

?????? C-284/09

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«????????? ??????? - ?????????? ?????????? ??? ????????? - ???? 56 ?? ??? ????
40 ??? ?????????? ??? ??? ?????????? ?????????? ??? - ?????????? ??? ?????????? -
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????
????????????? ?? ??? ??? ?????? ??? ??? ? ?? ?????? ??? ?????????? ?????????? ???
???????? - ?????????? ?????????»

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

1. ??????? ?????????? ??? ????????? - ?????????? - ?????????? ????????? - ????
???????? - ?????????? ??? ????????? - ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ?????????? ???
????? ??? ?????????? ? ?????? 90/435

(????? 56 § 1 ??- ?????? 90/435 ??? ??????????, ??? 3 § 1, ?????????? ??)

2. ??????? ????????? - ?????????? ??? ??? ?????????? ?????????? ??? - ??????????
????????? ??? ????????? - ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?? ?????? ?????? ?????????? ?????????? ?????????? ??' ?,?? ???
????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? - ??? ??????????

(????????? ??? ??? ???, ??? 40)

1. ?????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??
????????? ?? ??? ??? ???, ?? ?????????? ??? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?? ?????? 3, ?????????? 1, ?????????? ??, ??? ?????? 90/435, ?????????? ?? ??
????????? ?????? ?? ?????? ?????? ??? ??? ?????????? ??? ??? ?????????? ??? ??????????
????????? ?????? ???, ??? ?????????????? ?? ??? ?????? 2003/123, ??????????,
?? ?????????? ?????? ???, ?????????? ??' ?,?? ??? ?????????? ??? ?????????? ??
????????? ??? ?????? ???, ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??
56, ?????????? 1, ??.

??????, ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ???
90/435, ?????????? ??? ??? ?????? ??? ?? ?????????? ??, ??? ?? ??? ?????, ?? ??????????
? ?????????? ?? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????, ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
??, ?????????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????????????? ?
????????? ?????????? ?????????? . ??????, ?? ?????? ??? ?????? ??? ?????????? ???
????????? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ???.

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

???? ?????? ??? ????????, ???? ??? ???? ?????????? ??????????, ???? ?????? ?? ?????????? ???
????????? ??? ??????? ???????, ? ?????????? ??? ?? ??? ????? ?????????? ?????????? ???
????????? ??? ??????????? ??? ??????????. ?? ?????? ??????????, ?????????? ??? ??
????????? ?????????? ??? ?????????? ?? ??? ?????????? ?? ?????????? ??? ??????????
????????? ??? ??????????, ??? ?????? ??????????, ??????????, ?? ?????? 56 ??, ?? ??????
?? ?????? ??????? ? ?????????? ??????? ??????? ?? ??????? ????, ??? ??????? ???
????????? ??? ?? ?????? ?????? ?????????? ??? ?? ?????? ??????? ? ?? ?????????? ???
????????? ??? ? ?? ?????? ?????????? ??????????????, ?? ?????????? ?????????? ??
????????? ?????? ?????????? ????????????????

(?. ??????? 48, 56-57, 77-78, 83, 86, 92, 94, ????????. 1)

2. ?????? ?????? ?? ?????? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ???????????
?????????????? ?? ?????? ?? ??????? ?? ??????? ?? ??????? ?? ???????????, ?? ??????????? ?? ???????,
?????????? ??' ?? ?? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ??
???????, ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????? ?? ?? ????? 40 ???
????????? ?? ?? ??????????? ?? ??????????? ?? (???).

????????? ?? ??????????? ?? ?????????? ?????????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??
?????????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? 40 ?? ?? ?????????? XII ?? ?? ?????? ??????????, ?? ?????????? ?????? ?? ?????? ?? ?????
????? ??????????? ?? ?? ???' ?????? ?????????? ?????????? ?? ?????? ?? ?????? 56 ??.

(?. ??????? 96, 99, ????????. 2)

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

?? 20?? ?????????? 2011 (*)

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

???? ?????? C?284/09,

? ? ?????????? ?????? ?? ?????? 226 ?? ??? ?????? ??????????, ? ?????? ?????? ??? 23
?????? 2009,

????????? ???????, ?????????????? ??? ??? R. Lyal ??? B.-R. Killmann, ?? ???
????????? ??? ????????????,

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????????????? ?????????? ??? ??????????, ?????????????? ??? ??? M. Lumma ???
C. Blaschke, ?????????????? ??? ??? H. Kube,

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

????????? ??? ??? A. Tizzano, ?????? ???????, M. Safjan, M. Illeši?, E. Levits (?????????)
??? J.-J. Kasel, ????????,

????? ??????????: E. Sharpston

?????????: B. Fülöp, ?????????? ??????????,

?????? ???? ?? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ??? ??
9?? ?????????? 2010,

?????? ?? ??????? ?? ??????, ??? ?????? ?? ?????? ??????????, ?? ?????????? ??
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1 ?? ??? ??????? ??, ? ??????? ?? ?????????? ?????????????? ?????? ??? ??
????????? ?? ?????????? ?? ? ?????????? ?? ?????????? ?????????? ??? ??????????, ??????????????
??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ?? ?????? ?????? ??? ?????? ???
????????? ?????????? ?? (?? ????: ??) ??????????, ??? ?????????? ??????????,
????????? ??' ?? ?? ??? ?????? ??? ?????????? ?? ?????? ?????????? ?? ?????? ??????????,
?????? ?? ?????????? ?? ?????? ?? ?????? 56 ??, ?? ?????????? ?????? ??? ?????? ???
????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ?? ?????? ??? ?????? 90/435/??? ??? ??????????, ??? 23?? ???????

1990, ??????? ?? ?? ?????????????? ?????????? ?? ?????? ??????? ??? ?? ?????????? ??? ??
?????????? ??????? ?????????????? ?????? (?? L 225, ?. 6), ??? ?????????????? ??
??? ?????? 2003/123/?? ??? ???????????, ??? 22?? ?????????? 2003 (?? 2004, L 7, ?. 41),
(?? ?: ????? 90/435), ??? ??? ?? ????? 40 ??? ?????????? ??? ?? ??????????
?????????? ???, ??? 2?? ????? 1992 (?? 1994, L 1, ?. 3, ??? ?: ??????? ???), ???????
????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??????????.

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2 ?? ?????? 40 ??? ?????????? ??? ?????????? ?? ???:

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

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

3 ?? ?????? 3, ?????????? 1, ??? ?????? 90/435 ?????? ???:

«??? ??? ??????? ??? ??????? ??????:

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

[...]

??? 1?? ?????????? 2007, ?? ??????? ?????? ?????????? ?????????? ?? 15 %.

??? 1?? ?????????? 2009, ?? ??????? ?????? ?????????? ?????????? ?? 10 %.

[...]»

4 ??? ?? ?????? 5, ?????????? 1, ??? ?????? 90/435, ?? ?????? ?? ?????????? ??
????????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????????? ?? ??? ?????????????? ??
????? ??? ???.

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5 ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????
??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? (Einkommensteuergesetz, *BGBI.* 2002
I, ?. 4210, ??? ?????????? ??? *BGBI.* 2003 I, ?. 179, ??? ?: EStG), ?? ??????????, ???
????? ?? ?????????? ?????? ??? ??????, ?? ??? ?????????? ??? ?????? ??? ?????? ?????? ??????
????????? (Körperschaftssteuergesetz, *BGBI.* 2002 I, ?. 4144, ??? ?: KStG). ?? ??????????
?? ?????????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ???
??? ?????? ?????? ?????????, ?????????? ?????? ??? ?????? ??? ?????????? ?????????? 6 ??? 15 ??? ????????

?????????.

6 ????. ?? ?????? 20, ??????????? 1, ?????? 1, ??? EStG:

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

1. ?????????? ??? ?? ?????? (??????????) [...] ?????????????????? ??????????, ???????
????????? ?????????????? ??????, ??? ?????????????? ??? ?? ?????????? ?????? ??????
“Erwerbs- und- Wirtschaftsgenossenschaften” ??? ??????? ?????????????? ??????? ????
????????? ?????????? ?????? ??????. ?????????????? ?????? ??? ?????? ?????????? ??
????????????? ?????? ??????. ?? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?????????? ??
?? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????? ?? ?????? ?????? ?????????? ??
???? ?????????? ??? ?????? ?????????? ??? ?????? ?????????????? ?? ??? ??? ??? “?????????
????????? ?????????? ??????????” (“steuerliches Einlagekonto”), ??? ??? ?????? ???
????? 27 ??? [KStG].»

7 ?? ?????? 43 ??? EStG, ?? ?????? ?????? ??? ?????? «????????????? ??? ????????

????????????? ?? ?????????????? ?????? ??? ?????» , ?????????? ??? ?????????? ??? 1, ?????

??????????, ?????? 1, ??? ????? ??????????, ?? ????:

«? ?????? ?????????????? ?????????????? ?? ?????????????? ??? ?? ?????????????? ??? ??????????
(????? ?? ???? ?? ?????????????? ?? ??????????) ??? ?? ?????????????? ??? ?????????? ??
????????? [...], ????? ??, ??? ?????????????? ?? ?????????????????? ?? ?????????? 7, ????????? a),
?? ?????? 8 ??? ?? ?????? ??????????, ??? ?? ????? ?????????? ?? ??????????:

1. ?????????? ??? ??????? ??? ?????? ??? ?????? 20, ?????????? 1, ?????? 1 ???
2.

[...]

? ?????? ?????????????? ?????????? ??? ?????????????? ??? ?????? 3, ?????? 40, ??? ???
????? 8 b ??? [KStG].»

8 ????. ?? ???? 44, ?????????? 1, ????. ?? ???? ??????????, ??? EStG, ????.
????????? ???. ???. ???. ???. ?????????????? ???. ???. ??????????:

«???? ??????????? ??? ?????????????? ??? ?????? 43, ?????????? 1, ????? ????????,
[?????? 1] [...], ?????????? ??? ?????? ??? ??? ?????????? ??? ?????? ?????? ? ???????
??? ?????????? ??? ??????????. ? ?????????? ?????????? ?????? ??? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ? ?????????? ?????????????? ??
????????? ??? ??????????. ???' ?????? ??? ?????? ? ?????????? ??? ?????????? ???
?????????, ??? ?????????????? ??? ?????????????? ??? ?????? 43, ?????????? 1, ?????
?????????, ??? 1 ??? 4 [...], ?????????? ??? ??? ??? ?????????? ??? ?????? ???
????????? ??? ??????»

9 ? ??????????? ?? ???? ?? ???? ??????????? ?? ???? ??????? ?? ???? ?? ????
43 a, ?????????? 1, ?????? 1, ??? EStG, ?????? ? ????? ?????????? ?? ???:

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

1. ?????????????? ??? ?????????????? ??? ?????? 43, ?????????? 1, ?????? ????????, [????? 1],

??? 25 % ??? ?????????? ??? ??????? · [...]»

10 ??? ????? ?? ?????????? ??? ?????????? ??????????, ?? ????? 8 b, ?????????? 1, ????? ??????, ??? KStG ?????????? ??? ????? ??? ?????????? ??? ?????????? ??? ??????????.

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

11 ??? ????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ?????????? 1, ??? KStG ?????????? ??? ?????????? ??? EStG.

12 ?? ????? 36, ?????????? 2, ?????? 2, ??? 4, ?????? ??????????, ??? EStG, ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

«(2) ?????????? ?? ??? ??? ????? ??????????:

[...]

2. ? ?????? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????, ?????? ??? [...] ?? ?????????? ?? ?????, ?????? ?? [...] ?? ????? 8 b, ?????????? 1 ?? 6, ?????? ??????????, ??? [KStG], ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 45 a, ?????????? 2 ? 3, ?????? [...]

[...]

(4) [...] ??????, ?????? ??? ??????????, ?????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????.

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

13 ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????, ??? ?????? ??? ?????? 2 ??? KStG, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

14 ??? ?? ????? 32, ?????????? 1, ?????? 2, ??? KStG, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

15 ?? ????? 43 b ??? EStG ?????????? ???, ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 3, ?????????? 1, ?????? ???, ??? ?????? 90/435.

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

16 ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ?????????? ??????????
?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
????? ??? ??????. ?? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????,
????????????? ??? ?????? ??? ??????????, ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
?????????, ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????.

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

17 ?? ?? ?? 12 ?????????? 2005 ??????? ?????????? ? ??????? ?????????? ??? ??????? ??
????????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????? ??
?? ?? ?? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?? ?? ?????? 56
?? ??? ?? ?????? 40 ??? ?????????? ???, ?????? ??????, ??? ?????????? ?????? ?????? ??? ?????? ??? ??
????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?? ?????? ??? ?? ??
????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??.

18 ? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?? ?????????? ?? ?????????? ?? 21??
????????? 2005.

19 ??? 27 ?????? 2007 ? ?????????? ?????????? ??? ?????????????? ?????????????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?? ??
????? 56 ?? ?? ??????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??????, ??? ?? ?????????? ?????????? ?????????? ???' ?? ?? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????.

20 ?? ?? ?? 28 ?????????? 2007 ?????????? ???, ? ?????????? ?????????? ?????????? ???
?? ?????????? ??? ?????? ??? ?????? ??????, ?? ?????? ?????????? ?? ?????? ?????????? ??
????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ???
??? ?? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ???
??? ??????????, ??? ?? ?????????? ??????, ?? ?????? ?????? ?????????? ??? ?????? ?????????? ???, ???, ???
??? ?? ?????????? ?????????? ?? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???,
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

21 ?????????? ??? ?????????? ???, ? ?????????? ?????????? ??? ?? ??? ?????? ?????? ??? ??
??? 28 ?????????? 2007 ?????????? ??? ?????? ??????, ?? ?? ??? ?????? ?????????? ???,
????? ??? ?????? ???, ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???.
? ?????????? ?????????? ???, ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???, ???, ??? ??????
??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

22 ? ??????? ?????????? ?? ?????? ??? ?????????? ?????? ?????????????? ?? ?????????? ?
????????? ?????????? ?? ??? ???? ?????????????? ?????? ?????????? ??????????, ? ??????????
??????, ??? 28 ?????????? 2008, ?????????????? ?????????? ??????.

23 ? ?????????????? ?????????? ?? ?????????? ?????? ?????????? ??? ???? ???? ??????????????
????????????? ??? 30 ?????? 2008 ???????, ?? ??? ???? ?????? ?????????? ???
????????? ??? ??? ?????? ??? ???? ?????? ??? ???? ?????? ?????? ??? ???? ?????????? ???
????? ?? ?????????????? ?????????????? ??????.

24 ? ???????, ?????????????? ???, ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ???
????? ?????? ??? ?????????????? ?????? ?????????? ??? ?????????? ?? ?? ??????????????
????????????? ???, ?? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ???? ?????????? ???
??? ?????????? ??? ?????? ??? ?????????? ?????????, ?????? ??? ?????? ?????? ??????.

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

25 ? ?????????? ?????????? ??? ? ?????????? ?????? ?????????? ??? ?????????? ??????????
??? ??? ?? ??? 56 ?? ??? 40 ?? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ??????????,
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
?????????, ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????, ??????????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????????? ??? ?????????? ?????????, ??? ?????????????? ??? ?????? ??? ??????
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

27 ? ?????????? ?????????????? ??? ? ?????? ??? ?????? ??? ?????? ?????????????? ???
????????? ?????????? ?? ?????????????? ?????? ??? ??? ?????? ?????? ?????????? ? ??????????
????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

28 ??? ?? ???????, ?? ??????? ??? ?????? ?????? ?????? ?????? ??????
????????????? ??? ??????? ??? ?????????? ??? ???????????, ??? ???????????, ??????????????????
????????????? ??? ? ?????????? ??? ???????????, ??? ?????? ?? ?????????? ???????????
??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ???????, ?? ?????????? ??????????
???? ?? ?????? ?? ?????????? ?????? ?????? ?????????????? ??? ?????? ?????? ??????????
?????????, ??? ?????? ?? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? ??????
????????????? ??? ?????? ??? ?????????? ???.

29 ??? ?? ?????? ??? ?????????? ??????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????
?????????, ? ??????? ???????????, ??????, ??? ? ?????? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?? ??????????
????????? ?????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ???
????????? ???, ??? ?????? ?????????? ?? ?????????? ???, ??? ?????????? ??????
????????? ??? ?????????? ???????????, ?????? ??? ?????????? ?? ?????? ?????????? ??????????
????????? ??? ?????????? ???????????, ??? ?????? ??? ?????????? ?????? ??? ?????? ??????????
????????? ?????? ??? ?????????? ?????????? ???.

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

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

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

33 ? ?????????? ?????? ?????????? ??? ?????????? ?????????? ?????? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????, ???????, ??? ??
2001, ??? ?? ?????? ?????? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????? ??? ??? ??????. ???
?? ?????? ?????? ??? ?????? ?????????? ?????????? ???, ? ?????? ??? ?????? ?????????? ??????????
????????? ?? ?????????? ???, ?? ?????????? ?? ?????? ???, ??? ??? ?????? ?????????? ???, ???

?????? ? ??????????? ????????, ??? 1?? ?????????? 2008, ??? 15 %, ???, ??? ???? ?
?????? ???? ?? ???? ??????? ???????????, ? ?????? ?????????? ??? ?????????? ???? ???? ???? ?
?????? ?????????? ?? ?????????? ?????????? ?? ?????? ?????? ???, ?????????? ??? ???? ?
????????? ??? ?????????? ??? ???? ?????????? ?????? ?????? ?????? ?????? ??????, ??
????????? ???? ???? ?????????? ??? ?????? ?????????? ?????? ??????. ??? ??????, ??????, ???
????????? ?????? ???? ?????? ?????????? ??? ?????????? ?????? ??????. ??? ??????, ??????
????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ???? ?????? ?????????? ?????? ??????, ? ?? ?????????? ??? ?????? ??????
??? ?????????? ?? ?????????? ?????? ?????? ?????????? ?????? ?????? ?? ???? 8 b ??? KStG, ???
????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?????????, ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????
?????? ????.

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

35 ? ?????????? ?????? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??? ??? ??? ?????? ?????? ?????? ??? ?????? 8 b ??? KStG.

36 ??????, ??? ? ?????? ?? ??? ? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??? ??????
????????? ?????? ?? ??? ???? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ???
????? ?????? ?? ??? ?????? ?? ??? ???? ?????? ?????? ?????? ?????? ??? ?????? ???.

37 ??????, ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?? ?????? ??
????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? 8 b
??? KStG, ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? , ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? . ?? ?????? , ???, ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ??? ?????? ?????? ???.

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

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

40 ?????? ??? ?????????? ??? ??? ?????????? ??? ?????? ??????????, ???? ?????? ????
?????? ?????????????? ??? ?????????? ??????????, ?? ?????? ?????? ?????????? ?? ??? ?
????? ??? ?????? ??? ??????, ???? ??? ?? ?????????? ??? ?????????? ??? ?????? ??
????????? , ? ?????????????? ?????????? ??? ?????????? ?????????? ?? ?????????? ??? ?
????? ??? ??? ??????????, ??? ?????? ? ?????????? ??????????, ??? ??????, ??? 10 ? ???
15 %. ?????????????? ?????? ??? ?????????? ?????, ?? ?? ??? ?????? ?????? ?????? ??????
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ?? ?????????? ??
????????? ??? ?????? ???' ?, ?? ??? ?????????? ??? ?????????? ?? ?????????? ??
????????? ??? ?????? ??? ??????.

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

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

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

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

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

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

44 ?????? ?? ?????????? ???, ??? ?????? ?????????? ??? ?????????? , ?????????? ? ??????
????????? ?????????? ??? ?????? ?????????? ??? ?????? , ????? ?????? ?????? ?? ???
????? ?????????? ?? ?????? ??? ?????? (??., ?????? ?????, ?????????? ??? 12??
????????? 2006, C?374/04, Test Claimants in Class IV of the ACT Group Litigation, ??????
2006, ?. I-11673, ????? 36, ??? 8?? ?????????? 2007, C?379/05, Amurta, ?????? 2007, ?. I-
9569, ????? 16, ??? 19?? ?????????? 2009, C?540/07, ?????????? ??? ?????? , ?????? 2009,
. I-10983, ????? 28, ??? ??? 3?? ?????? 2010, C?487/08, ?????????? ??? ?????? , ???
??? ??? ?????????? ??? ?????? , ??? ?????? 37).

45 ?????? ?????? ?????? ?????? ??????, ?????? ?????, ?? ?????????? ?????????? ?? ?????? ???
??????, ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????????? , ???
????? ???, ?? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??????
????? ?????????? ??? ?????????? ?????? (??., ?????? ?????, ?????????????? ?????? Test

Claimants in Class IV of the ACT Group Litigation, ?????? 50, ?????????? ??? 12?? ??????????? 2006, C?446/04, Test Claimants in the FII Group Litigation, ??????? 2006, ?. I?11753, ????? 47, ??? 20?? ?????? 2008, C?194/06, Orange European Smallcap Fund, ??????? 2008, ?. I?3747, ????? 30, ??? ?? 16?? ??????? 2009, C?128/08, Damseaux, ??????? 2009, ?. I?6823, ????? 25).

46 ???????????, ??????, ? ??????????? ???, ??????? ?????????? ?????? ?????????? ?
?????????? ?? ??????? ???????, ?? ?????? ??? ?????????????? ?? ?????? ??????? ??
??????????, ?????????? ? ?????????, ?? ??????? ?????????? ??? ?????????? ???
??????????, ???????????, ?????? ???, ?? ?????????? ?? ?????? ??????? (?)
????????? ??? 12?? ????? 1998, C?336/96, Gilly, ?????? 1998, ?. I?2793, ?????? 24 ?? 30,
?? ?? 21?? ?????????? 1999, C?307/97, Saint-Gobain ZN, ?????? 1999, ?. ??6161, ???
57, ??? ?????????????? ?????? Amurta, ??? 17, ??????? ??? ???????, ??? 29,
?? ??????? ??? ???????, ??? 38).

47 ? ?????? 90/435, ??? ???????, ?????? ???, ??? ?? ?????? ?????????? ??????
???, ??????, ??????????? ?????? ?????? ?????????? ???????, ?? ?????????? ???
?????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?? ??
?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????????? ???' ??? ??
????? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?????? (?)?????????????
????????? Test Claimants in the FII Group Litigation, ??? 103, Amurta, ??? 18, ??
????????? ??? ???????, ??? 39).

48 ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ???
90/435, ?????????? ??? ?????? ??? ?? ?????????? ??, ??? ?? ???, ?? ??????????
? ?????????? ?? ?????? ?????????? ?????? ?????????? ??? ?????????? ?????? ???
????????? ??? ?????, ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??
????, ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ????
????????? ?????????? ?????? ?????? ??? ?????? ?????? ?????????? ?????? ???
????????? ?? ?????????? ?????????? ?????? ??? ?????????? ?????? ???
????????? ? ?????? (?)?. ?????????????? ?????? Test Claimants in Class IV of the
ACT Group Litigation, ??? 54, Amurta, ??? 24, ??????? ??? ???????, ??? 31, ??
????????? ??? ???????, ??? 40).

49 ??? ?????????? ?? ?????????? ??? ?????? ?? ?????????? ?????????? ?????????? ??
????????? ??? ?? ?????? ?? ?????????? ??? ?????? ?????????? ?????????? ???
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??
????? ?????? ??????. ??????, ??? ?????? ?? ?????????? ??? ?????????? ??
????????????? ??? ???????, ???, ?????? ???, ??? ?????????? ?????? ??? ??
????????? ??? ?????????? ??? ?? ?????? ?????? ?????? ?????? 8 b, ?????????? 1,
????? ?????????, ??? KStG, ??????? ?, ?????????? ?????????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?? ?? ?????? 36, ?????????? 2 ?? 4, ??? EStG,
????? ? ?????? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??? ??
????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ??
?????. ?? ?? ??????, ?? ?????? ?????????? ?????? ??? ?????????? ??
????????? ??? ??????? ?????? ???.

50 ??????????, ??? ????? ?? ?????????? ??? ?????????????? ?? ?????????? ??????????????????
????? ????? ?????? ?????? ????? ?????????? ??? ?????? ?????? ? ?????????? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??????
????????? ?? ????? 3, ?????????? 1, ??????? ?, ??? ?????? 90/435, ? ?????????? ???
???? ????????, ??? ?? ?????????? ?????????? ??????, ?????????? ??????????????.

51 ??? ?????????? ??? ? ?????????? ?????????? ?????????? ?????????? ???' ???? ???
????? ?????? ?? ??? ?? ?????????? ??? ?????????? ?????????? ??? ?? ??? ??????????????
?? ?????? ?? ?????????? ?????????? ??????????.

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

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

54 ??????, ?????? ?? ?????????? ??? ? ?????? ??? ?????????? ??? ??????????????????
?? ?????? ??? ?????????? ??? ?????? ?????????? ?? ??? ?????????? ???
????????????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ??????????,
????????? ?? ??? ?????? ??? ?????? ??? ?????? 49 ??? ?????? ??????????.

55 ??? ?? ?????????? ?????????? ???, ??? ?????? ?? ?????? ??? ?????????? ??????
????? ??? ?? ?????????? ?? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??????????
????????????? ??? ?????????? ??? ?????? ?????? ??????, ?? ?????????? ??????????
????????? ??? ?????????? ???' ?????? ?? ?????????? ?????????? ?? ??? ??? ??????????
????????? ?? ?????? ?????????? ?? ??? ?????? ?????? (??., ???????, ??????? ??? 14??
????????? 2006, C170/05, Denkavit Internationaal ??? Denkavit France, ?????? 2006, ?.
??11949, ??? 34, ??? ?????????? Amurta, ??? 37, ?????? ???
??????, ??? 51, ??? ?????? ??? ?????? ??? 50).

56 ??????, ?????? ?????? ?????? ?????????? ???, ?????????? ? ?????? ??????????, ??? ??
????????? ??? ?????? ??? ??????, ??? ?? ?????????? ??? ?????????? ??????????, ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????????? ??????, ? ?????????? ??? ?? ??? ?????? ??????????
????????? ??? ?????? ?????????? ??? ?????????? (??., ???????,
????????????? ?????? Test Claimants in Class IV of the ACT Group Litigation, ??? 68,
Denkavit Internationaal ??? Denkavit France, ??? 35, Amurta, ??? 38, ?????? ???
??????, ??? 52, ??? ?????? ??? ?????? ??? 51).

57 ??????, ?????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ??? ??????????
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????????????,
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????. ?? ?????? ??????????
????????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????, ???????, ?? ?????? 56 ??,
?? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ??????
??? ?????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???? ?????????????? ? ??? ?????? ?????????????? ??????????????, ?? ?????????? ?????????? ??
????????? ?????????? ?????????????? ?? ??? ?????? (??.. ?????????????? ?????????? Test
Claimants in Class IV of the ACT Group Litigation, ????. 70, Amurta, ????. 39, ?????????? ????.
???????, ????. 53, ??? ?????????? ????. ????????, ????. 52).

58 ?? ???????????, ????, ??????????? ? ??????????? ??? ? ??????????? ??????????? ??
 ?????????? ??????? ?? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
 ?????????? ?? ??????????????? ?? ?????? ?????? ?????? ?????? ??????. ????? ???????, ??
 ?????????? ??????? ?? ?????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ??
 ?????????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
 ?????????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ??
 ?????????? ?? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
 ?????????? ?? ??? ?????? ?????? ?????? ?????? (????????????? ?????? ?????? ?????? ???
 ???????, ????) 53).

60 ?????? ??? ?? ???? ??????? ?? ?????????????? ?? ?????????????? ?????????? ?????????? ?? ??
 ?????? ?????? ??? ?? ?????????????? ?????????????? ?? ?????????? ?? ?? ?????? ?????????? ??
 ?????????? ?? ???? ??????, ? ?????????? ?? ?????????????? ?????????????? ?? ?? ?????? ??
 ?????????? ?? ???? ?????????? ?? ?????????? ?????????? ?? ?????????? ?? ?? ?? ??????????
 ?????????? ?????????? ?? ???? ?????? ?????????? ?? ?????????? ?? ?????????? ?? ?? ?????????? ??
 ?????? ?????????? ?????????? ?? ???? ?????? ?????????? ?? ?????????? ?? ?????????? ??????????
 ??, ?????????? ?? ???? ?????? ?? ?????????? ?????????? ?? ?????? ?? ?????????? ?? ?? ?????????? ??,
 ?????? ?? ???? ?????? ??????, ??????, ?????? ?????????? ?????????? ?? ?????????? ?? ??????????
 ??? ?? ?????????? ?????????? ?? ???? ?????? ?? ?????????? ?? ?????????? ?? ??, ?????????? ?? ??????????
 ?????????? ?????????? ?????????? ?? ???? ?????? ?? ?????????? ?? ?? ?? ?????????????? ?? ?? ?????? ??
 ???, ??? ?????? ?????? ?????????? ?? ?? ??? ?????? ?????? ?????? (??., ???????, ??????????????
 ?????? ?????? ?????? 43).

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

62 ????? ?????? ??? ??????? ??? ?????????? ??? ?????????? ??? ???? ?????? ??? ?????? ??????????,
?????? ?? ?????????? ??? ?? ?????????? ???, ???????, ??????? ??? ?? ?????? ??
?????????? ?? ?????????? ?? ??????? ??? ?? ?????????? ??? ??????? ??? ?? ?????? ??
??? ?????? ??? ?? ?????? ?????????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ???
??? ?????? ?????????? (??., ???????, ?????????????? ?????????? Test Claimants in Class
IV of the ACT Group Litigation, ??? 71, Amurta, ??? 79, ??????? ??? ??????, ??? 36,
??? ?????? ??? ??????, ??? 58).

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

?????????? ?????????????? ?????????????? (?. ?????????????????? ?????????? ?????????? ????
???????, ??? 37, ??? ??????? ??? ??????????, ??? 59).

64 ??????? ?? ?? ?????????? ??? ?????????????? ? ?????????????? ?????????????? ??? ????????????,
???' ??????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ??? ??????????
?? ?? ?????? ?????? ???, ?? ?????? ??? ?????????????? ?? ?????????? ??? ?????????? ??? ?????? ????
??? ????????????, ??? ?????? ? ?????????????? ????????????, ??? ??????, ??? 10 ? ??? 15 %, ???
? ?????????????? ??? ?????? ?????? ? ?????? ?????? ?????????? ?? ?????? ??? ?????????????? ???
????? ???' ??????? ?? ?? ????????.

65 ???????, ??? ?????????????????? ? ??????????, ? ??????? ?????? ??? ??????????????
????????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????????? ???
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 49
??? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????.

66 ? ?????????????? ?????????? ??? ?????????? ?????????????? ?????? ??? ??? ???
????????? ??? ??? ?????????? ??? ?????? ?????????? ? ?????????? ?????? ??????????????
????????????? ??? ??? ?????????????? ??? ?????????????? ?????? ??? ??? ?? ??? ??? ? ??????
????????? ??? ??? ?????? ??????????????. ??????? ? ? ?? ?????????? ??? ??????????, ?? ????
?? ?????????????? ?? ??? ?????? ?????? ????, ?? ?????????? ?????? ?????????????? ??? ? ??????????
????????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????????? ???.

67 ??????? ?? ?????????????? ???????? ??? ? ?????????? ??? ??????? ??? ?????????????? ??
?????? ?? ??????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ???
?????????? ?? ?????????????? ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????????????? ??? ?????????? ??????????, ??? ?????, ?? ?? ?????????? ??? ?????????????? ??
??? ??? ??????? ??? ?????????????? ?????? ?????????? ?????????? ??? ?? ?? ?????????? ???
????????????? ??? ?????????????? ?????? ?????????? ??????????, ??? ????? ? ?????????? ??
????????? ??? ??????????, ??? ?????, ?? ?????????? ??? ?????? ?????????? ?????????? ??
????????? ??? ??????????, ??? ?????? ?????? ?????????????? ??? ?????????? ?????????? ??
????? ?????? ?? ?????????? ?????????? ??? (??., ???????, ?????????????? ??????)
?????? ??? ??????????, ??? 60).

68 ?? ?? ??????, ? ??????????? ??????????? ?????? ?? ??????????????? ??? ??
?????? ?? ?? ??????????? ?????? ?? ??????? ?? ??????????? ?? ?? ??????? ?? ???????
?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????. ???????, ??????? ?? ??????? ??
?????????? ?? ?? ??????????? ???????, ?? ?? ????? ?? ????? ?? ?? ??????????? ?? ??
????????? ? ?????? ?? ????? ?? ????? ?? ??????? ?? ??????????? ??????????? ?????????? (?)
?????????????? ?????????? ???????, ?????? 38, ??? ??????? ?? ??
??????, ??? 62).

69 ??????? ?? ??????????????? ?????? ??? ? ??????? ????? ???????????????, ??? ????? ?????
 ?????, ??? ?????????????? ??? ?????????????? ??? ?? ??????? ? ?? ??? ????? ??? ?????????????? ???
 ??????????? ?????? ??? ?????????? ??? ??? ?????????????? ??????????? ??? ???????????, ???
 ??? ??? ????? ?????? ??????? ??? ??? ????? ??????? ?? ??? ????? ?????? ?????? (??????????????
 ?????? ??????? ??? ???????, ????? 64).

70 ???????, ? ?????????????? ?????????????? ??? ?????????????? ??? ?????????????? ?? ??????????????

????? ??????? ?????? ????, ???' ???????? ?? ???? ?????????? ??? ???? ???????? ??? ???? ?????????? ???
????? ???????????, ??????? ?????? ?? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? ???
????????????? ?????????????? ? ?????? ?????????? ??? ???? ?????????? ??? ???? ?????????? ???
????? ?????????? ?????????? ? ??? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ????
????????? ?? ?????? ??? ?????????? ?????????? ??? ???? ?????? ??? ???? ?????????? ??? ???? ????
(??., ??????, ?????????????? ?????? ?????????? ??? ???? ??????, ??? 39, ??? ??????
????? ???????, ??? 64).

71 ??? ???? ?, ????, ?? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??
????? ?????????? ??? ???? ?? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? ???
????? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ???? ????
????????????? ?????????????, ??? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ????
????????? ??? ???? ?????????? ??? ???? ?????????, ??? ???? ?? ?????????? ???, ??? ???? ?? ??????????
??? ??????????, ??? ?????? ?? ?????? ?????? ??? ?????????? ?????????? ?????????? ??????????
????????? ??? ???? ?????????? ?????????? ??? ???? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? ????
????????? ??? ???? ?????????? ?????????????, ??? ???? ?? ?????????? ??? ???? ?????????? ??? ???? ??????????
????? ?????????? (??., ??????, ?????? ??? 6?? ?????? 2000, C?35/98, Verkooien,
????? 2000, ?. I?4071, ??? 61, ?????????? ?????? Amurta, ??? 75, ??? ??????
?? 1?? ?????? 2010, C?233/09, Dijkman ??? Dijkman-Lavaleije, ? ?????? ??? ???
????????? ??? ???? ?? ???????, ??? 41).

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

73 ??? ???????, ? ??????? ??? ???? ?????? ?????????? ??? ???? ??????? ?????????? ??? ???? ???????
?? ???????, ? ????, ????, ???????, ?????????? ??? ???? ???? 56, ?????????? 1, ??.

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

74 ??? ??????? ??? ???? ???????, ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ??? ???? ??????? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ???? ???? ???? ?
????? ?????????? ??? ???? ??????? ??? ???? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? ???? ???? ?
(?????? ??? 23?? ??????? 2007, C?112/05, ??????? ??? ???????, ?????? 2007, ?,
I?8995, ?????? 72 ??? 73, ??? ?????????? ??? Dijkman ??? Dijkman-Lavaleije,
????? 49).

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

76 ? ???????, ? ?????????? ?????? ?????????? ??? ?????????? ?????????????? ??? ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?? ?????? 59 ??? ??????????????????
????????? Test Claimants in Class IV of the ACT Group Litigation ??? ??? ?? ?????? 83 ???
????????? ??? 17?? ?????????? 2009, C?182/08, Glaxo Wellcome (????????? 2009, ?. I?8591),
????????? ??? ?? ?? ?????????? ?? ?????? ?????????????? ??? ?????????????? ?????????? ??
????????? ??? ?? ?? ?????? ??? ?????????????? ?? ?????? ?????????? ?????????? ??? ?????????? ??
?? ?????????? ??? ?? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??
????????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???.

77 ? ?????? ?? ?????????? ?????? ??? ?????????? ?????????????? ??? ??? ??????
????????? ??? ?????????? ?????????? ??? ?????????? ?????????????? ?????? ??? ??????
????? ?????? ?? ?????? ?????? ??????, ????, ?? ?????? ?????? ?????? ?????? ?? ??????????
????????? ?????? ?????????? ?? ?????????? ?? ?????? ?????????????? ??? ?????????? ??
????????? ??? ?????????? ?? ?????? ?? ??? ?????? ?????????????? ??? ?????????? ??
????????? ??? (??. ?????????? ??? 29?? ?????? 2007, C?347/04, Rewe Zentralfinanz,
?????? 2007, ?. I?2647, ??? 42, ??? ?? 18?? ?????? 2007, C?231/05, Oy AA, ???????
2007, ?. I?6373, ??? 54, ?????????????? ?????? Amurta, ??? 58, ??? ?????? ?? 18??
?????? 2009, C?303/07, Aberdeen Property Fininvest Alpha, ??????? 2009, ?. I?5145, ???
66).

78 ? ?????, ??? ?? ?????????? ??? ?????????? ?????????? ?????? ???, ?? ?????????? ???
?? ?????? ?????? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????? ?????????? ?????? ??? ??????, ?? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ?????????? ?????? ?????????? ?????????? ??? ?????????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????????? ?? ?????????????? ?? ?????????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????????? ?? ?????? ?????? ?????? (?????????????????)
????????? Amurta, ??? 59, ??? Aberdeen Property Fininvest Alpha, ??? 67).

79 ? ???????, ???, ? ?????????? ?????? ?????????? ??? ?????????? ?????????????? ??? ??
?????? ?? ?????? ?????? ??? ?? ?????? 8 b ??? KStG ?????????? ??? ?????????? ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??
????? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ???.

80 ? ???????, ?? ?????????? ??? ?????? ??? ?? ?? ?????????? ?? ?????? ??????????????
?? ?????????? ??? ?????????? ?? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????? ??
????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???

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

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

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

83 ???, ???, ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????????? , ? ?????? ???
????????????? ??? ?????? ?? ?????? ?? ?????????? ?????????????? ??? ?????? ?????? ??????????????
????????? ?? ?????????? ??? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??
????????? ?????????? (??., ?????? ???, ?????? ??? 7?? ?????????? 2004, C?319/02,
Manninen, ??? 2004, ?. I?7477, ??? 49 ??? ??? ?????????? ??????).

84 ??????, ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?? ?? ??????
????????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????? ?????????? ?? ?? ?????? ???
????????????? ??????????. ?????????????? , ?? ?????????? ?????????????? ??? ?????? ?????????? ???
?? ?????? 8 b ?? KStG ?????????????? ??? ?????????? ?????????????? ??? ?????? ?????????? ???
?? ?? ?????????? ??? ??????. ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ?????? ?????? ??? ??????, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
?????????.

85 ??? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ????
????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??????????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? (???????)
?? 28?? ?????????? 1992, C-204/90, Bachmann, ??? 1992, ?. I-249, ??? 28,
????????????? ?????? Manninen, ??? 42, ?????? ??? 27?? ?????????? 2008, C?418/07,
Papillon, ??? 2008, ?. I?8947, ??? 43, ??? ?????????? ?????? Glaxo Wellcome,
????? 77).

86 ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??????????
????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ?? ?????? ??? ??????
????????? , ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????? ??? ??????
?? ?????? ?????????? ?????? (?? ?????????????? ?????? Papillon, ??? 44,
?? Glaxo Wellcome, ??? 78).

87 ?????????????? ?? ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??????????
????????? , ? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??

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

88 ?????????????? ??? ???. ?????????????? ??????? ???. ?????????? ?????????????? ??????????????
?????????????, ? ?????? ?????????????? ?????????? ???. ?????????? ?????????????? ?????????????? ???.
????????????? ?????????????? ???. ?????????????? , ?????? ??? ?????? ?????? ?????????? ???. ?????????????? ???.
????????????? ?????????????? ???. ?????????????? ?????? ?????????? ?????? ???. ?????????????? ??????????????
????? ???. ?????? ?????????? ???. ?????? ?????????? ???. ?????? ?????? ???. ?????????????? ???. ???. ???. ??????????
???. ?????? ???. ?????? ???. ?????????????? ?????? ?????? ???. ?????? ?????????? . ???. ?????? ???.
????????? ?????????????? ?????? ?????? ???. ?????? ?????? ???. ?????? ?????????? ???. ?????? ?????? ???.
????????? ???. ???. ?????????? ???. ???. ?????????? ???. ?????? ?????? ???. ???. ?????? ???.
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89 ????????????????, ?????????? ?? ? ? ??????? ??????? ?????????????????? ?????????? ?????
?????? ?? ?????? ?????????????? ?????? ?????????? ?? ?? ?????? ??????????????, ?? ??????
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90 ??????? ? ??????? ?? ?????????? ?????? ?????????? ?????? ?????????????????? ?????? ?? ???????
????????? ?? ??? ????? ?? ?????? ?? ?????? ?????????????? ??????????????, ? ?????? ?????????????? ?? ?
????????? ? ?????????? ?? ?????????? ?????? ?????? ?????? ?????????? ?????????? ?? ??? ??? ? ?????????? ???
????? ?????????? ?? ?? ?????? ???????????, ??? ?????? ?? ?????? ?????? ??? ?? ?????????? ???
??? ?????????? ?? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ?????? ??? ?? ?????????? ???
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????????? ??? ??????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??
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92 ????????, ??? ?????????? ?????? ??????, ????? ?? ?????? ?????? ??? ?????????????? ???
????????? ??? ?????? 86 ??? ?????? ?????? ??????????, ?????? ??? ?????????? ??? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????????? ??? ???? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??????, ??? ?? ??????????
??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????????????
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94 ??? ?? ??????? ??? ??????? ?????????? ??? ? ?????????????? ?????????? ???
?????????, ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ?? ??????
????? ????, ?? ??????? ??? ????? ?? ?????? ? ?????????? ??? ?????????? ?? ??????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????? 3,
????????? 1, ??????? ??, ??? ?????? 90/435, ??????????, ??? ?????????? ??????,
????????? ??' ?? ?? ?? ?????????? ??? ?????????? ?? ?????????? ?????????? ?? ??????????

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

??? ??? ?????????? ??? ?????? 40 ??? ???????? ???

95 ??? ??? ??? ????? ??????? ??? ??????? ??? ?????????? ??? ?????????? ??? ??????? ??? ???????
????????? ?????????? ??? ?????????? ?????????? ?????????? ??????????, ???????, ??????????
??? ?????????? ??? ?????? ? ?????????????????? ?????? ??? ??????? ?????????? ?????? ???
????????? ??? ?????? ??? ?????.. ??' ???? ?? ??????, ?????????? ?????????? ??? ?? ???
????????? ??????? ?? ?????????? ??? ?????? ?? ?????? ?????? ?????????? ?????????? ??? ??
?????? ??? ??? (??.. ?????????? 1/92 ??? 10?? ?????? 1992, ?????? 1992, ?. ?-2821).
??? ?????? ???, ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ???
???, ?? ?????? ?????????? ???' ?????? ?? ????? ?????? ??? ???????, ?? ?????????? ??
???? ?????????? ?????? ??? ?????? ??? ?????? (?????? ??? 23?? ?????????? 2003,
C452/01, Ospelt ??? Schlossle Weissenberg, ?????? 2003, ?. I-9743, ??? 29, ???
????????? ?????? ?????? ??? ???????, ??? 65).

96 ???????, ??????? ?? ?????????? ??? ?????????? ?????????????? ??? ??????????
?????? ??????? ??? ?????????? ??? ?????????? ??? ??????? ??? ?????? ?? ?????????? ??
?????? ?? ????? 40 ??? ?? ?????? XII ??? ?? ????? ???????, ?? ?????????? ???
????? ?? ??? ?????? ?????????? ?? ??? ???' ?????? ?????????? ?????????? ??? ??????
56 ?? (??.. ?????? ??? 11?? ?????? 2009, C-521/07, ?????? ??? ?????? ???, ??????
2009, ?. I-4873, ??? 33, ??? ?????????? ??? ?????? ??? ???????, ??? ???????, ??? 66).

97 ??? ?????????? ??? ?????? 49 ??? ?????? ?????????? ??? ???????, ?? ?????????????? ???
????????? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ?????????? ??? ??????
????????????? ??? ?????? ??? ?????? ?? ?????????? ??? ????? ?????????? ?? ??????????
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98 ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????????? ??? ?????? ??????????
??? ??? ???????, ? ?????????? ??? ?????? ??? ?????? ???, ??? ?? ??????????
??????, ???????? ???????????.

99 ?? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????????????? ??? ?????? ??? ??????? ???
????????? ??? ??????? ??? ?????? 56, ?????????? 1, ??, ?????? ?? ?????? ??? ?????? ??? ?
????????????? ?????????? ??? ?????????, ?????????????? ??? ?????????? ??? ??????????
?? ??????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????????? ???????, ?????????? ??' ?? ?? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? 40 ???
????????? ???.

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100 ??? ?? ?????? 69, ?????????? 2, ??? ?????????? ??????????, ? ?????? ??? ??????????
????????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????
?????????. ?????????? ??? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

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

1) ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?? ?????? ?????????? ?? ??? ?????? ?????? ??? ?????, ?? ?????????? ??? ???
????? ? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ??? ?????? 3, ?????????? 1,
????????? ??, ??? ?????? 90/435/??? ??? ?????????, ??? 23?? ?????? 1990,
????????? ?? ??? ?????? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ???

??? ?????????? ??? ?????? ??? ??????????? ????, ????, ??? ?????????????? ?? ??
?????? 2003/123/?? ?? ??????????, ?? 22?? ?????????? 2003, ??????????, ??
?????????? ??, ?? ??????? ??' ?, ?? ?? ?????????? ?? ??????????? ??
?????? ??????? ??, ?? ???????, ?? ?????????? ?? ?????????? ?? ??????? ??
????? 56, ??????? 1, ??.

2) ? ?????????? ??? ?????????? ??? ??????????, ?????????????? ?? ?????????? ??
????????? ?? ??????? ?????????????? ??? ?????????? ?? ?? ??????????
??????????, ?? ?????????? ???????, ?????????? ??' ?, ?? ?? ?????????? ??
????????? ?? ??????? ?????????? ??? ???????, ?????? ?? ?????????? ??
????? ?? ?? ?????? 40 ?? ?????????? ?? ?????????? ?????????? ??, ?? 2??
????? 1992.

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

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