? ?????? Manninen, ??? 49, ??? ?? 14? ?????????? 2006,
C386/04, Centro di Musicologia Walter Stauffer, ?????? 2006, ?. I?8203 ??? 59).

127 ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??
????? ??????, ?????????????? ???, ??? ? ?????? ??? ?????? ??? ?????? ?? ??????????
????????? ??????, ?? ?? ?????? 56, ?????????? 1, ??, ??? ?????? 63, ?????????? 1, ???,
??? ?????? ?????? ?????? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??????, ??? ??
????????? ??? ?????? ??????, ?? ??? ?????? ??? ??? ?????? ?????????? ??? ??? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ??? ??????
????? ??? ?????? ?????? (????????????? ?????? A, ??? 31).

128 ??? ??? ????????, ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???.

129 ??? ????????, ? ?????? ?????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??
????????????? ??? ??? ?????? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??
??????, ?????? ?? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ??
?????? ?????? ?? ?????????? ?? ??? ?????? ?????? ?????????? ?????????? ?? ??? ?????? ??
????? ??? ?????? ??? ?????? ??? ?? ?????????? ??, ?? ??? ?????? 77/799, ?????? ??? ??????
??? ?????? ???.

130 ????????????, ????????, ??? ?? ?????? ?????????? ?????? ??? ?????????? ???
??? ?????? ???, ?? ??? ?????? ?????? 77/799, ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ??? ??? ?????? ??????????
????????? ?????? ?????? (??., ?????????????? ?????? ?????????? ??? ?????? ???,
????? 70, ??? Établissements Rimbaud, ??? 41).

131 ????????, ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????????? ???
????????????? ??? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?? ?????????? ??? ??
??? ?????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??,
?? ?????? ?????? ?????? ??????, ???' ????, ?????? ?? ?? ?????????? ?? ?????????? ??
????????? ??? ?????? ?????? ?????? ?? ??? ?????????? ??? ?? ?? ??? ?????? ?????? ???,
????? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??.,
???' ??????, ?????????? ?????? Établissements Rimbaud, ??? 44).

132 ??????, ?? ??????????, ?????????????? ??? ? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ???, ??? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????. ??????????,,
????? ??? ?????? 10 ??? KStG, ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ???.

133 ??? ??? ????????, ? ?????? ???? ?????? ?????? ??? ?????? ?????????? ???
????? ?????????? ???, ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??????, ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??????, ??? ?????? ??

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

134 ?????, ? ?????????? ?????????? ?????????? ???, ?? ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ??????????, ?????? ?? ?????????? ?? ??
????????? ?? ?????????? ?????????? ?????????? ?? ?????? ?????? ?????? ?? ?????????? ?? ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????? 64, ?????????? 1, ???, ?????, ???, ???
????????? ???, ?? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? 31
????????? 1993. ??????, ?? ?? ??? ?????? ??????, ??? ?????? ?????? ???, ?? ?????? ???
??? ?????????? ??? ?? ????? stand-still, ? ?????? ?????????? ??? ?? ??? ?????? ???
????.

135 ??????, ?????????? ???, ??? ?? ??? 64, ?????????? 1, ???, ?? ????? 63 ???
?? ?????? ??? ??????, ?????? ?????? ???, ??? ?????????? ?? ?????? ??? 31
????????? 1993, ?????? ??? ?????? ?????? ?? ??? ?????? ??? ??????, ?????? ?? ???
????????? ?????? ??? ? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????.

136 ??????, ?? ?????? ??? ?????? ??? ??????, ??? ??? ?? 31 ?????????? 1993,
????????? ? ??? ?????? ?????? ?????????????? ??? ?? ??? 63 ??? ?????????????? ???
????????? ?????? ??? ?? ??? ?????? ??? ?????? ???, ??? ??? ?????????? ???, ??????
????????? ?? ??????, ?????? ?????????? ??? ?????? ?????????? ??? ?? ??? ??????, ???
??' ?????? ?????? ?? ??? ?????????? ?????? ?????? ?????? ?????? ?????????? ? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?? ??? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ?? ??? ?????? ???
????????? ?????? ?????? ??? ?????? 63 ??? ?? ?????? ??? ?????? ??? ?????? ???
????? ?? ??? ??? ?????? ???, ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ???
????????? (????????? ?????? Test Claimants in the FII Group Litigation, ??? 196).

137 ??? ?????? ??? ?? ?????? ?? ?????????? ?? ?????? ?????????? ?? ?????????? ??
??????, ?? ?????? ??? ?????????? ??? ?? ?????????? ?? ?? ?????????? ??? ?????????? ??
????? ?????????? ??? ?????? ?????? ??? ?????????? ?? ?? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?? ?????? ??? ??
????? ?????? ??? (????????? ?????? Test Claimants in the FII Group Litigation, ???
196). ?????? ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? 10 % ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ???
??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? 64, ?????????? 1, ???.

138 ?????????? ??? ?????? ??? ?????? ??? ??????????????, ?????? ?????? ?? ???
????????? ??? ?????? ?????????? ??? ?? ?????? 63 ??? ??? ??? ?? ?????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ???, ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ???, ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

4. ??? ??? ?????? ??????????

139 ?? ?? ?????? ??????, ?? ?????? ?????????? ???, ???' ??????, ?? ??????????????
?? ?? ??? 63 ??? ?????? ?????????? ?? ?????? ??? ?? ?????????? ???, ??? ?? ??????????
????????????? ??? ?????? ?????? ?????????????? ?? ?????? ?????? ??? ?????? ??? ???, ??
?? ?????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ???, ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ???

????????????????? ??? ? ? ??????? ???? ? ??????? ?????? ????? ?????????????? ??? ?????????????? ??
????????? ?????????? ?????????? ??? ???? ?????????? ??? ??????????, ??? ??? ??? ??? ???? ?
????????? ??? ?????????????? ??? ?????????????? ???????, ??????? ?? ??????? ???
Verwaltungsgerichtshof, ??? ??????? ??? ???????, ??? ? ?? ??????? ??? ?????????? ???
????????? ??? 10 % ??????? ?? ?????????? ???????, ???, ???????, ??? ???????
????????? ??? ??????? ?????????? ?????????? ??? ?? ?????????? ?????????????? ???
????????? ?????????????? ??? ??????? ???.

140 ???????, ?????????? ??? ?? Verwaltungsgerichtshof ?????? ???, ??? ?????? ???
????????? ??????? ?????????? ?????????? ?????? ?????? ?????? ?????????? ?? ?????????? ???
?? ??????? ??????? ?? ?????? ?? ???? ?????? ??? ?????? ?????? ???????, ??? ??????
????????? ?????????? ??? ?????? ?? ?????????? ? ?????? ??? ??????????, ??? ? ??????
?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????????
?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????????

141 ?????????????????? ?? ?????? 86 ??? ?????? ?????????? ??????????, ?? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ?????? ?????? ?????????? ?????????? ?????? ?? ?????? ?????????? ??? ?? ???
????????? ??? ?? ?????????? ??? ?????????? ?????? ??? ?????? ???????, ??????????????
????? ?????????? ??????????????, ??? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ???
????????????? ??? ?????????? ??????????, ?????? ?????? ? ?????????? ?????? ?????????? ???
????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ???
????????? ?? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ???
????????? ??????, ??? ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ??????.

142 ???????, ???????, ???????, ??? ???? ???? , ??? ?????????? ?????????????? ??? ??
?????? ? ?? ? ?????????? ?? ?????????????? ?????????? ?? ?????????????? ??????, ??
????????? ?????? ????? ?????????????? ?????? ?? ?????????? ?????? ?????????????? ?????? ??
????????? ??? ?????? ??? ?? ?????????? ?? ?????????? ??? ?? ??? ????? ?????????????? ???
????????? ?????? ?????? (????????????? ?????? Test Claimants in the FII
Group Litigation, ??? 67).

143 ????????, ?? ??? 63 ??? ?????? ?????????????? ??? ?????????? ?????????? ??????????????
????? ? ?????, ??? ?? ?????????? ??? ?????????? ?????? ?????, ?????????? ?? ?????? ???
????????????? ??? ?? ??? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?? ?????????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?? ??? ?????? ???,
??? ?????????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?? ?????????? ??????????
??????????, ??????, ??????, ?? ?????? ?????????? ??? ?????? ? ?????????? ??
?????????? ?????????? ??? ?? ?????????? ?????????? ??? ?????????? ?? ??????????
??????????.

144 ? ?????????????? ?????????? ?????????? ?????????? ?????????? ??? ????? ?????????????? ?
????????? ??? ??????? ??? ?????????????? ?????????? ??? ????? ?????? 92 ??? 99 ??? 104
??? ??????? ?????????.

145 ?? ?????? ??????????, ?? ?? ?????? ???????, ??? ? ??? ?, ????. ?????? ?? ?? ??
?????????? ?? ?????? ?? ?? ?????? 63 ????. ?????????????? ??????? ??????? ? ??????? ? ??????? ? ??????
??? ?? ?????????? ?????????????? ?? ?????? ?????????? ??????? ?????????? ?????????????? ?? ??????
?????? ?? ?? ?????? ?? ?? ?????? ?? ?????? ?? ?? ?????? ?? ?? ?????? ?? ?? ?????????????? ?? ??
?? ?????? ?????? ?????????? ?? ?? ?????? ?? ?? ?????? ?? ?? ?????? ?? ?? ?????? ??????.

146 ??????, ?? ??????? ??? ?????? ?????? ?????????? ???, ????????, ?????????? (??.
?????? ?? 22?? ??????? 2010, C?188/10 ?? C?189/10, Melki, ??? ??? ????? ???????????
?? ???????, ??? 27 ??? ??? ??????????? ??????????).

147 ??????, ??? ??????? ?????????? ??????? ?? ?????? ? ???????? ??? ?? ?????
63 ??? ?? ?????????? ??? ??????? ?????? ?????? ?????????? ?????? ? ??????, ??? ??
????????? ??? ?????????? ?????? ?????, ??????? ?? ?????? ??? ?????????????? ???
????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????, ??? ?????????? ??????????
?? ?????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ???????, ??????, ??????, ??
????????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ???
????????? ?????? ?????????? ??? ?????????? ?? ?????????? ?????? ?????????? ???
????????? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????, ??? ??????, ??? ?????????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????????? ???.

? – ??? ??? ?????????? ??? ?????? C-437/08

148 ?? ?? ??????? C-437/08, ?? ?????? ?????????? ???, ???' ??????, ??
??????????, ??????, ?? ?? ?????? 63 ??? ?????? ?????????? ?????? ??????? ??? ??
????? ?????? ? ?????? ?????????, ??? ?????????? ?????????? ?????, ??? ?????????? ???
??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????? ? ?? ?????? ???, ??? ?? ?????????? ?????? ?????????? ?????????? ???
????? ??? ?????? ??????, ??? ? ?????, ??? ?? ?????????? ??? ?????? ??? ?????? ???
????? ? ?????????? ?????? ?????? ?????????? ?????, ??? ?????????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????????? ???.

149 ??????, ?? ?????? ?????????? ??? ?????? ?? ?????????? ?? ?? ?????? 63 ???
????????? ??? ?????? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???.

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

150 ? ?????????? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?? ?? ?????? ???
????? ?????? ?????? ? ?????? ?????? ??? ?????? ?? ?????????? ??? 2002, ??? ?? ??????????
????? ??? ?? ?????????? ?? ?????? ?????? ? ?????????? ????. ? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???.

151 ? ?????????????? ??? ?????? ?? ??????????.

152 ??????, ?????????? ? ?????????? ???, ?????? ??? ?? ?????? ??? ?????? ???
????? ?????? ?? ?????????? ??? ?? ?????????? ??? 2002, ??? ?? ?????? ??? ?????? ???
??? ?????? ? Salinen ?????? ??????, ?? ?????? ?????????? ??? ?????? ?? ?????????? ???,
????????? ??????, ?? ??????, ??? ?? ?????????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

153 ??? ??? ??????? ???, ?? ?????????? ?? C-437/08 ??????? ???.
???????

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

154 ?????????????? ?????? ??? ?????????????? ??? ?? ?????? ?????????? ?????????????? ??????????????,
?????? ?? ??????????, ??????, ?? ?? ????? 63 ??? ?????????????? ??? ?????? ?????, ?? ??????
????????? ?? ?????? ??? ?????????????? ??? ?? ?????????? ?? ?????? ?????????? ??????????
????????? ??? ?? ?????? ??? ?????????? ??? ?? ?????????? ?? ?????? ?????????? ???
????????? ????????, ?? ?????????? ?? ?????????? ??? ?????????? ?????????????????? ??? ??????????????
?????, ???, ??? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ? ?????????? ??????
????????? ?? ??????????, ? ?????? ??? ?????????? ?????????????? ?????????? ???.

155 ? ?????????? ?????????? ?????? ??? ?? ?????? 63 ??? ?????? ??? ?????? ?????????? ?? ??????????
????????? ?????? ??????. ??????????????, ?? ??? ?????? ??? ?? ?????? ?????? ?????????????? ??
????????????? ?????????? ?????????? ?????????? ??? ?? ?????? ?????? ?????? ?????????????? ??
????????????? ??????????, ?? ??????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ??
????? ??? ?????? ?????????? ??? ?????? ? ?????????? ?????? (????????????????? ??????)
Test Claimants in the FII Group Litigation, ????? 52). ??????, ???, ??? ?????? ?????? ??? ??????
????? ? ?????????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?? ??????????,
????? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ?? ??????????, ?? ?????? ??
????????? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ?????? ??????, ??? ?????? ??
????????? ?????? ??? ?????????? ??? ??????, ??? ?????? ???, ??? ?? ?????????? ?????? ??????????
???

156 ????????, ?????????????? ??? ?? ????? 63 ??? ??????????? ?? ??????? ??????, ?? ??????
???? ??????? ?????????? ??? ??????? ?????????????? ?????????????? ??? ??????? ??????????? ?????
?? ????? ?????????????? ?? ?????????? ?????????? ??? ??????? ?????????? ???????????, ??
????????????? ??? ?????????????? ??? ?????????????? ?? ??????? ?????????????? ??? ??????????
????????? ??? ?????????? ?????????? (?. ?????????????? ?????? Test Claimants in the FII
Group Litigation, ????, 72).

157 ???? ??????? ???? ?????? ??????, ??? ?? ????? 10, ??????????? 6, ??? KStG ??????????
???, ??? ??????? ??? ??????? ?????????? ?????????????? ???????????????, ?? ?????????? ?? ??????
?????????? ?????????? ?????????? ?????????? ??? ?????????? ??? ????? ?? ??????????
?????????, ?????????? ?? ??? ????? ???, ??? ?????????? ?????????? ?????? ??? ?? ??
?????? ?????????? ???, ?? ??? ????? ?? ?????????? ?????? ?????? ?????? ?? ??? ??
????????? ??????????. ???????, ?? ??? ????? ?? ?????? ? ?????? ?????? ?? ?????????? ???
????????????? ?????????? ??? ?????????? ??????????. ???????, ?? ?????????? ???
????????? ???????, ?? ??? ????? ??????????????, ??? ?????? ?????? ?????? ?????? ??? ??
????????? ??????? ??? ?????? ?????????? ???, ??? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ?????? ???, ???????, ??? ?? ?????? ?????? ??? ??

158 ????? ??????????, ?????? ??? ?? ?? ?????????? ?? ?????? ?????????? ?????????? ?????????? ???
????????? ??????? ??????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?????????? ?? ?????? ??????????
????????????? ?? ?????????? ?? ?????????? ?????????? ?? ?????? ?? ?????????? ?????? ?? ?????? ?? ?????????? ??
????? ?????????? ?? ??????????, ? ?????? ??? ?????? ?? ?????? ?? ?????????? ?????????? ?????????? ??
???????????, ??? ??? ?? ??? ?????? ??????, ?? ??? ?????? ?? ?????????? ??? ?????????? ?????? ?????????????? ??
????????????? ?? ??? ?? ?????????? ?????? ??????. ?????? ?????????? ?????????? ?????????? ??? ???

???????????? ?????? ??? ? ?????????? ??? ?????????????????? ?????????????? ???, ??? ?
????????? ??? ???? ?????? (??., ??????, ?????????????????? ?????? Cobelfret, ?????? 39
??? 40, ?????? ??? ?????????????????? ?????? KBC-Bank, ?????? 39 ??? 40). ??????????, ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??????????, ??? ???? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

159 E????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ???
????????????? ??? ???? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????????????? ???
????????? ?? ?????? ?????? ?????? , ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??
????? ?????? ??? ?????? ?????? ?????? , ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????? ??? ???? ?????? ?????? ?????? ??????.

160 ?????????? ?????? ??? ?????????? ??? ?????? 156 ??? ?????? ?????????? ?????????? , ???
?? ?????? ??? ???? 63 ??? ?????? ?????????? ?? ?????? ???.

161 ?????????? ??? ?????? ?????????? ? ?????????? ?????????? , ?????? ??? ?????? ???
????? ?????? ??? ?????? ?? ?????????????? ??? ???? ?????? ???, ??? ?????? ??????????
??? ?????? ??? ?????????????? , ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (??.
????????????? ?????? Test Claimants in the FII Group Litigation, ?????? 50 ??? 52).

162 ?????? , ??? ???? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ???? ?????? ??? ?????????????? ??? ?????? ???, ??? ?????? ???
????????? ?????? , ?????????? ?????? ??? ?????? ??? ???? ?????? ??? ?????? ?????? ???
? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? (??. ?????????????? ??????
Test Claimants in the FII Group Litigation, ?????? 50 ??? 52). ?????? , ? ??????
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????.

163 ?????? , ??? ?????? ??? ???? 158 ??? ?????? ?????? , ??????
????? ???? ??? ?????? , ??? ???? ?????? ??? ?????? ?????? , ?? ?????? ???
????????????? ??? ?????????????? ??? ?????? ?????? , ??? ?????? ??? ??????
????????? ?? ?????? ?????? ?????? , ??? ?????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ??????.

164 ?????? , ?????? , ?????? ?????????? ?????? ? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? , ? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? , ??? ???? ??? ?????? ???, ?? ??????
??? ?????? , ?? ?????????????? ?????? , ??? ?????? , ??? ?????? , ?? ??????
????????? ?????? (??. ?????????????? ?????? Test Claimants in the FII Group
Litigation, ?????? 62), ?????????? ?????? , ??? ???? ??? ?????? ???, ???
????????? ?????? ?????? , ??? ?????? , ??? ?????? ?????? ?????? ?????? ??????
????????? , ??? ?????? ??? ?????? ?????? ??? ???? ?????? ??? ?????? ?????? ???
????????? ?????? ??????.

165 ???, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? , ? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ???? ?????????? ??? ???? ?????? ???
????? ?????? ?????? ??? ?????? ?????? ???? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ???? ?????? ?????? ?????? , ?????? ?????? ?????? ??? ??????
??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? . ?????? , ??? ???? ?????? ??? ???? ?????? ?????? ?????? ?????? , ? ???
????????? ??? ?????? ?????? ?????? ??? ?????? , ??? ?????? ?????? ?????? ???

?????? ??????? ???????, ?? ?????? ??? ??????? ????? ?????????????? ?????????????????? ???
????? ??????? ??? ?????? ??? ??????? ?????? ?????????????? ?????????????? (??., ????????, ????????
Glaxo Wellcome, ????????????????, ??? 89 ??? ??? ?????????????? ??????????????). ???????????,
???? ??????? ? ?????? ?????????????? ??? ?????? 160 ??? ?????????? ???, ? ?????? ??????
????????? ??????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?? ?????????? ???
???? ??? ?????? ?????, ?????? Salinen ????? ?????????? ??? ?????????? ??? 10 %
??? ??????? ??? ?????????? ?????? ?????????, ??? ?????? ?????? ?????? ??? ?????????? ?????? ??????????
????????? ??? ?????????????? ?? ?????? ??????????.

166 ???????, ??? ?????? ?? ?????? ??, ??? ?????? ?????????? ??? ?????? ???
???????????????, ?????? ?? ?????????? ?????? ? ?????????????? ??? ?????? ???
?????? ??? ?????????? ?????, ?????????? ??? ? ?????? ?????? ???????????,
????????? ?????????? ??? ??? ?????? ?????????????? ??? ?????????? ? ?????? ??????????
?? ?????? ???????, ??? ?????????? ??? ?????? ?????? ??????????.

167 ???????, ?????????????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ?? ???????????,
????????? ?? ?????? ??? ?????, ?? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ???
??, ??? ?????? ???, ?? ?????????? ?? ?????????? ??? ?????? ??? ??? ?????????? ??????????
?? ?? ?????? ??????? ??? ?? ?????????? ??? ?????????? ??? ?????? (??., ?????, ??????????
Test Claimants in Class IV of the ACT Group Litigation, ??????????????, ??? 50· Test
Claimants in the FII Group Litigation, ??????????????, ??? 47, ??? ?? 20?? ??? 2008,
C?194/06, Orange European Smallcap Fund, ??????? 2008, ?. I?3747, ??? 30).

168 ???????, ???, ?? ?????????? ??? ?????????? ??? ???????, ?????????????? ?? ???
?????? ???, ?? ?????? ???, ?????? ?????? ?????? ???????, ??????? ?? ???????????
????????? ??? ?????? ?????? ?????????? ???, ?????? ?? ??? ?????? ??? ?????????? ??
????????? ?? ?????????? ??? ?????????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ???
????????? ?????????????? ?? ?????????? ??? (?????? ?? 16?? ??????? 2009, C?128/08,
Damseaux, ??????? 2009, ?. I-6823, ??? 26).

169 ???????, ?? ?????????? ??? ?????????? ??? ?? ?????????????? ??? ?????? ???
?? ?? ?????????? ??? ?????? ?? ?????????????? ??? ?????????? ??? ?????? ??? ??????? ???
????????? ?????????????? ??? ?? ?????? ?????? ?????????? (?????? ?? 3?? ??????? 2010,
C?487/08, ??????? ??? ???????, ?? ??? ?????? ?????????? ??? ???????, ??? 56 ??
?? ?????????????? ??? ???????).

170 ?????? ?? ?????? ??? ??????, ??? ?? ?????? ?????? ?????????? ???, ??? ??????????
?????? ??????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
?? ??????? ??? ?????? ?????????? ??? ?????????? ??? ???????, ?? ??????? ??? ??? ??
?????? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???
?????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???
?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??
?? ?????? ??? ?????????? ???' ?????? ??? ?????? (?. ?????????????? ??? ?????? Damseaux,
?????? 30 ?? 34, ?????? ??? ??????? ??? 15?? ??????? 2010, C?96/08, CIBA, ??? ??
????? ?????????? ??? ???????, ??????? 27 ?? 28).

171 ??? ??? ?????????? ???, ?? ?????? 63 ??? ??? ?????? ?? ?????????? ??? ??? ??
?? ?????????? ?? ?????? ??? ?? ?????????, ??? ?????????? ??? ???????????, ???
????????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ??
???? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ???????, ?? ??? ?????????? ??? ??????????
?? ??? ?????? ?????? ??? ???????, ?? ?????? ??? ?????? ???????, ??? ??????????

????????????? ??? ?????????????? (??., ???????, ??????? ?? 14?? ?????????? 2006, C?513/04, Kerckhaert ??? Morres, ??????? 2006, ?. I?10967, ??????? 22 ??? 24).

172 ? ????? ??????????? ????????????, ???? ?????? ????, ???? ? ?????? ?????? ??????????
????????? ??? ?? ?????????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????
????????? ??? ??????????? ????????????, ???? ????????????, ???? ?????? ?????? ??? ???
????????? 119 ??? 120 ??? ??????? ??????????.

173 ?????????????? ?????? ??? ???? ??????????????, ??? ?????????????? ?????????? ??? ?????? ??
????? ? ???????? ??? ?? ????? 63 ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ????:

— ??? ??????????? ??? ?????? ?????? ?? ???????????, ??? ??????????? ??? ???????????, ???
?????????????? ??? ??????????????? ??? ??????????? ??? ??????????? ??? ??????????????? ??? ?????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ??? ?????????? ??????, ?? ?????? ??? ?????? ?????? ?????? ?????? ??????, ??? ???????????
????????????? ??? ?????? ???????????.

IV – ??? ??? ?????????? ??????

174 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ??????????, ?' ???
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????
???? ?????????? ?????????????? ??? ??????????, ??? ??? ?? ??? ??????????, ???
?????????.

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

1) ?? ?????? 63 ??? ?????? ?? ??????????? ??? ?? ???? ?????? ?? ???? ??????????

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

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

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

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

?? ???? ?????? ?????????? ?? ???? , ?? 2?? ???? 1992, ?? ???? ?????? ??????????

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

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

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

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

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

????????? ??????? ???? ??????? ?????????????????? ?? ???? ?????? ?????? ?????? ? ????
?????? ???? ?????? ?????????????? ?????? ??? ?????????? ??? ???? ??????????
????????????? ????, ??? 2?? ???? 1992, ??????? ?????? ? ?????????????? ??? ????
????????????? ??? ??????? ?????? ??? ?????????? ?????? ?????? ?????????????? ???
????????????? ??? ??????? ?????? ??? ?????????? ?????? ?????? ??? ???? ???? ????
????????????? ?? ?????????? ?????? ?????????????? ??? ?????????????? ??? ???? ????
????????? ??? ?? ??????? ?? ?????? ??? ?? ?????? ???????????????. ?? ?????????????? ???
????????? ?????? ? ?????? ?????????? ??? ???? ??? ???? ?????????? ??? ?????????????? ??????
????? ??? ??????, ? ?????? ?????? ?????? ?????????? ?? ?????? ??? ?????????????? ?? ???? ????
????????? ??? ?????? ?????????????? ??? ?????????? ?????? ?????? ??????????, ????
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????????? ??? ???? ????
????????? ??? ?????? ?????????? ??? ??????????.

3) ?? ?????? 63 ????, ??????? ?? ??????????? ??? ?? ???? ?????? ?? ???? ???????????
?????? ??????? ? ????, ????, ????? ?????? ?? ?????? ?????????? ???????????,?
?????????? ?? ???? ????? ??????? ?? ?????????? ??????????????? ?? ???? ???????????
?????? ??????? ?? ???? ????? ??????????? ?? ???? ????? ??????? ???????, ???, ??? ??
?????????? ?? ???? ????? ??????????? ?? ???? ????? ??????????? ?? ???? ???????????
???? ??????? ??????????? ?? ???? ??????? ?? ???? ????? ??????????? ??????????? ?? ????
??????, ??? 2?? ????? 1992, ??? ??????? ?? ???? ??? ??????? ?? ???? ??????????? ?? ???? ???????????
???? ??????? ??????????? ?? ???? ??? ??????? ?? ???? ??????????? ?? ???? ??????????? ?? ????
?????? ??????????? ?? ????.

4) ?? ?????? 63 ??? ?????????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?
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