

?????? C-175/09

Commissioners for Her Majesty's Revenue and Customs

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AXA UK plc

[?????? ??? Court of Appeal (England & Wales) (Civil Division)

??? ??? ?????? ?????????????? ??????????]

«????? ??????? ?? – ??????? – ?????? 13, B, ??????? ??, ?????? 3 – ??????? ??????? ??
?????? ?? ??????? – ??????? ??????? – ?????????? ??????? ?? ??????? ?? ?? ???? ??
????????? ??????? – ??????? ??????? ?? ?????????? ??????? ?? ?????????? ??
????????? ?? ??????? ??????? ?? ???????»

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????????? ??????? – ?????????? ??? ?????????? – ?????? ?????? ??????? – ??????
?????? ?? ?????????????? ????? – ?????????? ?????????? ??? ?? ??? ?? ????? –
????????? ??????? ?? ??????? 13, ?, ??????? ??, ?????? 3

(?????? 77/388, ?????? 13, B, ??????? ??, ?????? 3)

?? ?????? 13, B, ??????? ??, ?????? 3, ??? ?????? ??????? 77/388, ??? ?????????????? ??
????????? ??? ?????? ????, ??? ??????? ?? ??? ?????? ?????? ??????? ???????, ??? ??
????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ?????? ??? ??????? ??
????????? ??? ?????? ?????? ?????????? ??? ?????????? ???' ??????, ??????, ???, ???
??????, ??? ?? ?????? ?????? ?????? ???????, ?????????? ??? ?????????? ??? ???????, ???
????????? ??? «????????? ??????», ??? ?? ?????? ?? ??????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???????, ???
????????? ??? ?????? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???, ???, ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ???????, ???.

??????????, ? ??????? ?????? ??? ?????????? ??? ?????? «????????? ??????????» ???
????? 13, B, ??????? ??, ?????? 3, ???, ??????, ?????????? ??? ?? ???????,
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?? ??????? ???
????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ???????, ?????? ??????????
???? ?????????? ??????. ?????????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ???, ? ??????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
«????????? ??????» ??? ??? ??????, ?????? ??? ?????????? ??? ?????????? ???
?? ?????? ??? ?? ??????, ?? ???????, ?? ?????????? ??? ??????.

(???. ??????? 28, 32-33, 36 ??? ???????.)

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

?? 28?? ?????????? 2010 (*)

«???? ?????? ?? – ??????? – ?????? 13, B, ??????? ??, ?????? 3 – ??????? ??????? ??
?????? ?? ??????? – ??????? ??????? – ??????? ??????? ?? ??????? ?? ?? ???? ??
????????????? ?????????? – ?????????? ?????????? ?? ?????????? ?????????? ??
????????? ?? ?????? ?????????? ??????????»

???? ?????? C175/09,

??. ?????????? ?? ?????? ??????? ?????????? ?????????? ??????? ?? ?????? 234 ??,
?? ??????? ?? Court of Appeal (England & Wales) (Civil Division) (?????? ???????) ??
?????? ?? 8?? ??????? 2009, ? ?????? ??????? ?? ?????????? ?? 14 ????? 2009, ??
?????? ?? ??

Commissioners for Her Majesty's Revenue and Customs

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AXA UK plc,

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

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

?????? ??????????: P. Cruz Villalón

?????????: N. Nanchev, ??????? ??????????,

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

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

- ? AXA UK plc, ?????????? ?? J. Peacock, QC, ?? M. Angiolini, barrister,
- ? ??????? ?? ??????? ???????, ?????????? ?? H. Walker,
????????? ?? R. Hill, barrister,
- ? ??????? ???????, ?????????? ?? M. Lumma ?? C. Blaschke,

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

– ? ??????? ????????, ?????????????? ??? ?? G. Palmieri, ?????????????? ??? ?? S. Fiorentino, avvocato dello Stato,

- ?????????????? ??????????, ?????????????????? ??? ??? R. Lyal ??? ??? M. Afonso,

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

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1 ? ?????? ??????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 13, B,
???????, ??, ?????? 3, ??? ?????? ??????? 77/388/???, ??? ???????????, ??? 17?? ????? 1977,
???? ?????????????? ??? ??????????? ??? ???????, ??? ???????, ??? ??????? ?? ??? ?????? ??????
????????? – ????. ?????? ??????? ??? ?????????????? ????: ?????????? ?????????? ??? (??
???. ??. 09/001, ?. 49, ??? ?: ??? ?????), ????. ?? ????. ?????????????? ??? ??? ???
????????????? ??? (?? ?: ???) ?? ?????? ??? ??????, ?????? ???, ?????? ????.
?????????.

2 ? ?????? ?????????? ??? ?????? ?????????? ?????? ??? Commissioners for
Her Majesty's Revenue and Customs (??? ????: Commissioners) ??? ??? AXA UK plc (??? ????:
AXA) ??????? ?? ??? ??????? ??? ??? ??? ?????????? ??? ?????????? ? Denplan Ltd (???
?????: Denplan) ?? ?????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??? ??
??????, ??? ??? AXA, ??????????? ??? ??? ???.

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

3 ????. ?? ?????. 2, ?????? 1, ??? ?????? ???????, ????. ?? ?????. «?? ?????????? ?????? ???. ?? ?????? ?????? ?????? ???. ?? ?????????? ???. ?? ?????? ?????? ?????? ???. ?? ?????? ?????? ???. ?? ?????? ?????? ???. ?? ?????? ?????? ???. ?? ?????? ?????? ???. ?? ?????? ».

4 ?? ???? 13 ?? ???? ??????, ?? ???? «????????? ?? ???? ??????? ?? ????»,
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«[...]

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[...]

?) ??? ?????????? ????????:

[...]

3. ??? ????????, ?????????????????? ??? ??? ??????????????????, ?? ?????? ??????? ????????,
???????????, ?????????????? ??????????????, ????????, ?????????? ??? ????????,
???????????, ?????????? ??? ????? ??????????, ?????????? ??? ?????????? ????????????.

[...]».

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

5 ? ????????, ??? ?????? 13, B, ????????, ??, ?????? 3, ??? ?????? ??????? ?????? ???
?????? ??????? ??????? ??? ?????? ??? 1994 (Value Added Tax Act 1994),
????????? 9, ?????? 5, ?????? 1, ??? ?????????? ??? ?????????????? ??? ??? ??? ? «[??????],
????????? ? ?????????? ????????, ?????????? ?????? ? ?????? ????????????, ?????? ???
????????????? ??? ?????? ??????»..

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

6 ? AXA ??????????, ??? ?????? ??? ??, ?????? ?????????? ??? ?????? ?????? ??????????????
Denplan. ? ?????????????? ??? Denplan ?????????? ??? ?????, ?? ??????????????,
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ???, ?? ??? ??????
????????????? ??? ? ?????????? ?????????? ?????????? ?????? ?????? ?????????????? ???
?????????. ?? ?? ?????????? ??????, ?? ?????????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ???, ?????????? ?????? ?????????? ?????????? ??????????, ?????????? ??????????
????????? ??????, ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

7 ? ??????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? Denplan, ??????
????????? ????????, ?????????? ?? ??? ?????????? ?????? ?? ?????? ???
????????????? ?? ?????????? ??? ?????? ??? Denplan, ???????? ?? ? ??????
????????? ??? ?????? ??? Denplan, ? ?????? ?????? ?? ?????????? ???
????????? ??? ??? ?????? ??? ?????????? ?? ?????? ?????? ?????? ??????????, ? ??????
????????? ??? ?????? «??????» ??? ??? Denplan ??? ?????? ???
????????? «??????» ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
«??????» ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????????? ?? ?????? ?????? ?????? ?????????? ?????? ?????? ???, ??
????????? ??? Denplan. ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ????????, ?????? ??? ?????? ??? ?????????? ?????????? ???.

8 ??? ?????? ?????????? ??? ????????, ?????? ??? ?? ?????????????? ??? ??? ???
?????? ?????? «????????? ??????», ? Denplan ?????????? ?? ?????????? ??? ??????????,
?????? ??? ?? ???, ?? ?????????? ??? ??? ?????????? ?????????? ???, ?? ??????????
?? ?????????? ??? ?????? ??? ??????????, ??? ??? ?????????? ?????????? ??? ???????, ??
????????? ??? ?????? ??? ?????? ??? ?????? ?. ?? ?????? ?????????? ?? ??? ??? ??? ??? ?
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

9 ? Denplan ?????????? ????????, ?? ?????????? ???, ?? ??? ??? ?????????? ??
????????? ??? ?????? ?????????? ???, ??? ?????, ?????????? ??? ??? ?????? ??????????
??????, ?? ??? ?????? ?????????? ??? ??? ?????? ?????? ?????????? ??? Bankers' Automated
Clearing System (????????? ?????? ?????????? ?????????? ??????????, ??? ????: BACS), ???????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

Denplan ??? BACS ??????????????, ?????? ??????, ? ??????? ??? ?????????????? ??????????????
???? ???????? ??? ?? ??? ???? ? Denplan ?????????? ?? ?????????? ??? ??? ??????????????
?????. ?? ???????, ?? BACS ?????????? ?? ?????????? ??? ??? ??????????????????
????????? ??? ?????????? ???????.

10 ??????? ? ??????? ??? ?????????????? ??? ?????? «?????????? ?????????» ??? ?
????????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ???????, ? ??????? ??? ??????
??? ?????????? ??? ??? ?????????? ?? BACS. ?? ??????? ??? ?????????????? ?? ??????????
???? ?? ??????? ??? ??????? ??? Denplan, ??? ????? ?? ??????? ?? ??????? ???
????????? ??? ??????. ?? ??? ??? ?????????? ?????????????? ??? ??? ??? ??? ??????????
????????? ??? ??????? ??? ?????????? ????? ?????????? ??? Denplan. ?? BACS ??????????
???? Denplan ??????? ?? ??? ?????????????????? ??? ??? ?? ??????????????????
?????. ? Denplan ??????????, ?? ???????, ????? ?????????????? ??????????????
????????? ??????? ???, ???????, ?????????? ?? ??? ????? ?????????? ??? ??? ?????????? ???
????? ???????.

11 ??????? ?? ???? ?????? ??? ??????? ?? ?????????????? ??? ?????? ??? ?????????????? ???,
? Denplan ??????? ?? ???? ??????????? ?? ?????? ??? ?????? ??????????? ?? ???
????????????? ?? ???? ???????, ??????????????? ?? ?????? ??? ?????? ????????????. ??? ??????, ?
Denplan ??? ?? ???? ?????? ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ???
???? ?????????? ?????????? ??????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????????.

12 ????????????????????? ??? ?????????????? ??? ?????????????? ?????????????? ? Denplan
????????????? ?????????? ???, ?? ?????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????????????. ?? ??? ?????? ?????? ?????????????? ?? ?????????? ??? ?????? ?????? ??? ??????????. ??? ???????
????????? ??? ??????????, ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? Denplan ??? ??? ?????????? ??? ?????? ??? ??????????
????????????? ?????????? ??? ?????????? ??? ?????????????, ?????????? ? ?????? ?????????????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ??????
????????? «????????? ??????».

13 ?? ??????? ?? ??????? ?? ??????? ?? 2006, ? Commissioners ??????? ???????????
?????? ?? ?? ??????? ?? ?? ?? ??????? ??????????? ?? ?? ?? ??????? ?? ?? ?? ??????? ?? ?? ??
?????? ?? 2002 ?? ?? ??????????? ?? 2004. ?? ??????? ??????? ?? ?? ?? ??????????? ?? ?? ??
2006, ? Commissioners ??????? ?? ?? ?? ??????? ?? ?? ?? ??????? ?? ?? ?? ??????? ?? ?? ?? 2005
?? ?? ?? ??????? ?? 2006. ??????? ?? ?? ??????? ??????????? ?? ?? ??????????? ?? ?? ?? ??????? ?? ?? ??
???????? ?? ?? ??????? ? Denplan ????? ??????????? ??????? ?? ?? ?? ??????? ?? ?? ?? ???????
?????????? ?? ?? ?? ???????????.

14 ??? ?????? ??? ???. ??????? ???. 2006, ? AXA ?????????? ??? ?????????? ????.
????????? ??? VAT Tribunal London, ?? ????? ?????????? ??? ? ?????? ??????????
????????????? ??? ???. ???, ?????? ?????????? ?????? ??? ?????????????? ?????? ???
????????? ??? ????? 13, ?, ??????? ??, ?????? 3, ??? ????? ??????. ?? ????????, ?? High
Court of Justice (England & Wales), Chancery Division, Revenue List ??????? ??? ??? ????.
Commissioners ??? ???. ??????? ??? Tribunal. ??????? ??????, ? Commissioners ??????
???????. ?????? ??? ??????? ??????????.

15 ????. ?? ??????? ????????????, ?? ?????? ??????? ??? ??????????? ??? ?????? ???
?????????? ?????? ?? ? ????. ?? ?????? 13, ?, ????????, ??, ?????? 3, ??? ?????? ???????
????????? ?? «????????? [...]», ?? ?????? ??????? [...] ???????, ?????????? [...]» ?????? ??
?? ??????? ? ?????? ??????? ?? ??????, ?????? ???????, ??? ??????? ??
?????????? ??????? ?? ??????, ?????? ???????, ??? ?????? ???????, ??? ?????????? ??? ???????
?? ??????? ?? ?????? ??? ???????, ?????? ?????? ???????, ??? ?????????? ??? ???????

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

16 ????, ?? ????, ?????? ?????????? ?????????? ??? ?????? ?????? ??? 5?? ?????? 1997,
C?2/95, SDC (?????? 1997, ?.. I?3017), ?????????? ??? ?????? 53 ??? 66 ?????, ?? ???
????? ?? ?????????? ??????, ??????? ?? «?????? ? ?????? ?????? ?????????? ???
?????????», ??? ?? ?????????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????????
????????? ??? ?? ?????????? ?????? ??? ?????????? ?????? ??????????.

17 ????, ?? ????, ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ??????, ?? Court of Appeal (England & Wales) (Civil Division)
????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ??????????
????????? ??????:

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

?) ??? ?????? ?? ?????????? ??? ?????? ??? ?????, ??? ?? ??? ?????? ?????????? ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? (i) ?????? ??? ?????????? ??? (ii)
????????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ? (iii) ?????? ??? ?????????? ??? ??????
??? (i) ??? (ii) ???;

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

2) ??? ?? ?????? ??? [????????????? SDC] ?????????? ??? ?? ???, ???
?? ????? 13, ?, ??????? ??, ?????? 3, [?? ?????? ??????], ? ?????? ?? ??? ?????? ??????
(?? ??????) ?????????? ??? ?????? ??? ??? ?? ???;

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

- ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????, ?? ?????? ??? ??????????????
????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
?? ??? ??????????, ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??
?????? ??? ?????????? «????????? ??????»), ??? ???, ?????? ? ??????
????????????? ??? ??????,

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

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?) ??? ?????????? (i) ?? ?????? ?????????? ?????????? ??? (ii) ??? ??????????
?????? ??? ?????? ?????????? ?????????? ? (iii) ?????????? ?????? ?????? ??? ?????? ???
(i) ??? (ii);

3) ????????????????? ? ??????? ?? ?????? ?????????? ?? ? ??? ??????????????????
????????? ?????????? ?? ???? ?????????????? ?????????? ?? ?????????? ?????????? ?? ???? ??
????????? ?????????? ?? ???? ?????? ??????, ??? ???? ?? ? ?????????? ?? ???? ?????????? ?? ????
????????? ?????? ?? ???? ?????????? ?????? (?.? .????? ?????????? ?? ???? ??????)
?? ???? ?????? ???? ?????? ?????????? ?????? ?????? ??????????);»

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

18 ?? ? ? ?????????? ??, ?? ?????? ?????????????? ?? ?????????? ?? ???? ??, ?? ??????
????????? ??????, ???' ??????, ?? ?????????????? ??, ??? ? ???? 13, ?, ?????????? ?,
????? 3, ??? ?????? ??????, ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ??.??.

19 ? ????????? «????????? ??????», ??? ?????? ?????? ? Denplan ?????? ?????? ??,
???? ?????????????? ?????? ??? ?????? ?????? ?????? ??????, ??? ?, ?????????????? ?? ???? ???????,
????????? ??? ? ???? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ???????,
????? ?????? ?????? ??????, ?????? ?????? ??? Denplan, ?????? ?????? ?????? ???????????. ? ?? ????
????????? ??????????, ??????????, ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????? ??? ?????? ???, ????, ?? ????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? .?????, ? ?????? ??? ?????? ?????? ?????? ?????? ???
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????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

20 ?????????? ?? ???? ?????? ?????? ?????????? ?????????? ????????, ??????, ??????,
?? ?????????? ??, ??? ??? ?????? ???, ?????? ??? ???? ?????? ??? ?????????? ?? ???? ??????
????? ?? ?????????? ?????? ??? ?????? ??? ?????? ? Denplan ?????? ??????
?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???
????, ? ?? ?????? ?????? ?????? ?????? ?????????????? ?????? ?????? (?.? ???????,
????? ??????, ?????????? ??? 27?? ?????? 2005, C?41/04, Levob Verzekeringen ??? OV
Bank, ?????? 2005, ?. I-9433, ?????? 18 ?? 20, ??? 21?? ?????? 2008, C?425/06,
Part Service, ?????? 2008, ?. I-897, ?????? 48 ?? 49, ?????? ??? ?? 19?? ?????? 2009,
C?461/08, Don Bosco Onroerend Goed, ?????? 2009, ?. ??11079, ??? 34).

21 ??????????, ??? ?????? ?????? ??????????, ??????????, ?????? ??????????,
???????, ?? ?????? ?????? ?? ?????????? ?????? ???, ?? ? ?????, ?? ??????????
????????? ?????????? ?????? ?????? ?????? ??? ?????? ?? ?????????? ?? ????
????, ?????? ??? ?????? ?????? ??????. ?????? ?????? ?????? ??? ?????? ??? ? ??????????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??., ???????,
????????????? ?????? Part Service, ?????? 51 ?? 53, ?????? ?? 11?? ?????? 2009,
C?572/07, RLRE Tellmer Property, ?????? 2009, ?. I?4983, ?????? 18 ?? 19, ?????? ???
????????? ?????? Don Bosco Onroerend Goed, ?????? 36 ?? 37).

22 ??? ?????????? ?? ???? ?????? ?????? ?????? ??????????, ??? ? ???? ?????? ??????????
?? ?????? ?????????? ? ??????, ?????? ?? ?????????? ?????? ??? ? ???? ?????? ??? ??
????? ??????????, ?????????? ?? ???? ?????? ?????? ??? ?????? ?????? ??? ? ???? ??????????
????????? ?????? ? ??? ?????? ?????? (??., ???????, ?????????????? ?????? Levob
Verzekeringen ??? OV Bank, ????? 19, ?????? ?? 29?? ?????? 2007, C?111/05,

Aktiebolaget NN, ??????? 2007, ?. I?2697, ????? 21, ????? ?? ?????????????? ??????? Don Bosco Onroerend Goed, ????? 38).

23 ????? ????? ??? ??????? ??? ?????? ?????? ? ?????? ? ?????????? ??? ????????????,
????????????? ??? ?? ??????? ??? ?????????? ? Denplan, ?????????????? ??? ?? ?????? ???
???, ?????????? ??? ?????????? ?????? ????. ?????????? ?????????? ??? ?????? ???
????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ? ?????? ??? ?????????? ??? ?????????? .? ??????
??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?? ??? ?????? ???, ?????????? ??? ?? ?????? ??? ?????? ???
??? ???????, ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ? ?????? ??? ??????????
???? ??????? ?????????? ??? ?? ?????????? ????. ???????, ? ?????? ??? ?????? ???
????????? ??????, ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????? ??????? ??? ???????.

24 ????? ??, ???????, ?? ?? ? ??????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ???
?? ??, ??????? ??? ?????? 13, B, ??????? ??, ?????? 3, ??? ?????? ???????,
????????????? ???, ??? ?????? ???????, ?? ?????????? ??? ?????? 13 ??????????
????????? ??? ?????? ??? ?????? ??? ???????, ?? ?????? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ?? ??? (??.,
?????? ?????, ?????????? ??? 4?? ????? 2006, C?169/04, Abbey National, ??????? 2006, ?.
I?4027, ????? 38, ??? 19?? ??????? 2007, C?455/05, Velvet & Steel Immobilien, ???????
2007, ?. I?3225, ????? 15, ??? 22?? ??????? 2009, C?242/08, Swiss Re Germany Holding,
?????? 2009, ?. ??10099, ????? 33, ??? ??? 10?? ??????? 2010, C?86/09, Future Health
Technologies, ??? ??? ??? ?????? ?????????? ??? ???????, ?????? 28).

25 ??? ?? ?????????? ?????????? ??? ?????? ??? ?? ??? ?????????????? ??? ??
????????? ??? ?????????? ??? ?????? 13 ??? ?????? ??????? ?????? ?? ????????????
??????????, ?????????? ??? ?? ?????????? ??? ?????? ?????????? ?????????????? ??? ?? ??? ??????
???? ?? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??
????????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ???
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ???????
????????????? ??? (??., ???????, ?????????????? ??? ??????? Don Bosco Onroerend
Goed, ????? 25 ??? ??? ?????????? ???????, Future Health Technologies, ????? 30,
????? ??? ?????? ??? 30?? ?????????? 2010, EMI Group, C?581/08, ??? ??? ??? ???????
????????? ??? ???????, ?????? 20).

26 ???????????, ?????, ??? ?? ??????? ??? ?????????? ?????? ??? ?????? ??? ?????? 13, ?,
?????? ??, ?????? 3, ??? ?????? ??????? ?????????? ?? ?????????? ?? ?? ??? ????? ??
????????? ??? ?????????? ??? ?? ?????????? ?? ??? ?????? ?????? ??? ?????????? ? ???
????? ??? ??????? (?. ?????????? ?????? SDC, ?????? 32 ?? 56, ??????? ??
26?? ?????? 2003, C?305/01, MKG-Kraftfahrzeuge-Factoring, ?????? 2003, ?. I?6729, ?????
64, ?????? ??? ?????????? ?????? Swiss Re Germany Holding, ?????? 44 ??? ???
????????? ??????). ???????, ? ??????? ??? ?? ??? ?????? ??? ?????????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ?????????????? ?
????? ???????, ?????? ??????? ??? ?????????? ??? ?????????????? ??? ?????? (??., ???????,
????????????? ??? ??????? SDC, ????? 38, Velvet & Steel Immobilien, ????? 22, ????? ??
Swiss Re Germany Holding, ????? 46).

27 ?????, ??? ?????? ??? ?????????? ??? ?????? 13, ?, ??????? ??, ??? ?????? ???????,
?? ?????????? ??? ?????? ??? ?? ?????????? ???????, ??? ?? ?????????????? ??
????????????? ??? ?????? ?? ?????????? ???????, ???????, ?????????? ???????, ?? ??????
????? ?? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ???????, ??? ?????????? ???

????????????????? ??? ??????? ??? ?????????? (??., ???????, ?????????????????? ??????? SDC, ??????? 66 ??? 75, ??????? ?? ?? ?????? 13, B, ??????? ??, ??????? 3 ??? 5, ??? ?????? ???????, ??????? ??? 13?? ?????????? 2001, C?235/00, CSC Financial Services, ??????? 2001, ?. I?10237, ?????? 25, ??????? ?? ?? ?????? 13, B, ??????? ??, ??????? 5, ?????? ??? ?????????????? ??????? Abbey National, ?????? 70, ??????? ??????? ?? ?? ?????? 13, B, ??????? ??, ?????? 6).

28 ????? ?????? ??? ??????? ?????? ?????? ?????? ?????? ???????????, ??????????? ??? ?????? ??? ??????
? ??????? ?????? ??????? ??? Denplan, ?????? ?????? ????????????, ??? ??????????? ???
??? ??? ??????? ?? ??????? ????. ? Denplan ???????????, ?????? ???????, ???
????????? ??? ??????????? ?????? ??? ?? ??????????? ?????? ??? ??????????? ??? ???????????
????. ????????, ? ??????? ??? ?????? ?????? ??????? ?????? ?????? ??????? ?? ???????,
????????????? ??? ?? ?????? 13, B, ??????? ??, ?????? 3, ??? ?????? ???????, ?????? ??
????????? ??? ?? «????????? ??????????», ??????? ??? ?????? ?? ??? ???????, ???
?????, ??????? ??? ?? ??? ???????.

29 ??????? ??????? ??? ??? «????????? ??????????» ??? ??? ??????, ? ??????????
????? ??? ?????? 13, B, ??????? ??, ?????? 3, ??? ??? ?????? ??????? ?????? ?? ??????????
?????????? ??? ?? ??? ?????? ?? ?????? ??? ?????????? ??????, ????? ??, ?? ??????, ???
????????? ??? ?? ??? ?????? (????????????? ?????? MKG-Kraftfahrzeuge-Factoring,
????? 70- ???????, ??., ??????, ?????????? ??? 13?? ?????? 1989, 173/88, Henriksen,
?????? 1989, ?. 2763, ????? 11, ??? ??? 3?? ?????? 1994, C?16/93, Tolsma, ?????? 1994,
. I?743, ????? 10).

30 ????????, ??? ??????????????? ?? ?? ?????? 25 ??? ?????????? ???????????, ?? ??????????
??? ?????? 13 ??? ????? ???????, ?? ?????????????? ??? ?? ?????? ??? ?????? ??? ??????? ???,
?????? ?? ?????????????? ?????, ?????????? ? ??? «????????? ??????????», ?? ?????????? ???
?????? ?????????? ?????????? ??? ?? ?????? ???, ?????????? ??? ?????? ??? ??????,
?????? ?? ??? ?????? ?????? ??? ?????? ???????, ? ?????????? ??? ?????? ??? ??????
??????, ?????? ?? ?????? ?????? ??????? (?) . ?????????????? ?????? MKG-
Kraftfahrzeuge-Factoring, ?????? 72, 73 ?? 75, ?????? ??, ???' ???????, ?????? ?? 15??
?????????? 2002, C?171/00 P, Libéros ??? ?????????, ??????? 2002, ?. I?451, ??? 27).

31 ????, ?? ??????????? ???, ????????????, ? ??? «????????? ??????????» ??? ?????? 13, ?,
????????? ??, ?????? 3, ??? ????? ??????? ?????? ?????? ?????????????????? ??????? ?? ???
?????? ?????????? ? ??????? ?????????? ?????????? (??.. ?????????????? ??????? MKG-
Kraftfahrzeuge-Factoring, ????, 78).

32 ??? ?? ?????????? ??? ????? ?????????? ??? ? ??????? ??? ????? ??? ?????? ??? ??????, ??? ?????? ?????? ? Denplan ????, ??? «????????? ??????» ??? ?????? ??? ?????? ??? ?????? 13, B, ??? ?????? ??, ??? 3, ??? ?????? ??????.

33 ????????????, ?????? ??? ?????????? ?????? ?????? ?? ?????????? ?? ?????? ???
Denplan, ?????? ?? ????????????, ?? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?????? ????.
?????????, ? ?? ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ??????. ?????????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ??????, ? Denplan ?????????? ???
????? ??? ?? ?????? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ???
????????? ??? ?? ?????? «????????? ??????» ??? ??? ??????, ?????? ???
????????? ??? Denplan, ?? ?????? ??? ?? ??????, ?? ??????, ?? ?????????? ?? ??????.

????? ??? ?????? 13, B, ??????? ??, ?????? 3, ??? ?????? ??????, ??? ?????????? ??? ??
????? ????, ???? ??? ?????? ?????????? ?????? ??????, ???? ?? ?????????? ??
????? ?????????? ???? ??? ?????? ?????? ?????????? ???? ??? ?????????? ???? ??????????
?????????????. ??????, ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????, ?
????? ?????? ?? ??? ??? ?????? ??? ?????? «????????? ??????????» (?).
????????????? MKG-Kraftfahrzeuge-Factoring, ??? 77), ??? ?????? ??? ??
????????? ??? ?????????? ??????. ?????? ?? ??? ?? ?????????? ??? ??????????
??? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??? ?????? ???.

35 ??????, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??????????
????? ?????? ??? ??, ?????? ?? ?? ?????????? ??? ?????????? ??? ?? ?????? 31 ??? 32
??? ?????? ??????????, ??? ?????? ??????, ??? ?????? ??? ?????????? ??? ??????????
????? ??? ?????? ??? ?????????? ?? «????????? ??????????», ?? ?????? ??? ?? ??????????
??? ?????? ??? ?? ??? ??????????, ? ??? ?????????? ?????? ??? ?????????? ???
????????? ??? ??????.

36 ?????? ??? ????????????, ??? ?????????? ?????? ??? ?????? ?? ?????? ? ??????
?? ???? 13, B, ??????? ??, ?????? 3, ??? ?????? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ??????????, ???' ??????, ??????, ??? ??????, ??? ??????, ??? ??????
?????????, ?????????? ??? ??????????, ??? ?????? ?????????? ??? «????????? ??????????»,
????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?? ??????, ??? ??????, ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ??????, ??? ?????? ??? ?????????? ???, ??? ?????? ???
?? ??? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??????.

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

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

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

? ???? 13, B, ??????? ??, ?????? 3, ??? ?????? ?????? 77/388/??? ??
?????????, ??? 17? ??? 1977, ??? ?????????? ??? ?????? ??? ?????????? ??? ??
?????, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? - ??? ?????? ?????? ??? ??
????????????? ????: ?????????? ?????? ???, ??? ??? ?????? ??? ??
????????? ??? ?????????????? ??? ?? ?????? ?????? ?????? ?????? ??? ??
????????????? ??? ? ?????? ?????????? ??? ?????? ?????????? ???' ??????, ????,
????? ??????, ??? ??? ?????? ?????? ??????, ??? ?????? ??? ??????????, ???
??? ?????????? ??? «????????? ??????», ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?? ??? ??
?????, ???????, ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??
????????????? ??? ???, ????, ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??
????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

(?????????)

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